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OF THE

ASSEMBLY

MEETINGS OF THE COMMITTEES

MINUTES

OF THE

FIRST COMMITTEE

(CONSTITUTIONAL AND LEGAL QUESTIONS)

GENEVA, 1928

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Chairman:	His Excellency M. Vittorio SCIALOJA (Italy).
Vice-Chairman:	His Excellency M. Rafael ERICH (Finland).
Albania:	M. Mehdi FRASHERI.
Australia:	Sir William Harrison MOORE, K.B.E., C.M.G., B.A., LL.D.
Austria:	His Excellency M. Max HOFFINGER.
Belgium:	M. P. E. JANSON. M. Henri ROLIN (Substitute).
British Empire:	Sir Cecil James Barrington HURST, G.C.M.G., K.C.B., K.C.
Bulgaria:	His Excellency M. Vladimir MOLLOFF. M. MIKOFF (Substitute).
Canada:	The Hon. Raoul DANDURAND, C.R., C.P., LL.D. Mr. O. D. SKELTON, M.A., Ph.D. (Substitute).
Chile:	His Excellency M. Enrique VILLEGAS.
China:	His Excellency M. WANG-KING-KY. M. LO-HOAI (Substitute).
Colombia:	His Excellency Dr. Francisco José URRUTIA.
Cuba:	His Excellency M. Orestes FERRARA. His Excellency M. Guillermo DE BLANCK.
Czechoslovakia:	His Excellency Dr. Stephan OSUSKY. Dr. Vladimir SLAVIK (Substitute).
Denmark:	M. F. H. J. BORGBJERG. M. O. WADSTED (Substitute).
Dominican Republic:	Dr. Tulio FRANCO FRANCO. M. Salvador E. PARADAS (Substitute).
Estonia:	M. Otto STRANDMAN. M. Jüri SAMMUL.
Finland:	His Excellency M. Rafael ERICH. Baron YRJÖ-KOSKINEN and M. Hugo VALVANNE (Substitutes).
France:	His Excellency M. Aristide BRIAND. M. Louis LOUCHEUR. M. Henri FROMAGEOT. M. René CASSIN.
Germany:	Dr. Friedrich GAUS. Dr. VON SIMSON (Substitute).
Greece:	His Excellency M. Nicolas POLITIS.
Guatemala:	His Excellency M. José MATOS.
Haiti:	His Excellency M. Alfred NEMOURS.
Hungary:	His Excellency Count Albert APPONYI. M. L. GAJZAGO. M. A. DE EGRY. M. J. LAKATOS.
India:	Sir Edward Maynard DES CHAMPS CHAMIER, K.C.I.E. Sir Kurma Venkata REDDI.
Irish Free State:	Mr. John A. COSTELLO.
Italy:	His Excellency M. Vittorio SCIALOJA. The Hon. Cesare TUMEDEI and M. Massimo PILOTTI (Substitutes).
Japan:	His Excellency M. Mineitcirô ADATCI. His Excellency M. Isaburô YOSHIDA and M. Nobumi ITO (Substitutes).

Latvia:	His Excellency M. Charles DUZMANS. His Excellency M. Edvin MAGNUS (Substitute).
Liberia:	His Excellency Baron Rodolphe Auguste LEHMANN.
Lithuania:	His Excellency M. Venceslas SIDZIKAUSKAS.
Luxemburg:	His Excellency M. Joseph BECH. M. Albert WEHRER.
Netherlands:	M. Joseph LIMBURG.
New Zealand:	The Hon. Sir James PARR, K.C.M.G. Major-General Sir George RICHARDSON, K.B.E., C.B., C.M.G.
Nicaragua:	Dr. Antoine SOTTILE.
Norway:	His Excellency M. Joh. Ludwig MOWINCKEL. Dr. Frede CASTBERG.
Panama:	His Excellency M. Octavio MENDEZ PEREIRA.
Paraguay:	Dr. Ramon V. CABALLERO.
Persia:	Dr. P. Parviz Khan KITABGI. Dr. Hussein Khan GHADIMY (Substitute).
Poland:	M. Jean MROZOWSKI. M. Simon RUNDSTEIN. M. Sigismond GRALINSKI.
Portugal:	His Excellency Dr. Alberto D'OLIVEIRA. Dr. Gomes D'ALMENDRA (Substitute).
Roumania:	M. Mircea DJUVARA. M. Vespasian V. PELLA (Substitute).
Salvador:	His Excellency Dr. Gustavo GUERRERO.
Kingdom of the Serbs, Croats and Slovenes:	M. M. STRAZNICKI. M. Leonidas PITAMIC (Substitute).
Siam:	His Highness Prince VARNVAIDYA. Nai THAVIN ARTHAYUKTI.
South Africa:	Mr. J. S. SMIT.
Spain:	His Excellency M. Emilio DE PALACIOS Y FAU. His Excellency M. Cristóbal BOTELLA Y GOMEZ DE BONILLA and His Excellency M. Eduardo COBIÁN Y FERNANDEZ DE CORDOBA (Substitutes).
Sweden:	His Excellency M. Jonas Eliel LÖFGREN. M. B. Östen UNDÉN and M. K. I. WESTMAN (Substitutes).
Switzerland:	M. Walther BURCKHARDT. Colonel Gottfried KELLER (Substitute).
Uruguay:	His Excellency Dr. Alberto GUANI. His Excellency Dr. Alfredo DE CASTRO.
Venezuela:	His Excellency M. Diógenes ESCALANTE. M. HURTADO-MACHADO (Substitute).

FIRST COMMITTEE.

CONSTITUTIONAL AND LEGAL QUESTIONS.

AGENDA.

I. PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW.

(*a*) Preparatory Work for the first Codification Conference.

(*b*) Preparation of a General and Comprehensive Plan of Codification of International Law : Proposal by the Delegation of Paraguay.

(*c*) Work of the Committee of Experts for the Progressive Codification of International Law.

II. REVISION OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

Draft Resolution submitted by the French Delegation on behalf of certain Delegations.

III. ADVISORY OPINIONS OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

Draft Resolution submitted by the Swiss Delegation.

IV. PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES.

Examination, at the Request of the Third Committee, from the Legal Point of View, of the Following Parts of the Report of the Arbitration and Security Committee on the Work of its Third Session :

(*a*) Model Conventions for Judicial Settlement, Arbitration and Conciliation.

(*b*) Draft Resolution of the Assembly concerning the Model Conventions on Conciliation, Arbitration and Judicial Settlement.

(*c*) Draft Resolution of the Assembly concerning the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice.

FIRST MEETING.

Held on Tuesday, September 4th, 1928, at 10 a.m.

Chairman: M. SCIALOJA (Italy).

1. Election of the Vice-Chairman.

M. ERICH (Finland), proposed by M. FERRARA (Cuba), was elected Vice-Chairman and expressed his thanks to the Committee for this mark of confidence.

2. Adoption of the Agenda.

The Committee adopted the provisional agenda drawn up as follows by the Assembly:

(*a*) Preparatory Work for the First Codification Conference (Report on the Work of the Preparatory Committee contained in the Report to the Assembly on the Work of the Council and of the Secretariat and on the Measures taken to execute the Assembly's Decisions) (Annex 1).

(*b*) Proposal of the Delegation of Paraguay at the Eighth Ordinary Session of the Assembly for the Preparation of a General and Comprehensive Plan of Codification of International Law (Annex 2).

(*c*) Work of the Committee of Experts for the Progressive Codification of International Law (Annex 3).

3. Appointment of a Rapporteur.

The CHAIRMAN suggested that, as in the previous year, M. Politis might be appointed Rapporteur for the questions on the agenda relating to the codification of international law.

M. POLITIS (Greece) thought it preferable that others should have a share in the responsibilities and the honours.

Sir Cecil HURST (British Empire) proposed the appointment of M. ROLIN (Belgium).

This proposal was adopted.

SECOND MEETING.

Held on Wednesday, September 5th, 1928, at 3.30 p.m.

Chairman: M. SCIALOJA (Italy).

4. Publicity of the Meetings.

The CHAIRMAN proposed that the Committee should hold its meetings in public.

This proposal was adopted.

5. Questions relating to the Codification of International Law: General Discussion.

M. ROLIN (Belgium), Rapporteur, invited by the Chairman to open the discussion, observed that, in his capacity as Rapporteur, it might be more fitting that his remarks should follow those of the other members.

M. POLITIS (Greece) had observations to offer on each of the three sub-headings (*a*), (*b*) and (*c*).

The Committee might simply take note of the work of the Preparatory Committee, hwile expressing its earnest hope that the replies of the Governments to the questionnaire would be received before the end of the time-limit, namely, the end of October.

In regard to the proposal of the delegation of Paraguay, a proposal which, in the opinion of the Committee of Experts for the Codification of International Law, could be accepted, it would be for the First Committee to make suggestions as to the procedure to be followed.

Thirdly, as regards the work of the Committee of Experts, the Committee might confine itself to taking note of the progress made. It would seem to be too late to add to the agenda of the proposed Codification Conference any of the other questions which were already ripe to be dealt with by an international conference. It was to be hoped that the Committee of Experts would be invited to continue, in its rôle as a regular organ of the League, its work of research and definition in regard to matters lending themselves to codification.

M. BURCKHARDT (Switzerland) entirely approved the programme which the Committee of Experts was studying point by point. To go forward by stages, taking first the questions already ripe for immediate examination and passing later to others as the preparatory work was sufficiently advanced was without doubt the most appropriate procedure. The Paraguayan proposal did not seem to involve any abandonment of the principle involved in that mode of procedure since the general programme it included did not prejudge the order in which the questions would be discussed later.

M. GUERRERO (Salvador), referring to the very detailed character of the Preparatory Committee's questionnaire and the near approach of the date (October 31st) by which the Governments had been invited to communicate their replies, desired to know what the Preparatory Committee proposed should be done if some of those replies had not been received by the appointed date. He wondered whether Sir Cecil Hurst or M. Pilotti, who were members of the Preparatory Committee, could offer any light on this point.

Sir Cecil HURST (British Empire) welcomed this question as giving him an opportunity of raising in his turn a further question. There was reason to believe that the members of the Fourth Committee would be glad, before voting on the credit included in the budget for 1929 for the proposed Codification Conference, of some assurance that the Conference would be practically certain to meet in 1929. The answer to that question must clearly depend on whether the replies of the Governments would arrive before October 31st and whether it would be possible to prepare in due time the programme for the Conference. The Governments concerned were all represented on the First Committee, and information ought therefore to be available as to the likelihood of the replies being forthcoming before the date fixed.

In answer to M. Guerrero's observation regarding the detailed character of the questionnaire, Sir Cecil Hurst could only give his personal opinion. If the results of the Codification Conference were to be worthy to be described as a codification of international law, the task of the Conference would be, not merely to lay down broad general principles, but to arrive at a detailed method of applying those principles to a great variety of cases.

It was in regard to this detailed application that the Conference would be particularly dependent on having before it the views of the Governments. It might, of course, be that some Governments would say that they were unable to reply to those questions. Such a declaration would, however, be surprising, since all those questions precisely related to *de facto* situations that arose in the daily intercourse between Governments, and the points involved must have been constantly receiving the attention of the various chancelleries and Foreign Offices.

He could not believe that the Governments would have any great difficulty in furnishing information as to their existing practice in these matters. To have omitted to ask for such

information would have been to encourage Governments to avoid facing the real difficulties, and would have called forth merely a vague statement of principle such as might be found in any textbook on international law. In such conditions, the Conference itself would have been faced for the first time with all the difficult matters of detail.

Sir Cecil Hurst hoped that this expression of his own personal opinion would satisfy M. Guerrero. The Committee might, in any case, consider that, at the present stage, it would be better to ask for too much than for too little. It would always be open to the Conference to discard certain of the material that the Committee of Five had thought it useful to obtain; it might content itself with the enunciation of broad principles — whereas, should the information laid before the Conference not be sufficiently detailed in the first place, it would not be so easy for the Conference to adopt the alternative method. He hoped his colleague, M. Pilotti, would say if he dissented from this point of view.

M. Rolin (Belgium), Rapporteur, observed that the very pertinent question raised by M. Guerrero had evoked from Sir Cecil Hurst a reply which might appear to be surprising but was very gratifying. Those of his colleagues who had been accustomed to expect, on the part of Anglo-Saxon jurists, a taste for the progressive accumulation of precedents, and a certain hesitancy in regard to the codification and regulation which would be preferred by the Latin and Continental schools, would find in Sir Cecil Hurst's speech a happy omen for the unanimity of the Conference.

As regards the impression which the questionnaire was likely to have made on certain Governments, he thought M. Guerrero was perhaps nearer to the truth than Sir Cecil Hurst. Not every country stood, as regards either its age or importance, on the same footing as the British Empire, and consequently, few other jurists had such full and varied experience as those of Great Britain. It not uncommonly happened at international conferences that, while certain Governments arrived with a definite opinion on certain points, other Governments preferred to form their opinion in the light of the discussions. It might be well, therefore, to indicate that the less experienced Governments need have no scruples in leaving certain if not all of the questions unanswered, for, provided enough information were given by other Governments, there would be no occasion for the Conference to be postponed on that account.

It was sincerely to be hoped that sufficient replies would be forthcoming to enable the preparatory work to be resumed at latest in January. The suggestion which he had made four years ago that the work of codification should be progressive had been accepted by the Assembly and been faithfully followed by the Committee of Experts. M. Rolin feared that, if it were now necessary to admit that four years had not sufficed for the bringing about of a Conference, great disappointment would be felt, particularly in the American countries. It would therefore be well if the Committee were to declare definitely its view that the Conference ought to take place in 1929.

In regard to the place of meeting of the Conference, the Assembly had last year pronounced in favour of The Hague, a city closely associated with the history of international law, and incidentally the seat of the Permanent Court of International Justice. It now, however, appeared very probable that, in view of the expenses that would necessarily be entailed by the temporary transfer of staff to The Hague, certain members of the Fourth Committee would express doubts as to the expediency of giving effect to last year's decision. The increasing work of the Permanent Court, with the claims it involved on the accommodation in the Peace Palace, was a further factor tending to suggest a reconsideration of the decision taken last year. He personally lacked the necessary information to form a definite opinion on this point.

The Committee of Experts had just reported that certain other questions had now attained the degree of maturity necessary for their examination at a conference. He, however, agreed — as he thought all his colleagues must agree — with M. Politis in his view that, in the present state of affairs, if new questions were added to the agenda, there would be a risk of causing a postponement of the Conference. It would, of course, always be possible to convene a second Conference later.

With regard to the question of domicil, the only one on which the replies to the questionnaire of the Committee of Experts were still awaited, it was hardly to be expected that those replies would arrive before 1929. There was, however, no urgency about that question. Moreover, the distinguished jurists of the Committee of Experts were all very busy men and he wondered whether it would be necessary to convene them once more for the sole purpose of examining the replies to that single question. At the time of the next ordinary session of the Assembly, the Codification Conference would probably be about to begin, and, in any event, it was hardly likely that it would have come to an end. There would then be ample time for the Assembly, with the replies on the subject of domicil before it, to judge of the utility of putting them before the Committee of Experts.

The proposal of the Paraguayan delegation, on the other hand, did seem to provide new work for the Committee of Experts. Above all, however — and he was sure the delegate of Paraguay would agree with him — there was no question of varying in any way the principle on which the work for progressive codification had been based, the principle of taking into account, in deciding upon the order of dealing with the questions, practical possibilities rather than purely logical considerations.

He agreed, however, that it would be desirable to prepare a detailed classification, irrespective of the order in which they were to be treated, of the matters regarding which codification appeared desirable or necessary. The only point on which he was doubtful was whether, for so purely theoretical a task, a body as large as the Committee of Experts need be employed. He did not wish to propose the creation of a new organ, but he thought that it might be suggested that the Chairman of the Committee of Experts should delegate three or at most five of his colleagues to undertake this work of classification — work which might prove of great value if only to reassure any persons who might be inclined to criticise the League for the seemingly slow and fragmentary character of its treatment of the problem of codification.

M. Guerrero (Salvador) thanked Sir Cecil Hurst for his explanations.

He did not wish to appear critical of the procedure followed by the Preparatory Committee, but he would have preferred some other method than that of sending very detailed questionnaires to the various Governments. It might perhaps have been simpler to have invited the Governments to give instructions to their delegates with regard to these questionnaires rather than to await the despatch of their written opinions, since it was far more difficult to modify an opinion once that opinion had been submitted in document form to the Council of the League.

Of the fifty Governments consulted by the Committee of Experts on the simple point whether such-and-such a question had reached a sufficient degree of maturity that it could be settled by international agreement, only eighteen States had replied, and of these but one was a Latin-American country. Under these circumstances, he was afraid that, with a questionnaire like the one sent out by the Preparatory Committee, the replies would not be received by October 31st next.

M. Guerrero added that it had been his intention to ask the Committee to recommend that the First Conference on the Progressive Codification of International Law should meet next year; in view, however, of the slowness with which the replies were coming in, that hope might possibly have to be abandoned.

M. Limburg (Netherlands) thought that the questionnaire sent to the Governments was not too detailed. Countries which had no customary or positive law on certain points could leave those parts of the questionnaire blank.

It was highly important, on the other hand, that the Conference should be convened in 1929. He therefore suggested that the Committee should submit to the Assembly a draft resolution, to the following effect :

> " The Assembly expresses the hope that the replies from the various Governments will reach the Secretariat in time to allow the convening of the Conference on the Codification of International Law in 1929."

He also thought that it was undesirable to make any additions to the programme of the Conference.

With regard to the place at which the Conference would be held, he reminded the Committee that the Assembly had decided last year that the Conference should be convened at The Hague, and the Assembly did not usually go back on its decisions. It was hardly probable that the Fourth Committee would raise any financial objections, in view of the importance of the work to be undertaken. He assured M. Rolin that the premises of the Peace Palace could be placed at the disposal of the International Conference.

Possibly the Rapporteur's suggestion with regard to the Paraguayan proposal was a result of the following opinion expressed by the Committee of Experts in its report to the Council :

> " While expressing itself, in agreement with the decision taken by the Assembly at its fifth ordinary session, on September 22nd, 1924, as being in favour of the maintenance of the method which it has followed in its work, the Committee of Experts nevertheless considers that the proposal of the delegation of Paraguay deserves attention.
>
> " If the Council and the Assembly feel that the course suggested by the delegation of Paraguay should be followed, it would be possible to draw up — with reference, more particularly, to the remarkable achievements which have been or are being realised by American enthusiasm — a systematic outline of a more complete codification, on the understanding always that what was contemplated was not immediate and simultaneous realisation of a plan thus formed or determination of the order in which the various matters ought to be the subject of efforts of international legislation. Advantage might be seen in such a work of co-ordination. The work, which would be strictly technical in character, might, by ensuring the continuity of the work of codification, render very important services in regard to co-ordination of the tasks to be ultimately undertaken by the organisations of the League of Nations or by particular States of which the initiative in this question has been and is so fruitful." (See Annex 2.)

He did not quite see how the organs of the League could undertake so enormous a task as the preparation of a complete system of international public law. He asked the members of the Committee of Experts there present whether that Committee had not itself prepared a system from which it had selected certain questions capable of being dealt with by a Conference. His reply to M. Rolin's suggestion that a small Committee should be appointed would depend on the answer given to his own question.

M. POLITIS (Greece) said he desired to express his approval of M. Rolin's observations by emphasising two points.

The first was concerned with the method followed by the Preparatory Committee. The Committee could not be blamed for drawing up an over-detailed questionnaire, because it was the Committee of the Assembly which had itself defined the Preparatory Committee's task. He wished to express his gratitude to the Committee of Five and was sure that the present Committee would agree with him in congratulating it on the scrupulous and devoted manner in which it had carried out its mission.

In deciding to send out this questionnaire, the First Committee last year was following the procedure adopted in the case of the London Naval Conference in 1908-09. On that occasion, an endeavour had been made, by simply comparing the replies received, to reach a sort of average opinion which might provide the Conference with a useful basis for discussion. It had been decided to follow the same system with regard to the Conference on the Codification of International Law. Personally, he was sure that the same satisfactory result would be obtained.

He agreed with M. Rolin that it was essential that the Conference should meet in 1929. It must be remembered that Sweden's original proposal was already four years old and that, even after the Conference, some time would elapse before the necessary ratifications were obtained and the texts became law.

Since 1924, arbitration had made great strides and it was anticipated that it would progress still further. One of the main results of the Conference would be precisely to give a new impetus to the idea of international arbitration. Arbitration could never become general and function smoothly until there existed, in the form of a unified international law, the elements on which judgments could be based. This was one of the reasons which made it urgent to begin the work of codification.

M. Politis therefore thought it indispensable that the Assembly should clearly state in a resolution its confidence in the method it had outlined at its last session, in view of the meeting of the first Codification Conference, to be held in 1929.

M. UNDÉN (Sweden) agreed with M. Rolin and M. Politis. He insisted that it was absolutely necessary to convene the Conference in 1929. It was not necessary to take too tragic a view of the fact that certain Governments had not replied. The countries in question probably had no very great interest in these questions, and consequently the Committee might justifiably conclude that those same countries would not place any obstacles in the way of their international settlement.

The CHAIRMAN put to the vote M. Politis's proposal, to the effect that the Preparatory Committee should be congratulated on the manner in which it had fulfilled its mission.

This proposal was adopted.

The CHAIRMAN observed that the silence of Governments was such a common occurrence that it did not call for comment. Too long a delay should not be permitted. When a time-limit was fixed for a reply, it must not be imagined that the period began to run from the date on which the request was sent out and closed on the last day; in practice, it began to run only from the tenth day before the close of the time-limit. It would therefore perhaps be a good thing to send a reminder to the Governments which were behindhand, so that their replies might arrive in time to be taken into consideration.

The Chairman proposed that M. Rolin should prepare, on the basis of the discussion which had taken place, a report and draft resolution for submission to the Committee.

The proposal was adopted.

THIRD MEETING.

Held on Wednesday, September 12th, 1928, at 10 a.m.

Chairman: M. SCIALOJA (Italy).

6. Reference to the First Committee of Certain Sections of the Report of the Committee on Arbitration and Security.

The CHAIRMAN communicated a letter from the Chairman of the Third Committee asking the First Committee to consider, from the legal point of view, the following sections of the report by the Committee on Arbitration and Security:

(a) The model Conventions on conciliation, arbitration and judicial settlement;

(b) The draft Assembly resolution regarding the model Conventions on conciliation, arbitration and judicial settlement;

(c) The draft Assembly resolution regarding the optional clause of Article 36 of the Statute of the Permanent Court of International Justice.

The Third Committee also intimated that, with a view to ensuring liaison between the First and Third Committees, it had appointed a Sub-Committee consisting of M. Motta, M. Guerrero, Dr. Beneš, M. Politis and M. Cassin.

The Chairman suggested that the Committee should appoint a few of its members, who, together with the members nominated by the Third Committee, would form a Liaison Committee.

After discussion, he proposed the names of M. ROLIN, M. GAUS and M. UNDÉN.

The proposal was adopted.

7. Reference by the Assembly to the First Committee of: (a) Draft Resolution proposed by the Swiss Delegation regarding Advisory Opinions of the Permanent Court of International Justice ; (b) Draft Resolution proposed by the French Delegation on the Question of the Revision of the Statute of the Permanent Court.

The CHAIRMAN communicated to the Committee two letters from the President of the Assembly, informing the Committee of two decisions taken by the Assembly which referred to the First Committee, for consideration, a draft resolution proposed by the Swiss delegation on the question of the advisory opinions of the Permanent Court of International Justice, and a draft resolution, presented by the French delegation on behalf of various delegations, on the question of the revision of the Statute of the Permanent Court of International Justice.

The Chairman noted that these proposals had already been placed on the agenda of the meeting for that day.

8. Progressive Codification of International Law: Draft Resolutions to be submitted to the Assembly.

The CHAIRMAN declared the discussion on the first item of the agenda open, and called upon the Rapporteur to speak.

First Codification Conference.

M. ROLIN (Belgium), Rapporteur, submitted the following draft resolutions :

" 1. The Assembly expresses its high appreciation of the work already accomplished by the Preparatory Committee of the Conference.

" 2. It congratulates itself also upon the valuable assistance in the study of the questions to be dealt with by the Conference which is already being afforded by the various international scientific societies and by the study groups which have been formed more particularly in the United States of America and in Japan.

" 3. It once more calls attention to the fundamental importance of codification of international law for the satisfactory operation of arbitral and judicial procedure, and emphasises the urgency which attaches to the work to be done in this field in presence of the remarkable extension which has been given by a very large number of international conventions to pacific methods for settling international disputes.

" 4. The Assembly accordingly expresses to the Council its desire that the Conference should in all circumstances be convened in the course of 1929, so that the first practical results may be secured from an undertaking which has for four years been the subject of methodical preparation.

" 5. The Assembly requests the Secretary-General to communicate these views to the Governments and to recall to their attention the importance which the Preparatory Committee attaches to receiving before October 31st the Governments' replies to the questionnaires sent to them.

" 6. It asks that on this occasion it may be pointed out to the Governments that the detailed questionnaires drawn up by the Preparatory Committee, in obedience to the instructions given to it, have been prepared with the sole object of rendering it more easy for the various Governments to send the information for which they are asked, and do not prevent them, if they so wish, from reserving their opinion upon points which have not arisen in their own experience or upon which they would at present prefer not to pronounce.

" 7. It suggests that the Council should give the Codification Conference the opportunity of expressing its view upon the methods to be adopted for the continuation of the work."

M. Rolin desired, in the first place, to express his keen appreciation of the careful and accurate work done by the Committee of Five, work which had brought out clearly the various aspects of the questions included in the programme of the Conference. He indicated, as evidence of the way in which this work was regarded, the great cordiality with which the announcement of the Conference had been received by the scientific world and the valuable assistance which the latter was even then rendering.

The Institute of International Law and the International Law Association had set up committees, and had given instructions that the three questions proposed for codification should be examined immediately with a view to framing, in due course, draft conventions approved by a large number of jurists in various countries.

In the United States of America, thanks to the action of certain universities, and in particular, Harvard, a group of distinguished persons had undertaken to prepare an exhaustive digest containing excerpts from the laws, judicial decisions and conventions of all States;

valuable information would thereby be available for all who might desire to investigate the three questions placed on the agenda of the forthcoming Conference. Preparatory work was also being done in Japan.

As regards the third resolution, which summarised the ideas expressed by M. Politis, the Rapporteur reminded the Committee of a point which had been brought out by various speakers, namely, the urgent need of effecting progress in connection with codification. It had been noted that international undertakings had not progressed on logical lines. Laws should have been established before creating the courts whose duty it was to apply them. As it was, it was necessary to accept, on the most varied questions, arbitral or judicial awards though the arbitrators were occasionally greatly embarrassed because they could not find any rules in positive law on which to base their decisions.

There was no disguising the fact that the confidence felt in persons, no matter what might be their competence or integrity, was less than that which would be felt in established rules. A person before the court would have greater confidence when he knew the rules by which he would be tried.

In recent years, international law had advanced more slowly than international procedure. It was essential that law should follow the progress made by procedure, and that was the idea expressed in the third paragraph of the resolution to which he had referred.

A logical consequence of this was that the Committee would do well to urge the Assembly not to postpone the Conference contemplated for 1929.

The only plausible objection to the Conference being held in 1929 was that put forward by M. Guerrero, namely, that, having regard to the complex nature of the questionnaires, many Government Departments would find it somewhat difficult to answer them. The Preparatory Committee, indeed, had asked simultaneously what was the practice followed, the actual law and the reforms desired.

In the case of many Governments, their personal experience was not sufficient to provide material for a reply. Officials might not be any too pleased at being put through a kind of examination. Lastly, in asking the Governments to express their desires, it was to be feared that, if there were uncertainty, the replies might be framed a little at random. Nevertheless, these replies would have influence and would deprive the delegates of their freedom of decision.

For these reasons, the Rapporteur thought it might be well to state, in a general way, that Governments would be at liberty to reserve their opinion on questions regarding which they had had no practical experience. This would give the plenipotentiaries a freer hand and enable the Governments to omit unnecessary material in their replies.

Finally, the Rapporteur thought it advisable to give the Conference an opportunity of expressing an opinion as to the subsequent progress of codification. It was sufficient to consult the programme of the coming Conference in order to see how restricted it was; it covered an important but narrow field of international law.

The procedure adopted four years ago as a beginning was very cautious. Its main drawback was its slowness. The Governments were first consulted as to the desirability of the codifications, and then as to the manner in which they should be carried out. This had led to the forming of two Committees. It was a debatable point whether this somewhat ponderous and necessarily rather slow organisation should be maintained. He thought, in the light of past experience, that the members of the Codification Conference might make valuable suggestions. It would be interesting if these could be put forward at the Conference.

Incidentally, this would be useful for another reason : certain States did not belong to the League of Nations, but had indirectly taken a personal part in the work of codification and would attend the Conference at The Hague. It seemed only fair and courteous to give them an opportunity of expressing their views regarding the methods followed and any modifications they considered desirable.

M. Guerrero (Salvador) thought the Secretary-General should be asked to request the Governments to send in their replies as soon as possible; the time-limit prescribed, however, was too short, for the countries at a distance from Europe would not have received the Secretary-General's letter before October 31st.

As regards point 7 of the draft resolution, he thought it should not be forgotten that the plenipotentiaries who came to the Conference would be bound to defend their countries' views on the questions asked. Moreover, they would not have the necessary experience as regards the best method to follow.

It might therefore be preferable to ask the Council of the League itself to consult the Committee for the Progressive Codification of International Law as to the methods to be followed in the future. The opinion of that Committee would carry more weight than that of the first International Conference.

M. Erich (Finland) thought that the relation between the development and the determination of the rules of law, on the one hand, and the extension of arbitral or judicial regulations, on the other hand, had been excellently brought out by the Rapporteur.

He thought that, in this connection, it would be possible to refer to a recent instrument the importance of which for the pacific settlement of disputes was recognised : namely, the Briand-Kellogg Pact. By this Pact the Governments recognised that the settlement and solution of all disputes, no matter of what nature, could only be sought by pacific means. That Pact, unlike treaties of arbitration and conciliation, simply asserted a principle. It might be described rather as a *pactum de contrahendo*, but, by condemning war, it presupposed

that, even in cases where there was no arbitration treaty between the parties, they must resort to a pacific settlement. The development and determination of international law were therefore of the utmost importance from this point of view.

M. Erich therefore ventured to suggest that the following should be added to the third paragraph of the draft resolution :

> " And having regard also to the Treaty of Paris, signed on August 27th, 1928, which, by condemning war as a means of furthering national interests, provides for the widest application of the said articles."

Reference might also be made to the resolution adopted by the Assembly on September 24th, 1927, during its eighth ordinary session, regarding the prohibition of wars of aggression; this, however, was not, properly speaking, a treaty, and, moreover, it might be said that the idea embodied in the resolution was already inherent in the provisions of the Pact.

M. Ito (Japan) asked for a few explanations on paragraph 7 of the draft resolution. Contrary to M. Guerrero's opinion, he thought it would be necessary for the Conference itself to pronounce upon the methods to be adopted for the continuation of the work. This might be done in two ways : either by placing the question on the agenda of the Conference, or by discussing it among delegates as a question outside the agenda but yet having genuine importance.

The resolution proposed under paragraph 7 seemed to indicate the former method; it should, however, be remembered that the Conference's agenda was already a large one, and prudence required that the number of problems to be discussed should not be unduly increased.

Consequently, he suggested that the members of the Conference should take advantage of their presence there to consult one another upon the methods to be adopted for the continuation of the work, without being under any obligation to make a formal pronouncement on the subject. He asked the Rapporteur to modify paragraph 7 on these lines.

M. Rolin (Belgium), Rapporteur, replied to the observations which had been made.

First of all, he accepted M. Erich's suggestion provided a suitable wording could be found. From the strictly logical point of view, it was perhaps not essential to mention the Treaty of Paris. Non-aggression made arbitration necessary, and arbitration made codification necessary. By mentioning arbitration, the necessity of codification was sufficiently indicated.

The clause submitted by M. Erich might be modified as follows :

> " . . . extension which has been given or promised by a very large number of international conventions, and more recently by the Treaty signed at Paris on August 27th, 1928, to pacific methods for settling international disputes."

As regards M. Guerrero's objection that certain States were far away, the Rapporteur proposed that the delegations now met together should be asked to communicate the idea contained in the fifth paragraph, if necessary by telegraph, to their respective Governments.

The First Committee could not, on its own authority, change the date of October 31st. This date had been decided on by the Preparatory Committee, which was to meet in January, so as to leave time for the replies of the different countries to be analysed and classified by the Legal Section of the Secretariat, in order to facilitate their study. If it were desired that the Codification Conference should meet in 1929, it was necessary to insist that the replies to the questionnaire, with the reservations allowed in paragraph 6, should be sent in before October 31st.

M. Rolin then replied to M. Guerrero's second objection — that it might be dangerous to ask the Codification Conference to pronounce on the methods to be adopted for the continuation of the work because this Conference would have had experience of codification, but not of preparing for codification.

It was quite true that it was the Committee of Experts which had this experience of preparing for codification but, as a matter of fact, the majority, if not all, of the members of this Committee of Experts would be sent by their Governments as delegates to the Conference, and it therefore did not seem necessary that it should be the Committee of Experts which should pronounce on the methods to be adopted for the continuation of the work.

Moreover, all the States Members of the Conference were not represented on the Committee ; further, the criticisms which might arise, or the reforms which might be proposed, after this first experiment, would refer both to the Assembly's resolutions and to the programme adopted four years ago, as well as to the methods freely accepted by the Committee of Experts. The latter might therefore become both judge and party to the case. As a matter of fact, when the Conference came to discuss future methods in the light of the experience of the first codification, its work would be based on the results prepared by the Committee of Experts.

M. Rolin was less able to understand M. Ito's suggestion that the methods to be adopted for the continuation of the work should be discussed more or less unofficially in conversations which would take place among the members of the Conference. He would be glad if M. Ito would suggest a text on these lines. Moreover, he would add that, if this first Codification Conference were followed by others, there would be no lack of opportunities for conversation. For example, the Conferences on private international law or on maritime law had often themselves placed questions on the agenda of subsequent Conferences. The jurists members

of the Codification Conference would desire, not only to carry out their Governments' instructions, but to achieve results in conformity with the spirit of the League and redounding to its credit. They might therefore be expected to make suggestions of a nature to facilitate the continuation of the work.

If the Committee agreed, M. Rolin would therefore prefer to retain the present wording of paragraph 7.

M. D'OLIVEIRA (Portugal) asked whether it would not be somewhat inadvisable to introduce into the third paragraph of the draft resolution the word " promise ". The Rapporteur had said that, in the Briand-Kellogg Pact, a further extension of pacific methods for the settlement of international disputes was promised rather than given. He did not venture to express an opinion on this point, but he thought that, if what M. Rolin said was true, it was too true.

It would perhaps be advisable not to introduce into an official text a word which might be considered as detracting from the scope and efficacy of the undertakings contained in the Treaty of Paris, lest public opinion, pessimistic or suspicious as it was, should seize upon it to the detriment of the Pact's credit and prestige.

The CHAIRMAN drew the attention of the Rapporteur to paragraph 3 of the draft resolution, the first part of which read as follows :

> " It once more calls attention to the fundamental importance of codification of international law for the satisfactory operation of arbitral and judicial procedure."

That wording was not altogether fortunate, for it seemed to imply that attention was called to the importance of codification only so far as it concerned the satisfactory operation of arbitral or judicial procedure.

Moreover, while it was true that progress in the field of procedure had been more marked than in that of substantive law, there was nothing remarkable in this ; the same phenomenon had been observed in the development of systems of private law since the time of the Twelve Tables. The first business of the law had always been to bring the parties before the court. The formal establishment of a law which the sentences given must apply had been a later development.

In regard to the amendments proposed by M. Erich, he was doubtful as to the desirability of introducing a reference to the Paris Pact. That Pact had not yet been ratified and therefore, from a legal point of view, was merely a draft. Then again, as the words " a very large number of international conventions ", were included, it was hardly necessary to refer specifically to any particular instrument. In the third place, the Paris Pact, although it was of immense moral and psychological importance, was of less importance in its legal aspect, as it was not provided with sanctions. The sanctions had to be furnished by the Covenant of the League of Nations. Regarded from the standpoint of positive international law, the Paris Pact required to be completed by the provisions of the Covenant. Moreover, it implied very largely the solution of disputes by diplomatic means, for the majority of the steps taken to prevent disputes becoming acute were taken through diplomatic channels, by the good offices of other Governments and so on. They were not strictly legal steps and therefore they went beyond the scope of international law. He therefore doubted whether it was desirable to refer to the Paris Pact.

M. GUERRERO (Salvador) entirely agreed to M. Rolin's suggested change in paragraph 5. In regard to paragraph 7, his idea had been, not that the Codification Conference should be called on to determine the best method for the continuation of the work, but that it should merely be invited to give its opinion on that question.

As regards the proposal of M. Erich, he was unable to accept it, even in the form suggested by M. Rolin. He entirely agreed with the Chairman that paragraph 3 should be left in its original general form without mention of the Kellogg Pact. Although he lacked information as to the attitude which his Government would adopt towards that Pact, the question was, in his view, somewhat complex and delicate. Moreover, the Pact had not as yet come into force ; it still awaited ratification, and some States had only adhered subject to certain reservations.

He thought, therefore, that the Committee would be going too far if it mentioned the Kellogg Pact. So far as he was concerned, he could not support a text containing any reference thereto.

Mr. DANDURAND (Canada) recalled, in connection with paragraph 3, that certain Governments had mentioned, as one of the difficulties in the way of their acceptance of the optional clause of Article 36 of the Statute of the Permanent Court of International Justice, the existing uncertainties in international law. He wondered whether it would not constitute a step towards the removal of this difficulty if Governments were invited to give their plenipotentiaries at the Codification Conference such instructions as would enable them to explain there to what precise points the particular uncertainties in question related.

He entirely agreed with the Chairman that no mention should be made, in paragraph 3, of the Kellogg Pact.

M. CASSIN (France) was also of this latter opinion.

He thought that Mr. Dandurand's suggestion concerning the optional clause might best be considered with Item 4 (*c*) on the agenda.

M. Erich (Finland) said he would be entirely satisfied if his proposal were adopted in the form suggested by the Rapporteur.

M. Rolin (Belgium), Rapporteur, in order to meet the Chairman's criticism, proposed to adopt for paragraph 3 the amended wording :

" the fundamental importance, for the arbitral and judicial procedure of the codification of international law . . . ".

He was also glad to accept a suggestion from M. Gaus by substituting in the last line the words " the pacific settlement of " for the words " pacific methods for settling ".

With regard to the Kellogg Pact, he was inclined to agree that it would be better at present to make no reference to it. The matter might perhaps be put to the vote.

He was glad to note M. Guerrero's acceptance of his proposal in regard to paragraph 5.

He thought that Mr. Dandurand's suggestion might more usefully be taken into consideration when preparations were on foot for some further codification conference in the future. The instructions to the plenipotentiaries at the Conference now in prospect would be already sufficiently complicated.

Mr. Dandurand (Canada) agreed.

M. Politis (Greece) expressed his approval of the amended wording of paragraph 3.

He also was very definitely against any mention of the Kellogg Pact, for, in addition to the other reasons mentioned by earlier speakers, he considered it would be inaccurate to refer to that Pact as having contributed to a " remarkable extension " of " the pacific settlement of international disputes ". Its principal weakness lay in the vague and cautious reference which was made to the subject of pacific procedures. To describe the Pact as having given a new impulse to the movement in favour of compulsory arbitration would be dangerous.

As regards paragraph 7, M. Politis would suggest that this should be omitted. The first Conference had a heavy agenda, and it was not altogether certain that the programme already fixed could be completed. A vague invitation of this sort could only lead to a rather desultory discussion. The League already had an excellent organ concerned in preparatory work, and a proposal such as this in paragraph 7 would almost amount to a disavowal of that organ.

As to Mr. Dandurand's suggestion, he too thought it could more properly be examined in conjunction with Item 4 (*c*) of the agenda.

Sir William Harrison Moore (Australia) had been greatly impressed by the remarks of M. Ito and M. Guerrero on the subject of paragraph 7. On the one hand, considerable machinery for preparatory work already existed, and it was undesirable, therefore, to impose further work on the Codification Conference ; on the other hand, however, it would perhaps be too much to omit altogether any reference to that point. The Conference, after being engaged for weeks, or even months, in the work of codification, would almost inevitably arrive at a common view as to the general lines along which later work should proceed. It would therefore be highly undesirable that the plenipotentiaries should feel any delicacy in making known any views they had formed. He therefore proposed that paragraph 7 should be amended to run as follows :

" It suggests that the Council should inform the Codification Conference that the League will welcome the assistance that would be given by any suggestions it may think fit to make concerning the methods to be adopted for the continuation of the work."

This text left the Conference perfectly free to take these matters into consideration or not, but, if it had formed any views upon the subject which it thought it would be useful to communicate, it would be able to do so without there being any risk that the League would be deprived of the value of its experience. He thought this suggestion might incidentally meet the views of the delegate for Japan.

M. Duzmans (Latvia), while admitting the need for caution in the preparation of a Conference, was opposed to the striking out, as suggested by M. Politis, of paragraph 7. The latter, in his notable book, *Les Nouvelles Tendances du Droit international*, had expressed a wider view, to the effect that the caution of the League of Nations in its work in regard to codification was such as to amount almost to timidity. It was perhaps natural that, in his present capacity, no longer as a writer, but as a responsible delegate, M. Politis should adopt a more conservative position. Nevertheless, in view of the dissatisfaction with which some countries were watching the slowness of the League's methods, and in view of the relative ease with which a Conference might be expected to arrive at definite views on this mere question of method, he thought it would be a great pity to withhold from its attention a subject in which some of the countries were even more keenly interested than in the particular matters at present on the agenda. For similar reasons, he thought the Conference might also be given an opportunity to express its views upon the Paraguayan proposal.

M. Ferrara (Cuba), after warmly congratulating the Rapporteur on his draft resolutions, said he hoped that the long time devoted to the process of codification would, at any rate, render easier the ultimate ratification of the resulting texts. It was, however, worth noticing that, at another international assembly comprising twenty-one States, a more ambitious

programme had been undertaken. The Pan-American Conference held at Havana had adopted, in addition to a code of private international law, nine conventions on public law covering amongst others, such important matters as maritime neutrality, asylum, diplomatic and consular functions, commercial aviation, literary and artistic property and the status of foreigners. That Conference had, moreover, in a resolution of February 18th, 1928, provided for the future continuation of its work on codification. The International Association of Jurists of Rio de Janeiro had been charged to continue the preparation of draft texts and three Permanent Committees of Experts had been created, at Rio de Janeiro, Montevideo and Havana respectively. The American Institute of International Law had also been invited to assist in the work.

Prudence in going forward must not be pushed to such a degree that events remained at a standstill. It was necessary to contemplate even more intensive efforts for next year. He desired to submit two proposals. He would propose, in the first place, that any work on codification of public international law should be prefaced by a declaration regarding the rights and duties of States. Precedents which would facilitate such a step were to be found in earlier efforts at codification, and adequate material existed in the writings of publicists and the judgments of British and American courts.

M. Ferrara's second proposal was in the form of a draft resolution :

> " In view of the many-sidedness and the very wide interest of the work on the codification of law, the Assembly requests the Council to consider the advisability of recommending the Governments invited to take part in the Conference, if possible, to include some women delegates in their delegations."

At Havana there had been adopted a resolution instituting an Inter-American Commission of Women, with the task of preparing the necessary documentation for a study of the question of civil equality. He would wish his second proposal to be discussed in particular relation to the first question on the agenda of the forthcoming Conference.

In reply to a question from the Chairman, M. Ferrara added that the proceedings of the Havana Conference were available in four languages.

M. Guerrero (Salvador) associated himself with the proposal of M. Politis to strike out paragraph 7.

It was, however, clear that all the members of the Committee were agreed as to the necessity of examining again the question of the proper method of carrying out the work of codification. The method adopted in 1924 had given rise to various criticisms and, in order that they might be taken into account, if it were necessary, M. Guerrero would propose the following draft resolution :

> " In view of the continuation of the work undertaken, the Assembly invites the Council to request the Committee of Experts and the Preparatory Committee for the Conference to express their opinion on the methods to be adopted for the codification of international law in order that the Assembly at its tenth ordinary session may be in a position to effect the necessary modifications in the resolution adopted by the Assembly on September 22nd, 1924."

M. Escalante (Venezuela) desired to support M. Ferrara's second proposal, in regard to the participation of women in the work of the forthcoming Conference.

M. Rolin (Belgium), Rapporteur, thought it might give satisfaction to M. Erich if, by way of compromise, he, M. Rolin, were merely to be authorised to explain orally to the Assembly the Committee's views regarding the influence which the still unratified Paris Pact might have upon the work of codification.

He thought also, as regards paragraph 7, that the Committee would agree that he should explicitly emphasise to the Assembly that, even though no positive instructions were formulated on the point, it should be clearly understood that the Codification Conference would, of course, be perfectly free to include in its final Protocol any recommendations it might consider helpful in regard to the possibility of a further Conference.

There remained the proposal of the Cuban delegate. In its existing form, that proposal seemed to him somewhat too wide to represent precisely the idea that M. Ferrara appeared to have in mind, namely, the co-operation of women's organisations in the study of the question of the international status of the married woman. Indeed, it might well be that in many countries the most highly cultivated experts on that question might be found among women. He therefore thought the recommendation to the Governments might be restricted specifically to the treatment of the question of nationality.

He thought the Committee might now proceed to vote successively upon the several paragraphs of the first set of resolutions.

The Committee adopted without modification the original wording of paragraphs 1, 2, 4 and 6, and paragraphs 3 and 5 in the following amended form:

> " 3. It once more calls attention to the fundamental importance, for the satisfactory operation of arbitral and judicial procedure, of codification of international law, and emphasises the urgency which attaches to the work to be done in this field in the presence of the remarkable extension which has been assured, by a very large number of international conventions to pacific methods for settling international disputes."

" 5. The Assembly requests the delegations to communicate these views to the Governments — if necessary, by telegram — and to recall to their attention the importance which the Preparatory Committee attaches to receiving before October 31st their replies to the questionnaires sent to them. "

In reply to a question from M. Politis, the CHAIRMAN explained that the question of the meeting-place of the Conference had been held over for consideration by the Fourth Committee.

M. ROLIN (Belgium), Rapporteur, recalled that paragraph 7 had not been adopted, and enquired whether the Committee approved the idea of his proposed oral explanations to the Assembly.

The Committee assented.

M. ROLIN (Belgium), Rapporteur, continuing, asked for authority to consult with the delegates, in particular, of Cuba and Venezuela, in order to recast the Cuban delegate's second proposal in the more limited sense he had suggested.

The Committee agreed to this proposal.

FOURTH MEETING.

Held on Thursday, September 13th, 1928, at 10 a.m.

Chairman: M. ERICH (Finland).

M. ERICH (Finland), Vice-Chairman, opening the meeting, announced that the Chairman, M. Scialoja, being temporarily detained at a conference, would perhaps arrive and take over the chairmanship of the meeting later.

9. Question of the Reasonable Limitation of the Expenditure of the League: Letter from the Chairman of the Fourth Committee.

The Chairman caused to be read the following letter from the Chairman of the Fourth Committee :

" I have the honour to inform you that, at its fourth meeting, held on Wednesday, September 12th, the Fourth Committee adopted the following resolution :

" 'The Fourth Committee, having examined the draft budget for 1929, and noted the rapid increase in the credits demanded, which at present represents about 9 per cent as compared with the 1928 budget, draws the special attention of the other Assembly Committees to this position at the moment when they are about to consider the work contemplated for the League, and asks them to bear in mind the necessity for a reasonable limitation of the expenditure of the League.

" ' Similarly, the Fourth Committee requests the other Committees to revise the programme of conferences for which provision is made for 1929 and to limit them to those which cannot be postponed till 1930, and, more generally, to examine especially the budgets of the Economic Organisation and the Transit Organisation, of the opium and humanitarian activities and of codification of international law, and to make proposals for restricting expenditure, and to suggest any other direction in which economy can be effected, taking account particularly of the effect that the new tasks may have on the increase of the permanent staff.'

" It would beg you to bring the above resolution to the knowledge of the First Committee at its next meeting."

The Committee took note of the above communication.

10. Progressive Codification of International Law: Draft Resolutions to be submitted to the Assembly (continuation).

The CHAIRMAN recalled that, at the previous meeting, the Committee had discussed the first of the draft resolutions proposed by M. Rolin, but that a proposal submitted by M. Ferrara and M. Escalante remained to be considered. He understood that the Rapporteur had prepared a resolution on that subject.

M. ROLIN (Belgium), Rapporteur, submitted the following draft resolution, in terms agreed between himself and M. Ferrara and M. Escalante :

" The Assembly, considering that the question of nationality, which is on the agenda of the Conference, is of special interest to women, and that Article 7 of the Covenant embodies the principle that all positions under or in connection with the League shall be

open equally to men and women, expresses the hope that the Members of the League, when invited to the forthcoming Conference, will consider the desirability of including a woman in their delegations."

The question of nationality was one of special interest to women since international law dealt with the situation of the married woman and of the children. The Covenant of the League of Nations, moreover, already included a provision proclaiming the eligibility of women for the service of the League of Nations. It was beyond question, moreover, that several women had already played an important part in various delegations, and the Assembly itself had expressed the desire that women should be appointed to sit on certain Committees. This was notably the case as regards the Mandates Commission.

In the proposed resolution, account was taken of the different situations and of the possible difficulties which might arise if States were simply asked to consider the advisability of appointing women to serve as members of the delegations. He thought the resolution he had proposed in its new and somewhat limited form should secure the unanimous assent of the Committee.

M. DE PALACIOS (Spain) thought that the new wording was admirable, but desired to insist on the complete freedom of the States in the choice of their delegations. He therefore proposed slightly to modify the text of the resolution so as to read, without more precision : " that the feminine element should be represented among the delegations ".

M. TUMEDEI (Italy) endorsed this observation. The words " including a woman " would be too precise. He would prefer to say : " taking account in the appointing of their delegations of the existing situation ".

M. ROLIN (Belgium), Rapporteur, to meet the observations of the previous speakers, proposed the following new wording for the last sentence of his resolution :

" . . . expresses the hope that the Members of the League of Nations, when invited to the forthcoming Conference for the Codification of International Law, will consider the desirability of taking these considerations into account in composing their delegations."

M. DE PALACIOS (Spain) accepted this wording.

M. LO-HOAI (China) wished to observe that equality as between men and women was an essential point in the programme of the Chinese Nationalist Party and of the present Government. It had already appointed women to positions in its administrative and even in its diplomatic service abroad. The proposal under discussion had therefore the sympathy of the Chinese Government.

M. CASSIN (France) desired, before the discussion closed, to draw the Committee's attention to the resolution, adopted on the previous day by the Fourth Committee, suggesting that the other Committees should review the programme of Conferences projected for the year 1929 and to restrict it to those which it would be impossible to postpone to alater date.

The First Committee had to examine this resolution in relation to the Codification Conference planned for 1929. He thought the Committee might instruct its Rapporteur, not merely to maintain the resolution such as had already been adopted on that subject, but to lay additional emphasis on the great importance — which was often overlooked — of the work on legal questions.

Sir Edward CHAMIER (India), on behalf of his Government, said, in reference to the possibility of effecting economies, that, as it would not be possible to hold the contemplated Conference before the end of 1929, there would be no disadvantage in postponing it to the following year. Moreover, if any substantial saving would thereby be effected, the Conference ought to be held at Geneva.

The CHAIRMAN noted the Committee's agreement in regard to the recommendation submitted by M. Rolin and proposed that it should be added at the end of the first resolution.

This proposal was adopted.

M. ROLIN (Belgium), Rapporteur, thought it would be somewhat irregular to reconsider resolutions taken after long discussion regarding the date of the Conference. There was no reason to suppose, moreover, that a further postponement would not be demanded in 1929 — a proposal which would produce a very unfortunate impression. The work had been prepared in great detail, and, seeing that everyone was convinced of the utility of such a Conference, the representatives of the various countries would be well advised to press their Governments, if necessary, to agree to extra expenditure.

As regards the meeting-place of the Conference, it had already been pointed out that this matter was covered by a decision of the previous year on which it was hardly possible to go back. Moreover, according to the explanations given at a previous meeting by the Netherlands delegate, it might be supposed that the Netherlands Government would take steps to reduce the amount of the expenditure falling on the League of Nations.

The CHAIRMAN observed that the delegate of India had merely given expression to a point of view without submitting any proposals.

The first draft resolution proposed by M. Rolin was adopted.

Preparatory Work for Further Conferences.

M. Rolin (Belgium), Rapporteur, read the following draft resolutions :

" 1. The Assembly,

" Having considered the report addressed to the Council of the League of Nations in June 1928 by the Committee of Experts for the Progressive Codification of International Law, thanks the jurists who, under the enlightened guidance of their Chairman, have made this new contribution to the work of codification;

" Notes the conclusions of the Committee, according to which two new questions appear to be sufficiently ripe for international regulation, namely :

" (1) Legal position and functions of consuls;

" (2) Competence of the courts in regard to foreign States.

" It decides to reserve these questions with a view to subsequent Conferences.

" 2. The Assembly notes that a new questionnaire dealing with the question of domicile has been drawn up by the Committee of Experts and transmitted to the Governments by the Secretary-General.

" It adjourns to its session of 1929 the question whether it is necessary to convene the Committee of Experts again for the purpose of examining the replies from the Governments received in the interval by the Secretary-General of the League of Nations. "

He went on to say that he had been careful to adopt a formula which was not binding as regards the subjects to be submitted to the second Conference. Other suggestions might in fact be made in the interval.

M. Guerrero (Salvador) asked that to the second resolution there should be added the following sentence : " and ultimately to study any other questions which might arise in regard to the codification of international law."

The examination of the replies received from the Governments in regard to the question of domicil was too small a task to necessitate a meeting of the Committee of Experts.

M. Rolin (Belgium), Rapporteur, said that he would not oppose the suggested addition.

M. Burckhardt (Switzerland) had no serious objection to placing the question of domicil on the programme of a Conference. He thought, however, that it would be better first to discuss the question of the privileges of diplomats. The question of the legal position of consuls probably differed too widely in the various States to make it possible profitably to conclude a Convention on this point. Such a Convention could only outline general principles and fix the minimum rights to be accorded to consuls. He believed, moreover, that the Rapporteur understood the resolution in the sense indicated.

M. Rolin (Belgium), Rapporteur, signified his agreement.

These draft resolutions proposed by M. Rolin were adopted, together with the addition suggested by M. Guerrero.

M. Ferrara (Cuba) recalled that he had made a proposal at the previous meeting of the Committee.

The Chairman thought that the discussion of that proposal might more appropriately take place at the time of the consideration of the third draft resolution.

M. Ferrara (Cuba) deferred to the views of the Committee.

Establishment of a General Plan of Codification.

M. Rolin (Belgium), Rapporteur, read the following draft resolution :

" The Assembly,

" Having considered the opinion expressed by the Committee of Experts regarding the proposal of the delegation of Paraguay,

" Confirms its decision to make no change at present in the method of codification adopted by it in 1924;

" Recognises, however, that there would be advantages in indicating in detail the full extent of the subjects which, without prejudging the order to be followed, the Assembly proposes to cover by the work of codification;

" And, in view of the theoretical character of the contemplated task, addresses to the Council the request that the establishment of a draft may be entrusted to a Committee of three jurists, to be chosen preferably from the members of the Committee of Experts, and that the draft may be communicated to the Members of the League as soon as possible.

" It suggests that it would be desirable at the same time to distinguish, if possible, the subjects which should be reserved for the technical organisations of the League, or the international conferences which have already been initiated by particular Governments, and the subjects which appear capable of being dealt with by conferences of jurists.

" It emphasises the great immediate practical value in this connection of assembling together in the form of a code, according to a methodical classification, the various general international conventions, *i.e.*, those which are open to acceptance by States in general. It accordingly asks the Council to submit to the examination of three jurists selected from the members of the Committee of Experts the question of publishing, as an accompaniment to the *Treaty Series* and in the form of a code, of which new editions would from time to time be produced, those general conventions which have the above-mentioned character, and to report to the Assembly on the matter at its next session."

M. Rolin went on to say that, after the discussions that had taken place, he thought that a plan of codification would be premature, but that, on the other hand, it might be advantageous from the scientific and moral point of view if the Assembly were to indicate that it did not intend to limit its action, either to this forthcoming first Conference or to the subjects proposed by the Committee. He thought it might be useful to indicate the whole field of codification that it was intended to cover in time.

If this recapitulation made it possible to specify the field reserved to the technical organisations of the League and that reserved to the general Conferences on Codification, it would be rendering a real service. Overlapping and omissions would thereby be avoided.

M. Rolin passed next to the last two paragraphs of his proposed resolution contemplating the immediate establishment of a code. That suggestion had been made by M. Fromageot, and had appeared to M. Rolin and several of his colleagues as being of very great practical importance.

Doubtless the work of codification in the strict sense of the term was only just begun; nevertheless, during the last few years a great number of international conventions had been concluded, conventions governing not only the relations between one State and another, but also the general relations established by international life as between all States.

It had therefore appeared of advantage, in order to give public opinion a demonstration of the complexity of contemporary international life — and to facilitate the task of practitioners — methodically to classify these international conventions in the form of a code.

Nevertheless, it was desirable to act prudently and M. Rolin wished therefore merely to propose that a committee of three jurists should be appointed, which would be less expensive than a committee of seventeen : this committee would be consulted as to the technical method of drawing up the code and as to the expenditure which would be entailed.

M. Rolin thought that the publication of such a code would be a good business undertaking; the voluminous *Treaty Series* was finding more and more buyers : a code of general conventions would cost very little and thousands of jurists would purchase it.

The CHAIRMAN, while admitting the connection between the two parts of the third resolution, proposed that the Committee should discuss separately the first part, relating to a general plan of codification, and the second part dealing with the establishment of a code.

M. RUNDSTEIN (Poland) agreed with the view of the Rapporteur, and wished to lay stress on the practical conclusion regarding the establishment of a general plan of codification. The course proposed was in conformity with the requirements of existing realities; nevertheless, it contemplated the possibility of a future more general codification.

He recalled that the Committee of Experts had considered that the work of co-ordination was necessary. The preparation of a general and synthetic plan of codification called for the establishment of a technical organ such as had been repeatedly recognised as necessary as much by the Governments as by the First Committee of the Assembly in 1927. It was mere modesty that had deterred the Committee of Experts from pronouncing in a definite manner on the question of the practical means whereby the work of co-ordination and preparation might be undertaken.

The course proposed by the Rapporteur aimed at objects both practical and ideal. It took account of the First Committee's report to the Assembly, in which the opinion was expressed that it would be premature to set up a permanent organisation for codification in the form of a special Committee with a possible enlargement of the Legal Section of the Secretariat.

This resolution took into account the advantage of a systematic and general survey in order to ensure the continuity and co-ordination of the codification work. It was calculated to bring into harmony the limited work being done on specific questions and the preparation of a general plan; it could not be criticised as being too ambitious or premature.

This solution, moreover, would have the appreciable effect of establishing a relation between the work undertaken by the League of Nations and that done by the Pan-American Conferences. This work of co-ordination would overcome the difficulties which might arise from want of contacts in this respect.

M. LIMBURG (Netherlands) wished to show the connection between the two parts of the proposed resolution. Two committees of jurists were involved, and even if they were both drawn from among the members of the Committee of Experts, expenses would be incurred.

In regard to the first part, he would venture to observe that M. Rolin did not seem to have put the matter quite clearly and he thought he saw even a contradiction, not in the terms, but as between the paragraphs : after having confirmed the decision " to make no change at present in the method of codification adopted by it in 1924 ", the resolution went on to say that the Assembly recognised that there would be advantages in indicating in

detail the full extent of the subjects which it proposed to cover by the work of codification. That would lead to the drawing up of a plan for the general codification of international law.

The report of the Committee of Experts was much more modest, in that it confined itself to saying that if it were desired to adopt the course suggested by the delegation of Paraguay, it would be possible to draw up a systematic outline of a more complete codification. This was different from the codification plan to which M. Rolin had referred.

On the other hand, would it be practical to entrust this work to three jurists ? The Committee of Three might be chosen from among the members of the Committee of Experts, but it must be remembered then that the latter Committee was opposed to a plan of general codification. Admitting that the Committee of Experts was not opposed to this theoretical work, there was still the fact that it had indicated as a line of conduct the study of the various subjects which would then be submitted to the Council for treatment, finally, by an international conference. If the three jurists were chosen outside the Committee of Experts, they would draw up a plan without having been in touch with the Committee or with its members.

It should be remembered that the codification of public international law was a wholly different thing from that of private international law. In that connection, he recalled the remarks of the representative of Cuba, and reminded the Committee that the work of M. de Bustamente, for example, contained a codification of private international law.

It might be said that no codification of public international law yet existed ; but were there any States that even possessed a complete codification of their public municipal law ?

M. Rolin (Belgium), Rapporteur, replied that States had written constitutions.

M. Limburg (Netherlands) looked upon the constitution as nothing more than the embryo of a codification of municipal public law. He suggested that the Committee of Experts should merely be asked to furnish the Council with a general and systematic outline of the subjects it thought advisable to reserve for codification.

He also desired explanations in regard to two further points. After having expressed in paragraph 4 its desire " that the draft may be communicated to the Members of the League as soon as possible ", the resolution continued : " It suggests that it would be desirable at the same time to distinguish, if possible, the subjects which should be reserved . . . " At what " same time " he would like to know ?

Then the following paragraph went on : " emphasises the great immediate practical value in this connection of assembling together in the form of a code . . . "

Here, again, he asked, in what " connection " ? He did not understand in what connection it was proper to emphasise " the great immediate practical value of assembling together in the form of a code the various general international conventions, that was to say, those that were open to acceptance by States in general ".

In conclusion, he said he would hold over certain further observations that he intended making.

M. Cassin (France), while doing honour to the desire for clarity manifested by the Netherlands delegate, said it was necessary to distinguish between three things, namely, the scientific work, the work of sifting the subject-matter, and the work of compiling a code. In regard to the scientific work, he admitted that it would be useful to substitute for the word " draft " the words " systematic survey ", thereby excluding the idea of anything in the way of legislation.

Replying to the question of the Netherlands delegate as to what " same time " was referred to, M. Cassin said there was no doubt that the time in question was the time when the systematic survey was being established. In dividing up the subject-matter, the three jurists would be guided by the American methods ; they would at that " same time " perceive that a certain number of subjects belonged to the purely legal field, while others came within the sphere of the technical commissions. There was thus no possibility of a misunderstanding.

As for the third question put by M. Limburg, M. Cassin felt he could only endorse the view which the latter had expressed. The Committee ought to state that it would be the one and the same committee of jurists that would perform the three tasks : the scientific work, the division as between the legal and the technical organisations, and, finally, the task of assembling in a code the international conventions.

M. Duzmans (Latvia) considered that there was a direct logical relation between the third draft resolution now under discussion and the idea underlying paragraph 7 of the first draft resolution.

He had opposed the suppression of paragraph 7, which had been decided upon on the previous day and he was not at all surprised at the objections that were now being raised. The question put by the Netherlands delegate was logically sound, for, notwithstanding yesterday's decision, the idea contained in paragraph 7 had not been entirely abandoned. It was to be presumed that the Rapporteur would express it quite definitely in his resolution, so that the Conference itself could, if necessary, revert of its own accord to this method for the later work.

M. Duzmans went on to suggest the substitution, in the third paragraph, for the words " theoretical character ", of the words " synthetic and general character ". The task the Committee had in view was not, he thought, merely theoretical in character, but the provision of such a serious practical basis as might enable the first Conference to shape its course,

with a view to later work. The results would be of value, not merely to the Conference itself, but also to the general public and to those persons employed in the service of the League of Nations.

M. DE PALACIOS (Spain) held a similar view. The resolutions proposed by the Rapporteur, taken in their entirety, were adequate, and were in keeping with the sympathy with which the proposal of the Paraguayan delegation had been unanimously received.

Nevertheless, although he shared the point of view of the Latvian delegate, he thought it would be better simply to strike out the word " theoretical " rather than to substitute for it the words " synthetic and general ".

M. ROLIN (Belgium), Rapporteur, and M. DUZMANS (Latvia) assented to this proposal.

M. ROLIN (Belgium), Rapporteur, then submitted certain changes of wording which he thought would meet the ideas that had been expressed.

In the first place, he proposed that, in paragraph 3, the words " in detail " should be struck out.

Next, in the following paragraph, he would suggest deleting the word " theoretical ", and substituting, for the word " draft ", the words " systematic survey ".

He was unable to accept the proposal of M. Limburg that recourse should be had to the Committee of Experts. That Committee was too numerous for work of this kind, and, indeed, it had itself appointed Sub-Committees for the study of certain questions. Moreover, the work being of a scientific character, it was unnecessary that all currents of opinion should be represented. Finally, whereas the meetings of the Committee involved great expense, this would not be equally true of a small Committee. In his view, the two pieces of work should be undertaken by the same Committee.

There need be no fear that the Committee of Three and the Committee of Experts would take up opposite positions, for the tasks entrusted to them would be altogether different. The Committee of Experts had been asked to indicate which matters were ripe for codification, in view of the attitudes taken by the different Governments, whereas the Committee of Three was to be asked to make a systematic survey of the whole field of international law.

To give greater clarity to the resolution, it would be well to insert the figure 2 before the final passage concerning the compilation of a code. This would indicate that there were two different questions, though dealing with the same general topic. In the first part of this passage, he would propose — in order to meet M. Limburg's objection — to substitute, for the expression " in this connection ", the words " in the same connection ", and in the last part, in order to avoid any ambiguity, to use the words " of the above-mentioned committee of three jurists ".

M. Duzmans had asked that paragraph 7 of the first draft resolution should not, after all, be suppressed. He thought, however, that the Committee ought not to go back on its decision in regard to that matter.

M. ITO (Japan) agreed with M. Rolin's suggestions. He thought it was an excellent idea " to assemble together in the form of a code the various general international conventions ". Many conventions of that sort had been signed in recent years, dealing especially with technical questions — and not sufficient attention had been paid to their legal aspect. Those conventions varied considerably in form and the effect of bringing them together would be to make apparent those differences.

A gap existed at present owing to the absence of a collection of general conventions concluded under the auspices of the League of Nations.

M. DUZMANS (Latvia) said that, in view of the Rapporteur's explanations, he would not insist further on the retention of paragraph 7 of the first draft resolution.

M. LIMBURG (Netherlands) indicated that, as nobody had expressed concurrence with his view, he proposed no amendment. From what M. Cassin had said in reply, it appeared to him that he had not put his question very clearly. The intention of the resolution seemed to be that the proposed draft should indicate what matters were to be reserved.

M. ROLIN (Belgium), Rapporteur, agreed that this was so.

M. LIMBURG (Netherlands) said that, in that case, the resolution was ambiguous. It might be taken to mean that the Assembly should decide what matters were to be reserved.

To make a collection — in the form of a code — of the conventions would be a valuable piece of work, but why should three jurists be appointed — even though the committee in question was already contemplated ? Further, there were but few general conventions in existence and the appointment of a committee of three jurists would therefore be of little value.

M. ROLIN (Belgium), Rapporteur, explained that his first idea had been to ask the Secretariat to make the study in question, but the latter might regard this as too great a responsibility. Once it had been decided to summon a committee of three jurists, there was no reason why it should not be asked to do this work. He suggested that the Committee should now vote upon the proposed resolution.

The CHAIRMAN observed that, as M. Limburg had proposed no amendment, he might take it that the Committee was agreed. It should be noted that the Rapporteur had concurred in M. Cassin's proposal for the appointment of one and the same committee of experts for both tasks.

The third draft resolution was adopted in the following amended form:

" 1. The Assembly,

" Having considered the opinion expressed by the Committee of Experts regarding the proposal of the delegation of Paraguay,

" Confirms its decision to make no change at present in the method of codification adopted by it in 1924;

" Recognises, however, that there would be advantages in indicating the full extent of the subjects which, without prejudging the order to be followed, the Assembly proposes to cover by the work of codification;

" And, in view of the character of the contemplated task, addresses to the Council the request that the establishment of a systematic survey may be entrusted to a committee of three jurists, to be chosen preferably from the members of the Committee of Experts, and that the survey may be communicated to the Members of the League as soon as possible.

" It suggests that it would be desirable at the same time to distinguish, if possible, the subjects which should be reserved for the technical organisations of the League, or the international conferences which have already been initiated by particular Governments, and the subjects which appear capable of being dealt with by conferences of jurists.

" 2. The Assembly emphasises the great immediate practical value in the same connection of assembling together in the form of a code, according to a methodical classification, the various general international conventions, *i.e.*, those which are open to acceptance by States in general.

" It accordingly asks the Council to submit to the examination of the above-mentioned committee of three jurists the question of publishing, as an accompaniment to the *Treaty Series* and in the form of a code, of which new editions would from time to time be produced, those general conventions which have the above-mentioned character, and to report to the Assembly on the matter at its next session. "

The CHAIRMAN said that the Committee had yet to examine the proposal of M. Ferrara that:

" In conformity with various precedents, the Codification Conference should be called upon to preface its work with something in the form of a declaration regarding the rights and duties of States. "

M. FERRARA (Cuba) proposed that, as his resolution had, he thought, no connection with the drafts which had just been voted, its consideration should be postponed. If it were kept separate from the present resolutions, it could be examined under more favourable conditions.

M. CASSIN (France) did not think M. Ferrara's proposal could in such case be examined at all. A Committee itself had no power to place a question on its agenda. He suggested that the Cuban delegation should submit a proposal to the Assembly. The Assembly would refer it to the Agenda Committee, which would submit it to the First Committee at some time during the session.

M. FERRARA (Cuba) thought that the continuation of the discussion should be deferred to a later meeting.

After a short exchange of views, *the Committee decided to continue the discussion at once.*

M. GUERRERO (Salvador) pointed out that the adoption of the Cuban proposal would be tantamount to departing, in the case of one of the most difficult of questions, from the slow and thorough method of procedure which had been adopted in general in connection with the codification of international law. If the representative of Cuba desired to alter his proposal in such a way as would constitute an invitation to the Committee of Experts to study the question, which would then be referred through the Secretary-General to the Governments, after which the replies would be examined and a report made to the Council and the Assembly, M. Guerrero could agree to the proposal; otherwise, he must maintain his objection.

M. UNDÉN (Sweden) had some doubts as to the expediency of the Cuban delegate's proposal. The Committee of Experts had been instructed itself to indicate the questions which it should discuss. In the present case, it would be the Assembly that would give such indications. He did not think such a procedure desirable.

M. FERRARA (Cuba) recalled that this question of the declaration of the rights and duties of States had already been discussed at Havana. That being so, why could it not be discussed in a World Conference ? He added, moreover, that he based his proposal on the Preamble to the Covenant.

Declarations of the rights and duties of States were no new thing in juristic writings. One was to be found in Grotius, and, since then, they had occurred in the works of all the authors who had dealt with that question. It would not be possible to produce a code of international law without taking account of those principles, for such a step would be to create a body without a soul. That body must be provided with a soul -- to wit, the fundamental principles of international law.

He recalled the declaration propounded in 1789 by Volney, a member of the National Assembly; that drawn up by the Abbé Grégoire; and several others, concluding with that submitted by M. de Lapradelle to the Institute of International Law.

M. Guerrero had suggested that the declaration would be difficult to frame. He would remind the Committee, in this connection, of the declarations which had been framed by those wise men, the judges of British and the United States courts, and which would serve as the basis of a text giving to the small States the assurance that, though they might be wanting in strength, they did indeed have rights, and that those rights were embodied in written law and sanctioned.

He quoted the words used in 1817 by Sir William Scott on the equality and independence of States. He quoted also those used by John Marshall in the case of *The Antelope*, in the United States of America, in 1827.

If the judges were able, at the beginning of the nineteenth century, to give expression to such liberal ideas and to principles of such breadth, why should it not be equally possible in the twentieth century for Members of the League of Nations to do so within this new organisation embracing the whole of mankind ?

In conclusion, he insisted on the necessity of drawing up such a declaration of principle in regard to the fundamental rights and duties of States, and of attaching to those traditional principles a legal sanction.

M. Politis (Greece) thought he could show the question in its true light. The question was not whether it was useful or even possible for the League of Nations to draw up a declaration of the rights and duties of the States. All that the Cuban representative was asking was that the next Codification Conference should be invited to draft such a declaration.

Like M. Guerrero, he did not think that a breach should be made in the practice regularly followed by the League of Nations up to the present. Besides, he would recall that the Committee had already, on two occasions, declared that it was impossible to add anything to the programme of the forthcoming Codification Conference.

He accordingly invited the Cuban representative to put his proposal in the form suggested by M. Guerrero.

Sir Edward Chamier (India) agreed with M. Politis.

M. Ferrara (Cuba) was willing to accept M. Guerrero's suggestion, for he was anxious that the step he had taken should not be without results.

M. Rolin (Belgium), Rapporteur, reviewed the conclusions that had been reached. Neither the preparation for the Codification Conference nor the receiving of the replies to the questionnaire on Domicil would make it necessary to call a new meeting of a large Committee of Experts. Was the Cuban proposal a sufficient reason for requiring such a meeting ?

M. Guerrero (Salvador) replied that his proposal had merely in view a consultation of the Committee of Experts at such time as it might next be meeting.

M. Rolin (Belgium), Rapporteur, said that, in that case, he had no objection.

M. Guerrero's proposal was adopted subject to possible changes in final drafting.

The Committee appointed M. Rolin *to act as Rapporteur to the Assembly for questions relating to the Codification Conference.*

11. Programme of Work.

After an exchange of views, in which Sir Cecil Hurst, M. Undén, M. Rolin and M. Cassin took part, *it was decided* to open the general discussion on the draft Conventions regarding the pacific settlement of disputes drawn up by the Committee on Arbitration and Security. This general discussion would supply indications for the members of the First Committee on the Sub-Committee of Liaison with the Third Committee. The members of the First Committee would thus be able to provide the Liaison Sub-Committee with the views of the First Committee as a whole and not only their personal views.

FIFTH MEETING.

Held on Friday, September 14th, 1928, at 10 a.m.

Chairman: M. Scialoja (Italy); later, M. Erich (Finland).

12. Progressive Codification of International Law: Resolution concerning a Declaration of the Rights and Duties of States.

M. Guerrero (Salvador), with a view to meeting the desire expressed by the Committee the previous day, submitted the following alternative texts, between which the Committee might make a choice :

(*a*) " The Assembly requests the Council to invite the Committee of Experts for the Progressive Codification of International Law to consider at its next session whether it would be desirable to study the question of the fundamental rights and duties of States."

(*b*) " The Assembly requests the Council to invite the Committee of Experts for the Progressive Codification of International Law to study at its next session the question of the fundamental rights and duties of States. "

According to the first text, the Assembly would simply invite the Committee to consider the expediency of the proposed study : such was the usual procedure. The second text was more peremptory and accorded, he thought, more nearly with the wishes of the Cuban delegate : it amounted to an instruction given by the Council to the Committee of Experts to undertake the proposed study forthwith.

M. Guerrero asked the Cuban delegate to say which of these two texts he preferred, after which the Committee might vote on them.

M. Ferrara (Cuba) said he preferred formula (*b*), for the first alternative left the experts free to decide whether or not they should prepare the declaration of the fundamental rights and duties of States. A Committee of Experts was a technical committee. The question at issue, however, was political and for that reason he considered the second wording the more appropriate of the two.

The Chairman thought that the original proposal of the Cuban delegate did not aim so much at instructing the Committee of Experts to enquire into the existence of the rights and the duties of States as at requesting it to find a formula. It was a matter, he thought, of seeing whether it was possible to find a sufficiently satisfactory wording for embodiment in a code.

M. Ferrara (Cuba) replied that the Chairman's remark covered all the law. Law began with facts ; those facts led to generalisations, which in turn gave rise to principles ; those principles then found expression in precepts. M. Ferrara desired to see realised in public law that process of evolution which had already been achieved in the field of private law.

The Chairman said he agreed with M. Ferrara and considered, therefore, that formula (*b*) should be altered ; there would no longer be any question of submitting for study the rights and duties of States. The text might read :

" The Assembly requests the Council to invite the Committee to consider whether it would be possible to propose a formula regarding the rights and duties of States and what would be the most satisfactory formula. "

M. Guerrero (Salvador) recalled the procedure invariably followed by the Committee of Experts for the Codification of International Law. The Committee would study the question. For that purpose it would appoint a Sub-Committee, which would present a report to it. The Committee would forward that report to the Governments of the States Members and non-Members of the League of Nations, for their observations. The Governments would send in their replies, for they alone were competent to pronounce upon the expediency of the question. The Committee of Experts would consider the replies and then decide whether the question should finally be placed upon the agenda of an international conference.

M. Undén (Sweden) wished to make it clear, for reasons which he had already indicated on the previous day, that he was not in favour of making it obligatory upon the Committee of Experts to study the question of the fundamental rights and duties of States. As the majority of the Committee appeared, however, to be in favour of that idea, he would in the circumstances abstain from voting.

Sir William Harrison Moore (Australia) considered that to add that question to the agenda of the Conference would represent a considerable addition thereto and, incidentally, a perhaps not altogether fortunate interference with its functions. All the preparatory work and studies of the Committee of Experts ought to follow the usual procedure, of which M. Guerrero had reminded the Committee, and it would not be desirable to make an exception to that rule. The determination of the fundamental principles of international law was a matter of some difficulty, and if the Committee were to add this question to the business already assigned to the Conference, it would be taking what would constitute, in relation to the programme already mapped out, a backward step.

M. Limburg (Netherlands) began by recalling that the Committee had already adhered in principle to the proposal of the Cuban delegate. Nevertheless, he was not sure that it had been M. Ferrara's intention that this question should be placed upon the agenda of the next Conference. Indeed, he did not think it would be wise to overload the agenda of the Conference, nor was there enough time to make it possible to observe the rules which had always been followed up to the present.

He thought the Committee could hardly accept the second formula submitted by M. Guerrero, for it went too far : it would not be desirable to submit the question to the Committee of Experts for examination at its next session, since a complete schedule of the rights and duties of States could not be drawn up in a relatively short time. Moreover, the Committee of Experts had done nothing else but undertake such enquiries. It was only necessary to read the questionnaire addressed to the States on the subject of the responsibility of States to foreigners on their territory in order to see that it was concerned with nothing else except the rights and duties of States.

As the work of the Committee of Experts proceeded, an opinion on the rights and duties of States in a large number of cases would be made available. Consequently, being already bound by its vote of the previous day, the Committee could but adopt M. Guerrero's

first formula. He, M. Limburg, like the Swedish delegate would be unable to accept the second.

M. Rolin (Belgium), Rapporteur, declared that, if the proposal was immediately to pronounce upon the desirability of proceeding to the determination of the fundamental rights and duties of States, he could not agree to it — partly for the reasons developed by Sir William Harrison Moore, and also for the further reason that those fundamental rights and duties were, most fortunately, in process at the moment of a marked progressive evolution. A restrictive declaration of the rights and duties of States, so far from having a favourable effect, would, he thought, be liable to hinder the work in one of its most vital aspects. If, however, the South American delegates insisted on their point, the usual practice of the Committee made it impossible to refuse to put before the Committee of Experts the question whether this matter was or was not ripe for codification.

The scruples expressed by M. Undén might thus in a certain sense be used against his own argument. It was, in principle, certainly not for the Committee to indicate to the experts the matters which were considered to be ripe for codification; nevertheless, the Committee was not prohibited from asking the Committee of Experts, even in regard to a matter which it had not directly studied, to give an opinion on the expediency of codification. Such a request would be entirely reasonable. It ought, however, to be made perfectly clear that the Committee of Experts was not being asked to investigate the question of a declaration of the rights and duties of States, but to consider the question of codification — in other words, to pronounce, in the phrase used two years ago, upon the desirability and the possibility of submitting to a procedure of codification the question of a collective declaration of the fundamental rights and duties of States. He accordingly proposed to the Committee the adoption of the following resolution :

> " The Assembly recommends that the Committee of Experts should, when it next holds a session—without on that account requiring a special session during the year 1929 — consider the possibility and the desirability of seeking by the procedure of codification the establishment of a declaration on the fundamental rights and duties of States. "

M. Lo-Hoai (China) considered that the determination of the fundamental rights and duties of States was a matter of some importance, particularly with a view to guaranteeing the independence and the sovereignty of the States Members of the League of Nations, and with a view to fixing the responsibility of a State arising out of military intervention in the territory of one of the States Members of the League of Nations on the pretext of protecting its nationals.

The victim State, in addition to its right of legitimate defence, was entitled, he maintained, to claim compensation for direct and indirect material and moral damage due to such intervention.

M. Frasheri (Albania) did not propose to introduce any new element into the debate. He merely desired to sum up the discussion that had just taken place. He recalled that the Committee had been logically bound to reject, and had in fact rejected, the new proposal formulated on the previous day by the Cuban delegate. The Committee had then adopted the compromise which consisted in a resolution stating that it recommended the Committee of Experts to study the question of principle in regard to the rights and duties of States. The third possibility contemplated — and this was the one which corresponded to M. Guerrero's text — had likewise been rejected during the previous meeting. Nothing remained except the resolution proposed by the Rapporteur. He therefore suggested that the discussion should be closed and that the Committee should vote on M. Rolin's resolution.

The Chairman closed the discussion and put to the vote the resolution of M. Rolin.

M. Ferrara (Cuba), noting that the text in question was the only one still before the Committee, signified his acceptance of it.

The resolution proposed by M. Rolin was adopted.

13. Pacific Settlement of International Disputes: Consideration of the Draft Conventions on Conciliation, Arbitration and Judicial Settlement prepared by the Committee on Arbitration and Security.

The Chairman opened the discussion on this question (Annex 4) and called upon M. Undén to speak.

M. Undén (Sweden) read the following note :

> " The Introductory Note to the Draft Conventions on Conciliation, Arbitration and Judicial Settlement, drawn up by the Committee on Arbitration and Security, contains the following statement :
>
> > " ' The Committee, faithful to the principles by which it has so far been guided, did not feel that it could establish any order of preference as between Conventions A, B and C. Certain members of the Committee thought it would have been desirable to do so, but, since opinion was divided, the Committee refrained from adopting any definite attitude in this respect. It, therefore, places all the Conventions on the same footing, leaving States free to accede to one or more of them as they see fit. The difficulties arising from the order of application of the various Conventions

by States which have acceded to more than one of them will in practice be capable of easy settlement by the parties themselves. Failing this, the application of the final clauses of the Conventions, providing for an appeal to the Permanent Court of International Justice, would furnish a solution. '

" The difficulties pointed out by the Committee do not, however, admit of complete solution by the method indicated in the Introductory Note. The possibility must be borne in mind of some States acceding to Convention B, for instance, without also acceding to Convention C. In the event of a dispute between two States of which one had acceded to Convention B and the other to Convention C, there would exist no contractual obligation as between the two States and neither Convention would apply.

" In order to remedy this deficiency and to simplify the procedure of accession on the part of States to the different systems for the pacific settlement of international disputes as drawn up by the Committee on Arbitration and Security, it would be of advantage to examine the possibility of a fusion of the three types denoted by A, B and C respectively so as to bring them within the compass of a single Convention. This new Convention should be drafted in such a manner as to admit of States giving their accession to the Convention as a whole (A), or only part of it, corresponding to the less far-reaching systems of pacific settlement described in Conventions B and C.

" To this end, there could be added to Convention A — say, after Article 35 — a new article in virtue of which the accession of a State could be given, in respect of :

" A : The whole Convention ; or

" B : The procedure referred to in Chapters II and III for the disputes therein mentioned, but excluding the arbitral procedure contemplated in Chapter IV ; or

" C : The conciliation procedure contemplated in Chapter III for all kinds of disputes, but excluding the judicial and arbitral procedures contemplated in Chapters II and IV.

" Accession to any one of these alternatives, however, should be conditional upon reciprocity, so that, should one of the parties to disputes have given but partial accession to the Convention (for example, to the extent corresponding to models B or C), the other parties could claim the same limitation in regard to their obligations to that party. "

M. Castberg (Norway) intimated that the Norwegian Government was particularly pleased at the drawing up of the draft Conventions on arbitration and conciliation, since they gave effect to the principles contained in the Norwegian memorandum to the Committee dated December 30th, 1927.

The Norwegian Government had in that memorandum proposed that the Locarno type of arbitration treaty should be taken as the basis for the framing of a collective treaty. It had also proposed that any States which so desired should have an opportunity to accept compulsory arbitration also for non-legal disputes. It was thus the most advanced draft, namely, Convention A, which was of special interest to the Norwegian Government. It was possible, however, that it would not be accepted by very many States. An endeavour should be made to bring the wording of Convention A more fully into accordance with the advanced principle on which it was based.

The Preamble contained a formula, borrowed from the Locarno arbitration treaties, which was not very well adapted to the contents of that particular Convention. The Locarno treaties submitted for judicial or arbitral settlement only those disputes which were of a legal character, whereas Convention A empowered a Court of Arbitration to decide non-legal disputes. In the latter instance, it was not logical to require the tribunal to uphold in their entirety the formal rights of the States. To do that would be to put an obstacle in the way of the accomplishment by the tribunal of its task, namely, to settle in a really satisfactory manner, on the basis of equity, non-legal disputes.

On behalf of the Norwegian delegation, he therefore proposed to strike out the following part of the Preamble of Convention A :

" Noting that respect for rights established by treaty resulting from international law is obligatory upon international tribunals ;

" Recognising that the rights of the several States cannot be modified except with their own consent ; . . . "

M. Limburg (Netherlands), on examining the three draft Conventions, had noticed certain points which were very similar to those remarked upon by M. Undén. The Committee had expressed the hope, not only that Governments would accept one or another of the Conventions A, B and C, but that they would accept more than one of them.

Let it be assumed that two countries were at the same time to adhere to Conventions A and C. In the case of a legal dispute they ought, according to Convention A, to have recourse to an arbitral tribunal, and, according to Convention C, providing for conciliation, they were required to have recourse to conciliation. Should conciliation fail, Convention C provided nothing except recourse to the Council (Article 15 of the Covenant), whereas Convention A provided for a judicial or arbitral settlement.

Again, let it be assume that five States, for example, were to sign Convention A and five others Convention B. hat would then be done in the case of a non-legal dispute ? According to Convention he attempt at conciliation would be followed by compulsory arbitration. According t onvention B, there was nothing except recourse to the Council in virtue of Article 15 of Covenant.

Probably the jurists of the Committee had realised those difficulties. What, he asked, were their views on the point ? Paragraph 5 of the Introductory Note did not provide a way out of the difficulty; the Permanent Court of International Justice might be put in a difficult position. M. Limburg held the Court in hign esteem, but it could not remedy everything. If a State were to adhere at the same time to Convention A and Convention B, non-legal disputes would be lost in such a labyrinth that it would be impossible to find a way out.

There was a further point which, although it was a special one, was so fundamental that he desired to deal with it at the present stage ; he referred to the definition of legal disputes. In Article 4 of Convention A and the corresponding articles of the other Conventions, these disputes had been defined as those " with regard to which the parties were in conflict as to their respective rights ".

That definition had been borrowed from the Treaty of Locarno, and he would therefore, perhaps, be preaching in vain, but he would do so nevertheless, to save his own soul (*animam meam salvavi*). That definition was a departure from Article 13 of the Covenant and Article 36 of the Statute of the Permanent Court of International Justice.

Some one would perhaps reply that this was not the case, since in the formula of the Locarno treaties there were included all the disputes covered by Article 13 of the Covenant, this result being effected by the addition of the sentence :

> " It is understood that the above-mentioned disputes include, in particular, those referred to in Article 13 of the Covenant of the League of Nations. "

That sentence had been omitted from the model Conventions.

M. Limburg did not regard the definition in Article 1 of the Locarno treaties as so very good. There was something unsatisfactory about a definition which required the addition of a sentence to complete it. The definition would appear of doubtful value if the sentence in question were omitted. Was it necessary to accept the explanatory statement prefacing the Belgian Bill for the ratification of the Locarno treaties, which contained the reasons why the definitions in Article 13 of the Covenant and Article 36 of the Statute of the Permanent Court had been abandoned ? In this statement it was said that those provisions had seemed to the authors of the new agreements unduly restrictive, because they excluded, for example, disputes concerning the reality of facts which constituted, not a rupture, but the non-observance, perhaps involuntary, of an international engagement. That was not his view; these categories of dispute also fell within the scope of Article 13. It was only on the problem of " *dol* " and that of " *culpa* " that he would not enter into detail.

As regards another point, by adopting the formulas accepted by the jurists, the Committee on Arbitration and Security had taken a backward step. Article 13 of the Covenant spoke of " any point of international law " and Article 36 of the Statute of the Court repeated the same idea. The judges who would have to apply Conventions A, B and C would not have the well-defined powers that the wording of the Locarno treaties would have given them.

Even if the Belgian explanatory statement were entirely correct, and the cases to which he had just referred did not fall within the scope of Article 13 of the Covenant or Article 36 of the Statute of the Court, he would still prefer the definition employed in those two articles, on the ground that the judge, under Conventions A and B, would not have before him the complete formula of the Locarno Conventions, but only the first part.

The judge would be bound by the terms of Conventions A and B ; M. Limburg would quote two examples of cases which would thus elude the operation of the provisions of those Conventions.

There were some treaties that might give rise to difficulties of interpretation without it being possible to say that the parties were in dispute about a legal right ; suppose, for example, that provision was made in a treaty for a boundary delimitation commission. Should a dispute arise between the parties in regard to the rights and powers of that commission, they would not be disputing about a legal right; their difference would merely relate to the interpretation of a treaty. It might be pointed out that, in many instances, these questions would, in accordance with the treaty itself, be referred by an arbitration clause to the Permanent Court of International Justice. This was, as a rule, true of recent treaties, but it was otherwise with earlier treaties.

He would quote another example : suppose that one party had violated a right which it recognised the other party as having, but owned frankly that its vital interests demanded it. In such a case the defendant in the matter did not contest a right and the case did not fall within the scope of Article 4 of Conventions A and B.

In any event, M. Limburg would have preferred the definition given in Article 13 of the Covenant and Article 36 of the Statute of the Court, the more so because there was still the factor of reservations. This factor was regulated by the Statute of the Court. In Article 36, after the enumeration of the classes of disputes of a legal nature, it was stated that a State might declare that it recognised as compulsory *ipso facto*, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes. With that text, the party intending to make reservations knew that it could exclude anything it wished to exclude. The definition in Article 4, however, left everything quite vague.

He did not think that this definition should be retained. He reminded his colleagues of the observations of the British Government on the programme of work of the Committee on Arbitration and Security where reference was made to an Anglo-French treaty which dealt

with " differences of a legal nature or relating to the interpretation of treaties ". It was true that there were added the words :

" Provided nevertheless that they did not affect the vital interests, the independence or the honour of the Contracting States . . . . "

The draft Conventions A and B likewise allowed all possible reservations.

If it were not desired to adopt the terms of Article 13 of the Covenant or Article 36 of the Statute of the Court, why should not the Committee adopt a definition similar to that which had been accepted by Great Britain and France in 1903, and which was repeated in a large number of subsequently concluded treaties of the same type ?

(At this point, M. Erich took the Chair in place of M. Scialoja.)

M. d'Oliveira (Portugal) endorsed the remarks of M. Undén, with whom he agreed in thinking that a connection should be established between the three model Conventions prepared by the Committee on Arbitration, either in the manner proposed by the Swedish delegate or in some other way.

The Conventions were like those Chinese boxes which fitted one inside another : it was clear that a Government which had accepted Convention A ought thereby implicitly to accept Conventions B and C. In such cases the greater included the less. It appeared, however, that the three Conventions were independent and that a State signatory to Convention A would not be bound in relation to a State signatory to Convention C. Such an illogical result had doubtless never occurred to the authors of the drafts.

It ought to be clearly understood that the three model Conventions A, B and C together constituted a whole. States would be able to bind themselves just so far as suited them, but those whose engagements were on the largest scale would be equally bound in relation to the States with more limited engagements.

He did not agree with M. Castberg that two of the clauses in the preamble should be suppressed, although he was willing that their wording should be modified. The preamble of Convention A affirmed the principle of respect for rights established by treaty and affirmed also that the rights belonging to any given State could not be modified except with its consent. But it was plain that the Convention, in providing for the intervention of a tribunal as friendly compositor, admitted the possibility of the modification of the law of each State.

In view of these considerations, the Committee might perhaps modify the wording of the preamble, but it would be going too far if it were to strike out the two clauses in question.

M. Tumedei (Italy) did not agree with M. Undén's idea of running the three draft Conventions A, B and C into one. The first two Conventions represented very different types. Convention A submitted all disputes to judicial or arbitral settlement. Model B submitted only those disputes which were of a legal nature. This dissimilarity affected each Convention in all its parts.

If a State were prepared to submit to judicial or arbitral settlement disputes of a legal nature, the tendency would be for it to choose for its judge the Permanent Court. If, on the other hand, it was willing to submit to arbitral settlement all disputes, even those not of a legal nature, it might be more suitable for it to choose some other body, for to ask the Court to decide non-legal questions would be to put it in a position of some difficulty.

He would put another case : Suppose a State was willing to submit to judicial or arbitral settlement only those disputes which were of a legal nature. It would be possible in that case to dispense with the procedure of conciliation, and, in any event, it ought not to be prescribed as an obligatory preliminary ; on the contrary, if a State were submitting all its differences to a judicial or arbitral settlement, it would be essential for it to adopt the procedure of conciliation as a first stage.

Thus the clauses of each Convention were very intimately connected with one another and the three Conventions could consequently not be run together into one.

Again, the Swedish delegate had proposed to complete Article 35 by an Article 35 *(b)* rendering it possible for the adhesion of a State to have reference to " the procedure of conciliation contemplated in Chapter III for disputes of whatever kind ". He did not share this view.

Article 9 of Convention A referred, not to all disputes, but only to "disputes between the parties other than the disputes mentioned in Article 4 ". Article 4 distinguished between legal and non-legal questions, which illustrated the intimate interdependence of the various provisions.

Finally, in regard to all the Conventions, there was the difficult problem of adhesions. To run the three Conventions into one would be to add to the complexity of that problem.

As regards the case of a State signing Convention A and another State signing Conventions B and C, it was certainly true that those States would not be mutually bound, which was a very unfortunate position ; yet they could easily conclude special treaties. But, until they did so, it was inconceivable that a State should be bound in relation to other States that had not signed the same Conventions as it had signed. It must always be realised that that difficulty was only of very slight importance.

M. Rolin (Belgium) drew attention to a question that had not as yet been mentioned. The draft Conventions that had been referred to the Committee were described as " models ". That expression was admissible in the case of special conventions, inasmuch as in such a case the States would deal directly with one another. Where, however, general conventions were involved, it was impossible for the Assembly to confine itself to recommending models. It would be necessary to establish a Protocol open to signature, but in that case there would

be no longer a model treaty, but a treaty in the true sense. If it were not desired to go quite so far, it would be better to keep to the adoption of a draft treaty which would be communicated to the Governments for their observations with a view to the next session of the Assembly. Those would be two practical procedures. If the Committee were to content itself with giving its blessing to the models, it would only be making a mere gesture.

M. Rolin dealt next with the question of the alternative between the system of a single treaty and that of three Conventions. He agreed that there was a good deal in what M. Tumedei had said, and M. Undén had been obliged to recognise that the question was less simple than it had at first seemed.

In M. Rolin's opinion, it was necessary first of all to set on one side the system involving a choice on the part of the States between different Conventions. If every State must choose between a far-reaching Convention which only the small States would be able to accept; another Convention not so far-reaching, under which it would find itself in relation with another set of States; and, finally, a last Convention under which it would again find itself in relations with yet a third category of States, there was every reason to anticipate that the attempt that was being made would be unsuccessful and the result contemplated would not in any case be achieved.

He quoted the example of Belgium, a country which desired to conclude engagements in regard to conciliation with all the States that preferred not to go farther, and which also desired to proceed to the point of arbitration of legal disputes with those States that were equally ready to go so far, and which desired to achieve the third stage with those States that were willing to accompany it thither. Was it really possible to arrive at such a system of treaties as would effect such a result? He did not think so. M. Rolin recognised that, from the technical point of view, the system of the three Conventions might give that result, provided that each of the three Conventions contained a clause referring to the two others, a clause which the Permanent Court of International Justice could interpret in the case of a dispute.

Nevertheless, although this was technically a possible solution, it was not a happy one from the moral and political point of view. If, in fact, the Governments were obliged to go before their Parliaments with three draft Conventions containing both special provisions and common provisions creating different obligations in relation to different signatories, he did not believe that the position would be easily understood; the support of public opinion would be difficult to secure.

The important thing to aim at was, not merely to extend the bonds of arbitration, but also to simplify them, both from the technical and the moral point of view. To this end, it was desirable that the system of international procedure should present the minimum degree of complexity. The procedure by way of special Conventions had been valuable in that it had made it possible to improve the mechanism of arbitration. At the present time, the necessity for unification had made itself felt.

It would be desirable, therefore, to endeavour to draw up a single convention. Needless to say, it should be elastic. This elasticity might be attained in one of two ways : either, as contemplated by M. Undén, through the method of optional reservations and restrictions, or else through the method of optional additions. In the latter case, additional Protocols would be added to a minimum Convention. That method had been followed when the Permanent Court of International Justice had been set up, Article 36 of the Statute of the Court constituting its additional Protocol. The question of which solution was preferable could only be settled by a small Committee.

In conclusion, he wished to remove the uncertainty which was to be noticed in the statements of M. Limburg and M. Castberg as regards friendly composition. In the normal way, it was only in the case of differences for which international law had no solution to offer that provision could be made for friendly composition and arbitral settlement of a political kind. It must not for one moment be allowed that, in contemplating the widest type of arbitral settlement, it was admitted that discussion might thus be opened on the most firmly established features of the international legal regime.

M. Limburg (Netherlands), intervening, disavowed any idea of assuming such a position.

M. Rolin (Belgium), Rapporteur, gave an instance of a case where, international law not being applicable, friendly composition had to be applied : in 1870, the question of the accession of a prince to the throne of a country other than his own had precipitated a European war. In such circumstances, international law neither conferred on the prince any right to accede to the throne, nor gave the third Power any right to oppose his accession. It was a case of a sheer conflict of interests, and one which it was desired to see regulated by competent arbitrators, who would not be applying rules of international law, owing to the absence of any rules on the subject under discussion.

If, however, in a permanent arbitration treaty power were conferred on friendly conciliators to reject the application of international law, it would be like putting dynamite under the foundations of the system of arbitration.

M. Hoffinger (Austria) thought that, in principle, M. Undén was right, but that, as M. Tumedei had observed, it would perhaps be an unduly lengthy and complicated procedure to put together into a single Convention the drafts that had been prepared, and that it would be liable to entail a postponement of the solution of the problem. He presented a new suggestion based on an extension of the reciprocity element.

Whereas the first article of the model Conventions limited reciprocity to the contracting parties, it might perhaps be stipulated that the States that had signed Convention B would

be thereby bound likewise in relation to the States signatories of Convention A, and that the States signatories of Convention A would have to apply the provisions contained in Conventions B and C in relation to the States signatory to those last-mentioned Conventions in so far as they were identical with those contained in Convention A — and so forth. If it were possible to find a form of words to link the three Conventions on that basis, the general fusion of the three Conventions and the resulting complicated system of reservations would be avoided — as well as the preparation of the complicated supplementary Protocols.

M. D'OLIVEIRA (Portugal) said the question was one of those that might conveniently be settled by jurists. It was essential that a link should be established between the three types of Convention. It would be regrettable if the larger number of States signatory to Conventions B and C had no obligations *vis-à-vis* the smaller number of States, signatory to Convention A, which would have signed an undertaking the scope of which was much greater.

Jurists were very good architects and he was sure that they would not fail to build the house in such a way that the rooms had uninterrupted communication one with the other.

M. POLITIS (Greece) said, in regard to the question of friendly composition, that M. Rolin's remarks had reflected the ideas of the Committee on Arbitration at the time when it had been studying the question. It followed from the preamble that friendly composition could apply only on the hypothesis of a conflict of interests existing outside the field of international law. Perhaps the wording of Article 32 was not altogether clear, and it might be well to consider whether it would be modified somewhat.

The two important questions were that of the form of the Conventions and that of their interconnection. M. Rolin had attributed the use of the word " model " to a feeling of modesty on the part of the Committee, but the reasoning might be reversed by observing that a model was a thing of perfection. In point of fact, the Committee's purpose had been to overcome certain difficulties; it had remembered the setbacks experienced in 1923 and 1924 when Conventions fashioned by the League of Nations had gone unratified and had not entered into force.

The concluding clauses of the various Conventions contained certain novel provisions taking account of the manner in which the Conventions had been drawn up; for instance, there was no mention of the names of the plenipotentiaries.

The Conventions were not being laid before the countries as requiring, even as a moral obligation, acceptance by them if the language or spirit of those Conventions had been approved by their delegates to the League of Nations; in order that a Convention should enter into force, it would be sufficient for two countries to affix their signatures thereto. That was why the word " model " had been used.

He was a little afraid of speaking of " draft conventions ", and of submitting them for prior approval by the Governments. There was a risk that only poor results would be obtained by this method and that an unfavourable impression would be created. If, however, the somewhat vague proposals that were being made produced no results — and it was necessary to foresee the worst — there would be less tendency to reckon the fact as a failure on the part of the League.

As regards M. Limburg's criticisms of paragraph 5 of the Introductory Note, M. Politis said that it had simply been assumed that the same States would adhere to more than one of the models presented, for instance, to Conventions A and B. It had been thought that, should a doubt arise as to what Convention was applicable, the countries in question would have little difficulty in agreeing to accept the application of the widest of the Conventions, that was to say, of Convention A. Otherwise, the Permanent Court of International Justice would decide which Convention ought to be applied.

As M. d'Oliveira had stated, the important thing was that there should be a link between the several Conventions. Was the system M. Undén had indicated the best one ? Was it in itself the best one, and if so, could it be realised technically ? Some difficulty would be encountered, as the Conventions together constituted a harmonious whole. In any event, the task of running them into one would require a considerable amount of time.

Perhaps it would be preferable to prepare a formula on the lines of that suggested by the Austrian delegate, and founded on the principle that the greater included the less. Ought that procedure to be adopted or was an additional Protocol preferable ? A small Committee would be best qualified to solve those technical questions.

M. FRASHERI (Albania) observed that, in the eyes of the Third Committee, the First Committee filled somewhat the rôle of a super-committee.

The three model Conventions gave rise to several questions. Should it be decided in principle to unite the three types of Convention into one, or should they be discussed individually ? In the latter case, the Committee would have to enquire whether, from the legal point of view, there were any contradictions either in the terms of any one of the Conventions, or as between those Conventions and the articles of the Covenant, or, again, as between them and the provisions of other Conventions to which some of the States were parties. It would likewise be necessary to consider whether the Conventions contained any obscurities or points of vagueness.

Finally, the question whether the texts contained any such gaps as might give rise to difficulty had to be examined.

M. FERRARA (Cuba) read paragraph 2 of Article 2 of Convention A, beginning with the words " The present Convention shall not affect any agreements in force . . . ". Those

words, as he understood them, meant " in force " at the time when the dispute should arise, and not " in force " at the moment when the Convention was signed. He asked that the Committee to be appointed should give a ruling on that point.

M. DE PALACIOS (Spain) likewise agreed that the First Committee had only to view from the legal stand point the model Conventions sent to it by the Third Committee. The Committee had been discussing the question whether those models should be maintained in the form of models, or whether they had better be given the form of drafts. That was a political aspect of the problem, and, for that reason, he would reserve his right to deal with it in the Third Committee.

M. UNDÉN (Sweden) asked if the Committee would discuss the articles in detail.

The CHAIRMAN proposed to close the general discussion. The First Committee would proceed to a detailed study of the Conventions after it had received the report of the Liaison Committee.

He added that those members of the First Committee who were not members of the Liaison Committee might usefully send their suggestions to the latter through the Secretariat, so that they might be taken into consideration.

M. UNDÉN (Sweden) said that, if the general discussion were to be closed without the articles being examined, he would have liked to make a few remarks in reply to the observations of M. Rolin and M. Politis. As, however, the articles would be discussed at the second reading, he would ask to speak on that occasion.

Sir Cecil HURST (British Empire) pointed out that the purely legal discussion which had taken place at that meeting would not concern the Liaison Committee. He suggested that those members of the Liaison Committee who belonged to the First Committee should constitute a Sub-Committee of the First Committee, and should seek a solution for the highly important problem raised by M. Undén. Had M. Undén not raised it, he would himself have done so.

The Committee decided to ask those of its members who were on the Liaison Committee, sitting as a Sub-Committee, to discuss the questions that had been considered in the course of the meeting.

SIXTH MEETING.

Held on Saturday, September 15th, 1928, at 10 a.m.

Chairman: M. SCIALOJA (Italy); later, M. ERICH (Finland).

14. Question of the Revision of the Statute of the Permanent Court of International Justice

The CHAIRMAN opened the discussion on the first item on the agenda — the question of the revision of the Statute of the Permanent Court of International Justice (Annex 5) — and called on M. Fromageot to speak.

M. FROMAGEOT (France) wished to give some explanations on the quite innocuous draft resolution submitted by the French delegation.

In two and a-half years' time it would be necessary to renew the mandates of the Members of the Court, and it might be asked whether some changes or improvements might not at that time be made in the Statute of the Court.

It would, in the first place, be well to pay a well-deserved tribute to that institution which, having no precedent, was making the first attempt in the history of the world to dispense justice as between States, operating as it did as an established organism composed of judges appointed in advance and possessing the procedure and equipment of a Court in the true sense.

Nevertheless, after these eight years, during which the Court had been in operation, it might be of advantage to enquire, though with the utmost prudence — for " the best is enemy of the good " — whether it was not desirable to improve some one or other of the sixty odd articles of the present Statute.

The procedure to be followed in such a case must be that of Article 14 of the Covenant. It was the Council which had been called upon to prepare a plan for a Permanent Court of International Justice and to submit it to the Members of the League. The States represented in the Assembly having once approved that plan, a Protocol had been drawn up and opened for signature by the various Governments. Each of the States signing the Protocol declared that it thereby adopted the Statute of the Court, which Statute, being annexed to the Protocol and constituting with it a single whole, had acquired the character of a treaty.

Assuming — which was by no means a certainty — that modifications in the Statute of the Court were desirable, the Council might start, by whatever means it thought best, a study of any proposals that might be put to it. It would then forward these to the Assembly and the changes, once passed by the Assembly, would be embodied in a Protocol and transmitted to the Governments.

Experience had shown that there was no insurmountable difficulty in such a procedure. Were it otherwise, it would have been necessary to declare that it was impossible to change so much as a single letter of any instrument drawn up in the way in which the Statute of the Court had been prepared. But it was plain that any instrument produced by the League of Nations might call, at some time or other, for some sort of change or amendment.

As regards the actual resolution to be submitted to the Assembly, it ought not to contain so much as the shadow of a criticism against the Court; nor would it be desirable to mention in it any of the suggested changes — for that would be opening the door to a stream of proposals all of which would be extremely interesting, though there was some risk that they might give rise to exceedingly delicate discussions.

The resolution should therefore relate exclusively to the question whether it was desirable to have a fresh enquiry into the Statute of the Court; if so, it ought to request the Council to proceed to a study of the proposed changes and then to submit them to the Assembly.

M. Undén (Sweden) said he had listened with great interest to M. Fromageot's explanations with respect to the purpose of the draft resolution referred to the Committee and the procedure to be followed should the Assembly consider it necessary to revise the Statute of the Court. He would venture to make a few observations on the question of procedure.

The Statute contained no explicit rule providing for the mode of procedure to be followed for effecting modifications. M. Fromageot had reminded the Committee how, in 1920, a unanimous resolution had been passed by the Assembly and how a Protocol had been signed by the different Governments. The Statute was to enter into force when the majority of the signatory States had ratified it. An amendment to the present Statute would certainly require the unanimous assent of the signatory States which had ratified the Protocol, and would enter into force only after that ratification.

In 1926, at the time of the Conference on the reservations framed by the Government of the United States of America, an additional Protocol to the Statute had been proposed and it had been contemplated that that Protocol would have to be ratified by all the States which had ratified the Protocol of 1920.

The procedure of revision was therefore very complicated and might drag on for a long time. It was difficult to say how long the discussions prior to ratification were likely to last. Experience had, moreover, demonstrated the high standard of the work done in 1920, which indicated that the Statute ought in its essential features to be maintained without change. It was also to be noted that Article 30 of the Statute furnished a means of introducing changes in the internal regulations of the Court, for it was the Court itself which had the power of decision in that respect.

Should the Assembly judge it necessary to undertake a general revision of the Statute, he thought it would be desirable in the first place to consult the Court itself, and also to allow certain States which were not Members of the League of Nations to participate in the study of the question. He would recall, in this connection, that Brazil had signed the 1920 Protocol. It might also be of advantage to take into consideration once more certain of the questions discussed in 1926 with a view to the possible adhesion of the United States of America to the Statute of the Court.

To sum up, he thought that the difficulties he had mentioned ought not to be left out of account, and he considered that the complexity and slowness of the procedure of revision rendered a cautious attitude essential.

M. Burckhardt (Switzerland) agreed with what M. Fromageot and M. Undén had said in regard to the activity of the Court, which could not be too highly praised. There was no question of criticising that activity. What was intended was to uphold it and to render more favourable the conditions under which the Court did its work. As M. Undén had pointed out, it seemed desirable to invite the opinion of the Court itself on the points that might with advantage be revised and the possible improvements that might be introduced. This, moreover, was a matter of courtesy.

The procedure was in itself a delicate matter, because a large number of States were parties to the Statute. The Swiss Government had given its opinion as to the course to be taken at the time of the 1926 discussions. The revision ought to be kept within definite limits and, if it were desired to finish the work within the period proposed, the fundamental features of the organism must not be brought into question.

With that object in view, the proposals ought to be submitted to the Assembly in 1929 and the Protocol opened for ratification during the years 1929 and 1930. Provided the revision were on a restricted scale, it would not be necessary to discuss fundamental points, and the work would be fairly speedily done. There was another reason for not enlarging the scope of the work of revision; certain States had, by treaty, decided to refer disputes for settlement to the Court of Justice; those States might plead that the changes made justified them in refusing to submit to the Court. This possibility was not, however, a very likely one, since the changes were to be for the better.

Again, nothing must be done which would make more difficult the task of those in America who were urging their country to adhere to the Court of Justice.

M. Fromageot (France) hoped he could say something to set M. Undén's mind at rest. He did not think that the difficulties to which M. Undén had referred were so great as might be feared. As M. Burckhardt had observed, it was plain to any person of common sense that, if it was proposed to deal with those articles of the Statute concerning the functioning

of the Court, it was the Court itself that was best qualified, by reason of its experience, to give the necessary guidance.

If, on the other hand, the articles not concerned with the functioning of the Court were in question, there would be no use in troubling its President, who was not likely to have greater experience than the Committee itself.

Speaking from the point of view of the requirements of elementary courtesy and taking into consideration the best method of procedure, the organ which would examine the articles concerning the functioning of the Court should ask the President of the Court or any person nominated by him to indicate the lessons that experience had taught. As regards the maintenance of the essential clauses of the Statute, the very greatest prudence would have to be exercised. There must be no risk of upsetting an organism which was working extremely well.

As regards the countries which did not appear at Geneva — though this was, it might be hoped, only a temporary phase — and which had signed the Protocol, it was necessary that they should be able to state their opinion on the proposed changes. When the proposals were submitted to the Assembly, their opinions might be asked and their suggestions welcomed.

If the revision were effected with circumspection, it would not touch more than a small number of points, and since the changes made would constitute an improvement, it might be supposed that the end in view would be quickly achieved. The present Statute had not been very sharply criticised and care must be taken only to introduce changes which would command general approval.

Ratifications could probably be received within the time-limit contemplated, for there were few countries in which Parliament did not meet at all in the course of the year and, even when it did not meet, its intervention would no doubt be unnecessary.

M. Burckhardt had mentioned the case of those treaties which provided in advance that questions relating to their interpretation and application should, as a matter of legal necessity, be submitted to the Court, but if only improvements were made in the Statute, there did not appear to be any great danger that States would be found to plead that the changes made justified them in refusing the Court's jurisdiction.

The functioning of the Court, that was to say, its internal procedure, was entirely its own concern. It had full control of its internal regulations, and provision had been made for changes in regard to them. It would be improper and unfortunate to think of interfering with them; the Statute did, it was true, contain a few rules of procedure, but, in point of fact, the procedure was all contained in the regulations.

The Statute contained the essential principles; the Court itself had the right to organise its functioning as it chose. That was a principle which should not be modified.

M. Pella (Roumania) observed that, before the French delegation had submitted its draft resolution, which was also signed by Roumania, some members of other delegations, and he himself, had expressed a desire that, before proceeding to reappoint the members of the Permanent Court, the Assembly should consider the desirability of acting on the report submitted to the Council by M. Caclamanos in 1920 proposing to confer certain penal powers on the Court of Justice. The Council, while approving the report, had felt it highly desirable that the question should first be studied by the learned societies.

In 1920, the Assembly of the League of Nations was also called upon to consider a draft constitution for an International Criminal Tribunal, submitted by Baron Descamps. The Committee of Jurists appointed to draw up the draft Statute of the Permanent Court of International Justice had viewed this proposal favourably and the Assembly had admitted, through M. Lafontaine, its Rapporteur, that, if criminal offences should one day be brought under an international criminal law, a criminal tribunal might be created within the Permanent Court.

It would be seen that the League of Nations had not abandoned the investigation of this question, but had merely adjourned its solution till such time as the unofficial international associations should be in a position to supply it with the necessary material. The study of this question had been immediately taken up by the jurists. Since that date, many works on the subject had been published, lectures on an International Criminal Tribunal had been delivered at the Hague Academy of International Law and at the *Institut des Hautes Etudes internationales* at Paris, and also in certain Faculties of Law in both the eastern and western hemispheres.

Moreover, the learned societies had hastened to respond to the invitation of the Council. After much useful work, extending over eight years, they had arrived at some positive results which the League of Nations could not ignore. Thus, the International Law Association had drawn up a draft Statute, and an erudite report in favour of the creation of an International Criminal Tribunal. This draft Statute had been adopted by the Vienna Conference August 1926. Another learned society, the *Association internationale de droit pénal*, whose Chairman was Count Carton de Wiart, had concerned itself, from the first moment of its existence, with a similar question — which was placed on the agenda of the first Congress, held at Brussels in June 1926. The proceedings of the Brussels Congress furnished ample evidence of the erudite character of the discussions on this question, which were throughout animated by a profound sense of realities and of the possibility of results offered by the present state of international relations. Although there were differences of opinion concerning certain points in the resolution, the Brussels Congress had unanimously admitted the necessity of conferring certain penal powers on the Hague Court.

After two years of unremitting labour by a Drafting Committee, the *Association internationale de droit pénal*, had also drawn up a draft Statute, which would be submitted to the League of Nations, for the creation of an International Criminal Tribunal.

Lastly, the Inter-Parliamentary Union, whose importance in the present pacifist movement was universally admitted, and which reflected the prevailing currents of opinion in the Parliaments of the different countries, had passed unanimous resolutions, both at the Berne Conference in 1924 and at the Washington Conference in 1925 — where forty-five States were represented by the most eminent members of their Parliaments — recognising the necessity of an International Criminal Tribunal.

The work of the Inter-Parliamentary Union in this field had been supplemented by a far-reaching international enquiry undertaken by the speaker who had been Rapporteur on this question at the Washington Conference; the results of this enquiry favoured the principle of an International Criminal Tribunal and showed the necessity of resuming the work which was adjourned in 1920.

M. Pella added that, if a complete and thorough study were made of the proceedings of the International Law Association, the *Association internationale de droit pénal* and the Inter-Parliamentary Union, it would be realised that the most eminent experts in penal and international law, as well as politicians enjoying great authority in their own countries, had responded nobly to the invitation addressed to them in 1920 by the Council of the League, both in their individual publications and in the collective work undertaken by the learned societies of which they were members.

Moreover, experience appeared to show that, directly or indirectly, the Court had been required in the past, and would more especially be required in the future, to render decisions on questions very closely connected with international penal law.

It was only necessary to mention that a large number of conventions for the repression of certain offences had been signed and ratified, and that the majority of these conventions provided that all disputes regarding their interpretation or application should, unless settled amicably or by arbitration, be referred to the Permanent Court at The Hague.

M. Pella suggested that not improbably the Court of Justice itself felt the need of including in its organisation a certain number of experts in international criminal law.

Without wishing to revive the controversy concerning the responsibility of States, it was necessary to recognise that most of the jurists who had studied the question of conferring penal powers on the International Court had concluded that it was not only possible but eminently desirable to declare that natural persons guilty of certain crimes or offences against public international order should be made liable to punishment.

From another point of view, the Court should be able to perform the rôle of an advisory organ, that is to say, it would be consulted on the settlement of disputes concerning judicial or legislative competence which might arise between different States, and on the revision of final and enforceable convictions, which are not reconcilable with one another, and have been pronounced in respect of one and the same crime or offence by the courts of different States. Finally, all who had carefully studied the problem of the repression of international offences had realised the danger of continuing to allow offenders the immunity which they now enjoyed owing to the conflicting conceptions of law so often found in the legislations of different countries.

For these reasons, it had been considered very desirable to bring under the jurisdiction of the Permanent Court persons guilty of crimes or offences who could not be summoned before the courts of any particular State, either because it was not known in what territory the crime or offence was committed, or because the sovereignty over the said territory was a matter of dispute.

Nor could they be blind, while making every allowance for the very delicate nature of the problem, to the keen regret expressed in some legal circles that, in certain very important questions which were only capable of solution by general conventions between States (as, for example, questions of extradition and the competence of States in regard to offences committed outside their territories), the Committee of League Experts for the Codification of International Law had not been able to arrive at any positive results.

The difficulties were, of course, due to the conflicting conceptions of law in the legislations of different countries. But these conceptions might gradually be brought into unison by a jurisprudence based on the decisions of the Permanent Court in certain questions of international penal law.

The tendency to unification would thus become much more general than at the present day, though it was worth noting that seven European States had recently achieved a certain measure of unification through the meeting of two official Conferences. These Conferences, held respectively at Warsaw in October 1927 and at Rome in May 1928, had drawn up agreed clauses which were to be inserted in the draft penal codes of the seven States which had sent delegations.

M. Pella agreed that the First Committee could not be expected to discuss at the present moment the various arguments in favour of the institution of an International Criminal Tribunal. He did not ask the League of Nations to declare its attitude regarding the substance of the question; he only asked that, when considering the resolution submitted by the French delegation for the examination of the Statute of the Court and its possible modification, the Committee should express its recognition of the importance of the problem he had raised.

He was convinced that the League of Nations — while paying due regard to the possibility of obtaining results in the present situation — could not, and ought not to, remain indifferent to the main currents of opinion which were seeking new channels of expression in the sphere of international law.

It must, of course, be left to a Committee of Jurists, or some other organ of the League of Nations, to determine, with all due precautions, to what extent it could make use of the material collected by the learned societies in regard to the creation of an International Criminal Tribunal.

Being convinced of the importance of the question to which he had invited the attention of his colleagues, he believed that the League of Nations, by so doing, would for the moment have given full satisfaction to public opinion and the powerful currents, which were beginning to make themselves felt in favour of the attribution of a certain competence, in criminal matters, to the Permanent Court of International Justice.

M. Pella observed, in conclusion, that the learned societies and the jurists who had accomplished so much useful work in response to the invitation addressed to them in 1920 by the Council, and which had supplied it with such abundant material, well deserved this mark of attention.

(At this point, M. Erich (Finland) took the Chair in place of M. Scialoja.)

The Chairman observed that M. Pella had presumably not wished to do more than call attention to the very interesting question with which he had dealt, without wishing to provoke a discussion on the subject at the moment.

M. Pella (Roumania) said that, though he had no wish in any way to engage either the Committee or the Assembly in regard to the substance of the problem, he would none the less be glad if the following resolution, subject to any changes that might be made in it, were adopted as following upon the French resolution :

> " In conjunction with the above resolution, the Assembly draws the attention of the Committee of Experts to the question of international jurisdiction in penal matters. "

The Chairman did not consider this proposal as coming within the scope of the Committee's discussion.

M. Pella (Roumania) replied that it was a matter for the Committee's judgment, but, seeing that there was probably to be fresh examination of the Statute of the Court and that a Committee of Experts would presumably be set up to study all the questions that would be raised from the standpoint of international law, the Committee might, without in any way pledging itself, adopt the recommendation he had submitted to it. The Committee of Experts would, moreover, be able itself to judge whether there was any occasion to give effect to it.

If the Commission considered that the question raised was not on its agenda and that it was not competent to deal with it, it would be possible, without adopting a resolution, to instruct the Rapporteur to mention, in his oral statement before the Assembly, that the creation of an international criminal jurisdiction had been raised during the discussions on the draft resolution proposed by the French delegation.

The Chairman asked those members who had asked to speak to confine themselves for the moment to that preliminary question.

M. de Palacios (Spain) desired nothing better than to pay heed to the Chairman's wish, but the remarks which he wished to make regarding M. Pella's proposal was a reflection of the position which the Spanish delegation had adopted on the main problem.

He recalled that his delegation had signed the French draft resolution in the following strictly defined terms :

> " Draws the Council's attention to the advisability of proceeding, before the renewal of the terms of office of the members of the Permanent Court of International Justice, to the examination of the Statute of the Court with a view to the introduction of such amendments as may be judged desirable, and to submitting the necessary proposals to the next ordinary session of the Assembly. "

It was not the business of the Committee to specify what the amendments were to be; that was the concern of the Council, which should not limit the study of the question, provided only that it remained within the framework of the existing organisation of the Permanent Court of International Justice. If the views of the Roumanian delegation, as expressed in M. Pella's resolution, were adopted, that framework would be altered.

The extension of the Court's jurisdiction in such a way as to make it a penal jurisdiction was, in his opinion, a question of substance. Such a proposal would have to pass through the usual channels for submission to the next ordinary session of the Assembly. It was now too late for the Committee to express an opinion — nor was it, indeed, qualified to do so — even on the desirability of postponing the matter, for by so doing the Committee would allow it to be understood that it had faith in the effectiveness of the work suggested.

Sir Cecil Hurst (British Empire) thought that M. Pella's proposal was somewhat outside the terms of the French resolution, which merely contemplated the amendments which might be made in the existing provisions of the Statute of the Court.

It was only on the subject of the French resolution that he had asked to speak and, if the debate were to be limited for the time being to the particular point raised by M. Pella, he would prefer to reserve his remarks until such time as the discussion of the French resolution was resumed.

M. LIMBURG (Netherlands) was afraid that, in its existing form, the resolution submitted by M. Pella was calculated to give rise to misunderstanding. In that resolution the Roumanian delegation asked that the Committee of Experts should be instructed to study the question of a penal jurisdiction to be conferred on the Permanent Court of International Justice. No such Committee of Experts existed, however, for the revision of the Statute of the Court. Moreover, the French resolution contented itself with drawing the Council's attention to the expediency of proceeding to a study of the Statute of the Court, without giving the least hint of any kind as to the procedure to be followed.

If the Committee were to adopt M. Pella's resolution, it would be already accepting the idea of a reference to a Committee of Experts, whereas it had no information as to what the Council, which alone could determine the procedure, would decide in that regard. It therefore appeared that M. Pella's draft resolution might give rise to confusion and was outside the scope of the present discussion.

M. PELLA (Roumania) recalled that, from the beginning, he had left it to the Committee to decide between the two courses he had proposed. Since the Committee seemed to prefer the second, he would ask the Rapporteur, in his oral statement before the Assembly, to announce that the question of international criminal jurisdiction had been raised during the discussions in the First Committee. This reference to the possible creation of an international criminal jurisdiction would, in view of the state of mind now dominating international life, give full satisfaction to a strong current of opinion, now existing, which was quite favourable to such a jurisdiction.

M. FROMAGEOT (France) said that he too, in agreement with a number of other delegations, considered that the very interesting question developed by M. Pella was outside the scope of the draft resolution submitted by the Freneh delegation.

In point of fact, the Permanent Court of International Justice constituted an inter-State jurisdiction that was called upon to take decisions in regard to a certain number of disputes between States. The possible attribution to the Court of a repressive international jurisdiction belonged to a different class of ideas. It was of very great interest, and personalities exceptionally well qualified in matters of penal law had given attention to it under the auspices of non-official learned societies, but the question had only the very remotest bearing upon the proposal submitted by the French delegation. If the Roumanian delegation held to its idea, it ought to submit to the Assembly a special proposal recommending the study of that question.

The CHAIRMAN pointed out that M. Pella had limited his proposal to a mere mention of the matter in the report.

M. FROMAGEOT (France) replied that there were many other questions which might equally well be mentioned in the report, and that he failed to see the connection between the resolution of the Roumanian delegation and the proposal then under discussion.

M. ROLIN (Belgium) endorsed the remarks of M. Fromageot. He thought, moreover, that M. Pella would have done better to have submitted his proposal at the time when the Committee was engaged on the question of codification.

He asked M. Pella to postpone his proposal, for several reasons : first, on account of the difficulty of procedure pointed out by the Spanish delegate. The proposal was of such importance that it would be better if the Roumanian delegation brought it up in the Assembly, or, still better, during the interval between two sessions of the Assembly, so that the various delegations might receive their instructions upon it before coming to Geneva.

In the second place, the Committee of Experts, which M. Pella regarded as qualified to study his proposal, would probably not be meeting in the interval between the present session of the Assembly and the next. No time would, therefore, be lost by postponing the proposal till the next session of the Assembly.

His final reason was that M. Pella's proposal would, he thought, be improved if it were drafted in more precise terms. It suggested entrusting to the Committee of Experts the organisation of an international jurisdiction, or at any rate of a repressive branch of international jurisdiction. That was pretty vague.

Moreover, M. Pella's explanations seemed to him to spring from three fundamentally distinct sets of conceptions. They referred in the first place to an international jurisdiction for the interpretation of international conventions relating to penal law; then, to an international jurisdiction for taking decisions in case of a conflict of jurisdictions, and possibly even to serve as a superior jurisdiction to national jurisdictions. Finally, M. Pella had reverted to his old idea of 1920, which had already been considered on the proposal of Baron Descamps — the idea of the institution of an international court for crimes against international law.

It was difficult to picture a single organ to carry out such different functions. It would be better, therefore, to ask the Roumanian Government to take the initiative in proposing either the constitution of a criminal section or of a criminal court, or else to put, in some more concrete form, the proposal that those questions should be studied.

While recognising the obvious interest of the Roumanian delegation's suggestions, it was, he thought, to be hoped that, precisely on account of that interest, the Assembly would be placed in a position to examine, after full preparation and with greater precision, the possibility of taking up those suggestions. Further, since the Committee of Experts would not be meeting again in 1928, it would be better for the question to mature between now and next year, and perhaps be taken up again at the tenth session of the Assembly.

The CHAIRMAN thought the Committee might give M. Pella satisfaction by mentioning in the report that, during the discussion of the French proposal, he had intervened to put forward an interesting question.

M. PELLA (Roumania) noted that, through its Chairman, the First Committee had recognised the importance of the problem which he had ventured to put before his colleagues. Since it was now agreed to adopt his second proposal, namely, to request the Rapporteur to lay stress on this question in his statement before the Assembly, M. Pella would accept the suggestions of the Chairman and express his satisfaction that the League of Nations was at last dealing, if only indirectly, with a serious problem closely affecting the real organisation of peace.

The CHAIRMAN *noted the Committee's agreement to this proposal.*

Sir Cecil HURST (British Empire), speaking as the representative of a country which had not subscribed to the proposal, desired to affirm the deep interest and the high approval with which his country regarded it. He had been particularly struck by what M. Fromageot had said when he had declared that the text submitted was altogether " inoffensive ". That was just how he himself understood it, and, had the proposal contained anything that could be considered as a direct or indirect attack upon the Court, or as involving a lessening of its prestige, he would have opposed it, and opposed it strongly.

But it was certain that, the Court having been in operation for eight years, shortcomings would have been noted in it, and these must be remedied : it was for the Council to say through what organ that object was to be attained.

Certain States were parties neither to the League of Nations nor to the Permanent Court, and every effort should be made to render possible their accession — at any rate, to the latter. It was therefore desirable that the existing Statute should be improved.

The Council would have to examine the Statute of the Court in detail, but it need hardly be said that no change must be considered in the essential structure of that Statute, and it seemed that that was the guiding idea of those who had framed the resolution. Attention should, of course, be paid to every suggestion, but it was to be hoped that the resolution, in its existing form, would be accorded unanimous acceptance, in the spirit that he had just indicated.

M. LIMBURG (Netherlands) said there were many things he might have said had he not been afraid of lengthening the discussion. His reflections would relate only to two points.

He thought it would be extremely useful, if not necessary, to have the opinion of the Court itself on every issue. M. Fromageot had drawn a distinction which did not seem to him to be opportune; the proposal itself was drafted in such terms as to establish a relation between the ever-increasing number of cases and the question of revising the Statute.

He was not so sanguine as those who had already spoken in regard to the possibility of finishing the work before the reappointment of the Court. It was thought that the Assembly at its next ordinary session should be in a position to vote on the amendments to the Statute; only one year would then remain for the ratifications. In 1920, however, an immense effort had been necessary in order to obtain the ratifications within so short a time. Could such an effort be repeated ? Further, the Assembly's resolution dated December 13th, 1920 contained the following passage :

> " As soon as this Protocol has been ratified by the majority of the Members of the League, the Statute of the Court shall come into force. "

At the present moment, however, it appeared that, for amendments, unanimity in the matter of ratifications was necessary.

In making this observation, M. Limburg only wished to convince the Committee that the utmost possible despatch was necessary. From that point of view, there would be a considerable advantage if a special session of the Assembly were to be held for one reason or another, but there was no means of knowing whether that was likely in the near future.

He had been speaking of the utility of asking " the opinion of the Court "; but, lest there should be any misunderstanding, he would prefer to say " the opinion of the Judges of the Court ".

M. ROLIN (Belgium) wished to make two observations of a constitutional character.

He asked that the third paragraph of the resolution, in which reference was made to Article 14, should be struck out. M. Undén had said that, under Article 14, the Council was called upon to prepare the Statute of the Court but not to revise it. The Council had had the right to undertake such preparation, and the Assembly had had the right to invite it to do so, but it should not be supposed that that procedure was obligatory as regards the revision of the Statute. It might be that, at some future time, a more practical way would be found. He had consulted M. Fromageot, who had not raised any opposition to the amendment he was suggesting.

When the Council was in possession of the preparatory work, it would have to refer it to the Assembly, but this would probably not be sufficient. As M. Undén had pointed out, a certain State continued to participate in the judicial organisation of the Permanent Court, though not belonging to the League of Nations. It was necessary to obtain the adhesion of that State to the plan of revision. The Conference must not be limited to the signatory States, for the Court was not solely an organ of international jurisdiction, but was also an essential part of the machinery of the League of Nations. The States Members of the League

which had not ratified the Statute of the Court must be in a position to give their opinion in regard to its revision, and that was why the Statute had been approved in a twofold sense : it had been the subject of international treaty and it had been adopted by the Assembly as constituting the organ mentioned in Article 14.

He did not consider that a conference of the signatory States was ruled out, the date of which would be fixed by the Council.

The CHAIRMAN invited the opinion of the Committee upon the amendment proposed by M. Rolin, and on the resolution itself.

The resolution was adopted with the proposed amendment, that was to say, with the suppression of paragraph 3.

M. FROMAGEOT and M. ROLIN having expressed their unwillingness to serve, M. CASSIN *was appointed Rapporteur for the draft resolution just approved.*

SEVENTH MEETING.

Held on Monday, September 17th, 1928, at 10 a.m.

Chairman: M. ERICH (Finland).

15. Advisory Opinions of the Permanent Court of International Justice: Draft Resolution proposed by the Swiss Delegation.

M. FROMAGEOT (France) said that, at its meeting on September 8th, there was laid before the Assembly by the Swiss delegation the following draft resolution concerning the advisory opinions of the Permanent Court of International Justice :

> " The Assembly recommends the Council to consider whether it would not be desirable to submit to the Permanent Court of International Justice, for an advisory opinion, the question whether the Council or the Assembly can, by a simple majority, request an advisory opinion under Article 14 of the Covenant of the League of Nations. "

This proposal called for various rather important comments, for the question which it was proposed to put to the Court appeared intimately bound up with that of the character properly to be ascribed to " advisory opinions ".

According to Article 14 of the Covenant of the League of Nations, the Court was called upon to take cognisance of any disputes that the parties submitted to it : it was therefore for the Governments, being the parties involved in a dispute, to lay that dispute before the Court ; their consent was in every instance necessary — although it might result either from a special agreement in a given case, or from a general arbitration clause covering either certain classes or all classes of disputes, or from the acceptance, given in advance and once for all, of the Court's jurisdiction in the circumstances enumerated in Article 36 of the Statute of the Court.

It was relevant in this connection to recall the provision in Article 12 of the Covenant whereby the Members of the League of Nations had a choice, being able either to take their dispute before judges, that was to say, to seek a settlement of it by the method of contested judicial proceedings, or to submit it to the Council of the League, that was to say, to resort to a process of mediation whose value and authority were all the greater in that it was obtained, not from particular personalities, however competent, but from an aggregate of other Powers including the most important in the world.

The origin and the purposes of this provision were no secret. Everyone knew the objections which had invariably been raised both during and since the Hague Conference of 1899 and 1907 to proposals for making arbitration compulsory, whether in all matters or only in certain matters. The Governments had always pointed to the political character which certain conflicts might assume. Whatever its apparent cause might be, a conflict might affect a nation's vital interests, and even interests which were vital to both the nations involved ; hence there might be a legitimate hesitancy in accepting beforehand in such cases the enforced submission to a settlement by third persons, whether judges or arbitrators, acting as friendly mediators.

To these difficulties, the Covenant of the League of Nations furnished a solution. It made it possible for States to avoid what might appear to them to be the unduly rigid and absolute element in the acceptance of general compulsory arbitration ; thus States had a choice as between settlement by judges and settlement through the mediation of the Council. As M. Léon Bourgeois put it, there were two doors, and the States might pass at their will through the one door or the other, but they were bound to pass through one or other of those doors.

An examination of the practice that had become established showed that the above-mentioned wise provisions had taken on a markedly different shape.

Article 14 of the Covenant stipulated that the Council and the Assembly should have power to consult the Permanent Court of International Justice and ask opinions from it. Whatever view might be held of this stipulation *per se*, it was not possible to see in it anything but a means whereby the Council and the Assembly could themselves view things more clearly.

If the liberty of the Council and the Assembly were not to be prejudiced or even destroyed, those opinions, by the very fact that they were advisory, could not, it would seem, be offered otherwise than on a private and confidential footing.

It was for the Council and the Assembly to adopt or reject the opinions given to them. If the Court, in order to form its opinion, had need of information on particular points, it was for the Council and the Assembly to obtain those particulars for it. It was not for the Court to get into touch with parties that had approached the Council or the Assembly. The Court deliberated and settled the terms of its opinion on the basis of the documents referred to it; and the Court was obliged to, and did actually, address its opinion only to the source from whence the request had come.

Further, a perusal of the Statute of the Court, wherein were laid down the principles of the Court's procedure and functioning as an inter-State jurisdictional organ, revealed nothing about advisory opinions, which were outside the judicial function of the Court. The facts were quite otherwise, though it was not important to seek the reasons for this.

Nowadays, the advisory opinions of the Court were given with all the trappings of a judgment, with the same or very nearly the same procedure, and with the same publicity. If proof of this were needed, it could be found in the papers included in the last report by the Registrar of the Court :

> " The practice of the Court has been to establish a great similarity in procedure between affairs for judgment and for advisory opinion. From the very beginning, the Court had assimilated procedure in advisory opinions to that in contested cases. The view that advisory opinions are not binding is more theoretical than real. " (Pages 10 and 12 of the report.)

As often happened, the inexact application of a text was fast becoming the source of difficulties which were giving more and more trouble to everybody and of controversies from which there was no way out.

The Court was asking itself whether it should not, in the case of advisory opinions, summon the special national judge to sit. If it were a fact that the opinions were a species of judgment, the answer that would be in accordance with the principles of the Statute of the Court was surely in the affirmative.

In the Council or in the Assembly — and the Swiss proposal was evidence of this — a similar perplexity existed. Under the terms of Article 5 of the Covenant, decisions had to be taken by unanimity, but questions of procedure required only a majority vote. Surely a request for an opinion as a means of elucidation and for the use of the Council or the Assembly alone would appear — like a request for an investigation or a calling-in of experts — to be an interlocutory step, and consequently one of procedure; so that it was entirely natural for it to be taken by a majority vote. But an advisory opinion which the Court had to render in public was nothing else but a species of judgment. What else, then, was a resolution referring a matter to the Court for an opinion but a real decision on the very case submitted to the Council or the Assembly ? Did not such a decision require, under Article 5, a unanimous vote? To this it was difficult to give an answer in the negative.

Speaking generally, what had become in actual practice of the liberty, so happily ascribed to the States by Article 12 of the Covenant, to choose as between judicial settlement and mediation ? If advisory opinions were indeed a species of judgment, and if, in consequence, unanimity was necessary before asking for them from the Court, did not this in practice constitute, if not in the Council, at any rate in an Assembly which included more than fifty States, a notable clog upon the performance of a regular function ?

If the above considerations were sound, the question dealt with in the Swiss proposal would hardly seem to be really a proper question to put to the Permanent Court of International Justice. Was it not rather one for careful consideration and study by the Assembly itself, or by the Council ? The real question was, not whether the reference for an opinion ought to be voted by a majority or by unanimity, but whether that matter was not dominated by the political circumstances in which cases came before the Council or the Assembly. The best solution therefore consisted in giving no answer in advance, but in trusting to the wisdom and to the pacific and equitable spirit of the Council and the Assembly. If there was more to be said against this solution than in its favour, it would be for the Assembly and the Council themselves either to maintain for the Court's opinions the advisory character contemplated in the Covenant, or else to recognise the decisive character which they have acquired in fact. In either of these two cases there would no doubt be an obvious advantage in informing the Court of Justice on the point, so that it might make any necessary adjustments in its Rules of Procedure.

M. Burckhardt (Switzerland) said he was very glad to have heard the opinion of M. Fromageot, and he proposed in his turn to explain the spirit in which the Swiss resolution had been framed.

The question at issue had on various occasions been the subject of discussions in the League of Nations — notably at the time, two years ago, when the American reservations were being studied. The question at that time had been whether the League could assent to a reservation whereby the United States of America could reserve their freedom to give or withhold their consent to a proposed reference to the Court if they judged that an American interest was involved. The question had then been asked whether, in such a contingency, unanimity would be needed or whether a majority vote would suffice. Several States had taken the view that the Court should be asked for an opinion on that point; it had, however, been deemed more expedient not to do this, and the question had remained unsolved.

The Swiss delegation desired to have that discussion reopened, for it was a matter of great interest, particularly to the small States, that the question should be finally settled. Otherwise there was a danger that gradually a jurisprudence would be established which it would be difficult later on to oppose.

M. Burckhardt wished to ask who would decide the point since it was really a question of an interpretation of the Covenant. According to Articles 5 and 14 of the Covenant, the Assembly, voting unanimously, might say what its interpretation was. But the Assembly would perhaps have difficulty in obtaining unanimity. Could the Council take a unanimous vote and so settle the question for the Assembly itself ?

He thought that a committee of jurists might be able to throw some light on the point, but it seemed more desirable to obtain an opinion from the Court itself. It would perhaps be objected that another procedure would be more in conformity with the prudent method that had always been followed in certain countries, namely, to leave the matter to the jurisprudence of the Court itself. He thought, however, that the Council might have difficulty, in a concrete case, in deciding by a simple majority to submit a question to the Court, so that the question, failing reference to the Court, would remain unsolved. It would therefore be better to submit the question of principle to the Court, so that it might be finally cleared up for the future.

Or again, some one might object that it was only the Assembly which could decide the matter.

The question of knowing who could interpret the Covenant was an exceedingly difficult and delicate one. When some interpretation of the Covenant was the subject of dispute — and there were many such — was the unanimity of the Assembly required before the meaning of the Covenant could be precisely determined ? In that case it might never be attained. The alternative possibility was that a majority vote would suffice, in which case the minority would be in danger of having imposed upon it an interpretation of the Covenant to which it would not have wished to subscribe when signing it.

The Swiss delegation did not desire a binding legal solution for all these questions, but an opinion, which the Court would invest with all the importance that attached to its decisions. The Swiss delegation did not wish for any particular interpretation, but that there should be one that was clear and definite.

M. Burckhardt thought, however, that, in taking a decision to place the matter before the Court, a very clear distinction must be made between questions of law and questions of procedure. The question whether a point of law should be elucidated by the Court was one of procedure. In case of a conflict being brought before the Council it might be both useful and expedient, with a view to its solution, that the Council should consider a point of law. The Assembly and the Council were the proper judges on such a question of expediency; and in many cases such a procedure would be useful and perhaps even necessary. Now, if it were considered that a legal question should receive legal treatment, the question of procedure would at once arise. By whom should such a question be treated ? By a committee of jurists, by the Council itself, or by the Court — the choice between those several courses was a question of procedure.

When, on the contrary, the Council or the Assembly asked the Court for an interpretation of the Covenant — apart from any case which was pending — that consultation of the Court was the principal matter to be decided and a decision which did not relate to a pending case required doubtless to be unanimous.

M. Fromageot had remarked that the question of procedure was bound up with the question of substance and that the Court had made the procedure by means of advisory opinion a quasi-judicial procedure. He had added that no State could be compelled to submit to a judicial or arbitral procedure without its own consent.

He wondered whether that interpretation was sound. It all depended on knowing what was the conciliation procedure contemplated in the Covenant. That conciliation procedure included the opinions of the Court, and this was one of the means at the disposal of the Council and the Assembly for dealing with a difficulty. It was the Covenant itself which offered them that possibility and the only question was whether use might be made of it. In any case, it was an element in the procedure of conciliation and one to which small States attached especial importance.

Adverting to an authoritative opinion expressed in 1919 during a discussion of the Statute of the Court, he observed that the idea of arbitration as such was certainly not altogether foreign to the Covenant : it might be supposed to imply, at any rate in principle, the idea of compulsory arbitration. The dualism, to which reference had been made, was therefore not so definitely established as it had been sought to affirm.

From a legal point of view it must be admitted that the advisory opinion was never binding and decisive. It was never more than an opinion, and it never carried more authority than it derived from the reasons given in its support. There was no reason to criticise the Court for making its advisory procedure quasi-judicial; the Court could not do otherwise, for when it gave an opinion on a question submitted to it, it was giving an opinion on a question of existing law bearing upon a specific issue.

They might therefore be quite content to leave the Court to judge what method of procedure was legally necessary in rendering an opinion. The Court ought rather to be commended than criticised for the method it had adopted up to the present.

M. Burckhardt then read Article 5 of the Covenant. The majority vote was sufficient for instructing a Committee to enquire into a question of fact : was such a question of less importance than a question of law ? In its effect upon the outcome of a contentious

procedure, the former might be of no less importance than the latter, and a reply given on the question of fact was no less liable to prejudice the final solution than one given on a question of law. The Court itself had recognised this in its advisory opinion given on the Eastern Karelian question. That opinion contained in fact the following sentence :

> " To reply to the question would be substantially equivalent to deciding a difference between the parties. "

Such were the reasons which seemed to operate in favour of the proposal submitted. He desired, however, to repeat that what interested him was above all that the question should be settled. To leave it in suspense would be dangerous, for the practice hitherto followed would be liable to become a " jurisprudence " which it would become difficult to resist.

The Swiss delegation desired that the Council should consider whether it might not be well to ask for the opinion in question. It was not necessary that that should be done immediately if the time were not deemed opportune. The Swiss proposal had been made in the interests of clarity.

M. Scialoja (Italy) said he wished to take part in the discussion and had for that reason not taken the Chair at that meeting. At the time when the Swiss proposal had been made public, a Geneva newspaper had declared that, while some of the members would support it and others would oppose it, a certain number would no doubt follow the method of M. Scialoja in saying neither Yes nor No. He was going to follow " the method of M. Scialoja ".

He agreed with M. Fromageot that the answer to the request of the Swiss Government presupposed the solution of another problem : " What was the character of an advisory opinion ? " In pure law he thought there was no doubt whatever : the advisory opinion, as such, was not binding on the organ which asked for it, namely, the Council or the Assembly. The reply would therefore have to be that it was always an act of procedure, just as it was an act of procedure to consult an expert on the solidity of a building. The reply, from the point of view of pure law, would therefore be that the majority vote was sufficient ; and there was no necessity to ask a question of the Court in order to hear that truism enunciated.

But in actual fact the matter was, for several reasons, more complicated. It was obvious that, in this particular case, the expert whose opinion was asked was the most important of all experts, the highest of all authorities in the world on the particular matter. It would therefore be difficult to refuse to follow its opinion. A kind of compulsion would thus be put upon the free judgment of those exercising a vote and their original and essential liberty would be taken away.

Would it be wise to ask an opinion of such a kind at a time when not all of the Members of the Council or of the Assembly were wanting it, thus putting pressure upon the free judgment of the others ? His reply to that question was that, in general, it ought not to be done, though cases might arise in which prudence must yield to necessity. What cases ? No one knew. No experience on the subject was as yet available.

In law, then, the majority might ask for an advisory opinion ; in fact, prudence might urge them to abstain from so doing.

There was another point of view that might be considered. M. Fromageot had read extracts from the report showing that the Permanent Court had itself chosen to regard its opinions as having the character of decisions. It might be that the Court, in replying to the question now raised, would recede from that position — a position, to his mind, which was thoroughly wrong and contrary to the spirit of the Covenant.

That position was wrong, for it was not in accordance with the terms of the Covenant ; Article 14 conferred on the Court a power of adjudication, and competence to give advisory opinions. This meant that advisory opinions were not decisions. M. Fromageot had, he thought, given a further reason : the existing system was faulty but it was one which it was necessary to observe. M. Scialoja thought really that the parties which had not accepted the legal competence of the Permanent Court could not be obliged to be judged by it. If one of them, not wishing to be judged by the Court, came before the Council, the Council could only ask for an advisory opinion, which would, however, not be binding.

An advisory opinion could not, therefore, according to the Covenant, have the force of a decision, though it had a moral force very nearly equal to that of a decision ; and account must be taken of the fact.

For the combination of different reasons he had given, it was, he thought, essential to preserve for the future freedom to judge in each case what course wisdom would indicate, or, it might be, what course necessity would impose.

If the Court were to give an opinion that must be regarded as binding, the result would be, not a mere interpretation, but the insertion of a new article in the Covenant without the observance of the procedure for the adoption of amendments. It would then be necessary to tell the Court that it was impossible to follow its advice until such time as all the States had accepted it as an obligatory interpretation of the Covenant corresponding to an amendment of it.

There were, he thought, some further distinctions to be made. If any general rules were to be laid down, it was always well to remember that most general of all rules : *Omnis definitio in jure periculosa.* No one could indicate a limit to what experience might teach them in time to come — and with an authority far greater than that of the Permanent Court. Certain distinctions were already appreciated to-day, and others might suggest themselves later on.

It was plain that, if the enquiry concerned a point of procedure, a majority would suffice, since the majority had power directly to override the minority. It was when the enquiry concerned a question of substance that the difficulty arose.

What was a question of procedure ? What was a question of substance ? It was not easy to give the answer. There were plenty of questions of which no one could ever say whether they belonged to the code of procedure or to the civil code. Moreover, the language of the Covenant on that point was definitely obscure ; the difficulty, therefore, was not an easy one to settle.

Was a question of competence, under the terms of the Covenant, a question of substance, or was it one of mere procedure ? That question was still unsolved, and this was equally true of a considerable number of other questions. Assuming that the question was clearly one of procedure, the majority could ask for an advisory opinion. But what about the Swiss proposal ? Into what category did that fall ? Into that of questions of procedure or into that of questions of substance ? From the point of view of logic it was a question of procedure, but, in its aspect as involving a conclusive interpretation of the Covenant, it became, in relation to the meaning of that instrument, a question of substance. It seemed, therefore, that unanimity was necessary for asking the opinion of the Court upon it.

Under the terms of the Covenant, by whom could the request to the Court be made ? By the Council and by the Assembly. Let it be assumed that it was necessary for the decision to be unanimous. If the Council were to give a unanimous vote, would the Assembly regard itself as bound if in its case unanimity was lacking ? Here again was a difficulty.

The method which he thought should be adopted was, once more, " the Scialoja method ". He did not believe it was either necessary or useful to raise questions artificially ; they already arose only too often of their own accord and the number of difficulties was quite large enough without going in search of new ones.

If it were desired not to reject the proposal of the Swiss delegate, he would suggest that the decision upon it should be postponed indefinitely until experience should have rendered the question ripe for treatment — until, indeed, the Court should be newly appointed, and until that new Court should have had a certain time in which to gain experience from knowledge of the facts.

M. Scialoja was one of the senior members of the Committee and was also one of those who had served on it longest. Nevertheless, he himself did not feel sufficiently experienced to take a definite stand regarding a question of that kind, although he had been associated for a long time with the work of the League of Nations. The Court, except on the theoretical side, had no knowledge of the Covenant. It would be dangerous to ask it the question. because it would be unable to reply with a full knowledge of all the aspects of the question,

To conclude then : as a matter of pure law — and it was under this aspect that the answer would have to be given — the question was one of procedure. The request could be made by a majority vote ; but the Committee must not shut its eyes to the facts, and those facts were such that, in the majority of cases — in view of the effect of the Court's opinion upon the free judgment of those exercising a vote — it was prudent to forbear. This was what prudence required ; though it might happen in certain cases — cases which it was impossible to foresee — that necessity might prevail over prudence.

To ask the question of the Permanent Court to-day would be dangerous and it might also be somewhat embarrassing for the Court. If the Court's reply should happen to be displeasing to the Assembly or to the Council, a conflict would be caused between those bodies and the Court. Endeavour must be made to avoid such a conflict, which would savour of irreverence. Great respect was due to the Court. It ought to be set up on a lofty pedestal, for it was to be desired that its sentences should have the greatest authority. To assume an attitude of opposition to the Court, even where only an " opinion " was involved, would be dangerous and ought to be avoided.

He would therefore beg the Swiss delegate to consider whether it might not be better to withdraw his proposal and hold it over till some later time. If the problem seemed to be insoluble under present circumstances, it would be better to introduce an amendment to the Covenant in order to fix the conditions under which questions could be put to the Court ; but it would be better not to meet difficulties half-way.

A step might perhaps be taken along the path proposed by adding to the resolution moved by M. Cassin a suggestion that the Court should modify a little the procedure it had adopted and the rules by which an advisory opinion was treated as a judgment.

M. Ito (Japan) agreed with the view so clearly expounded by M. Scialoja.

He would refer very briefly to the question of substance, with which M. Fromageot had already dealt ; he pointed out that, if the request for an advisory opinion was to be taken by a majority vote, that decision would place a State such as his own in an unfortunate position. A number of States had not accepted the compulsory jurisdiction of the Court. If the Council were to ask the Court for advisory opinions, deciding by a majority, such States would find themselves obliged to accept a jurisdiction to which they had refused to subject themselves.

The Swiss proposal contemplated a request for an advisory opinion on the part of the Council or of the Assembly. In actual fact, it was hitherto the Council which alone had addressed such requests to the Permanent Court, and, with one possible exception, those requests had been made unanimously.

Similarly, the Court had in one case had an opportunity to declare itself on the point which was the subject of the Swiss proposal. It had avoided doing so in any general way.

It had avoided saying that either a majority vote or unanimity was in all cases necessary to enable the Council to ask for an advisory opinion.

In those circumstances, it was better not to be more categorical than either the Council or the Court had been. In the second place, the Council and the Assembly were, above all, political organs. Would it not be wise to avoid imposing upon them any rigid rule ? Lastly, though the advisory opinion was in its nature merely an opinion — *i.e.*, an optional decision — in actual fact it commanded the respect of everybody.

Suppose, then, that the Council or the Assembly should ask the Court to pronounce on the question whether a request for an advisory opinion could be submitted by a simple majority, and suppose that one or the other of them at some future time, for political reasons, were led not to accept that rule, the prestige of the Court would suffer. Moreover, the rendering of advisory opinions was not the only purpose for which the Court had been set up. He accordingly supported M. Scialoja's proposal.

Sir Cecil HURST (British Empire) enquired whether the Swiss delegate did not wish to withdraw his draft resolution.

M. BURCKHARDT (Switzerland) said that, before deciding, he would be glad to hear the views of some more of his colleagues.

Sir Cecil HURST (British Empire) said it was clear to him, from the speeches both of M. Fromageot and of M. Scialoja, that the present question was one which would necessarily bring the Committee up against the further question : What was the real nature of the " advisory opinion " referred to in Article 14 ? He could not help wondering whether the interpretation given by previous speakers was the only possible interpretation of the expression used in the Covenant.

He entirely shared the view that the Swiss proposal was inopportune, and he hoped that it would be withdrawn ; but he would in any event be glad to offer some reflections on the subject.

The view that the seeking of an advisory opinion was an act of mere procedure was, he believed, founded on analogies drawn from the preliminary process, under the French and Italian systems, of preparing a case for final adjudication. But was that opinion necessarily correct ? While himself unaware of the origin of the wording used in Article 14, he had always regarded the procedure therein contemplated as somewhat similar to that whereby, under a statute of more than a century ago, instituting the Judicial Committee of the Privy Council, the British Government had power to obtain advisory opinions from that organ. The power in question had been but rarely utilised — and then only on points arising in the course of Government business, never on a dispute between private parties — but the conception of British jurists was certainly that the opinion so obtained was a final settlement of the issue. It was, of course, not certain, but it was, he thought, not wholly inconceivable, that something similar had been intended by the authors of the Covenant. Certainly, the practice of the Council during the past eight years had been much more in keeping with his theory than what he would allow himself to style the " Continental view ".

At all events, the Court itself had now placed its own definite interpretation on the words in Article 14 : it had assimilated the procedure of the advisory opinion to that of the judicial decision. He would ask M. Burckhardt whether the Court was now likely to declare that it had proceeded earlier upon a misunderstanding of the Covenant.

It might be that the Court's practice had not been in accordance with the intentions of 1919, but was it any use to expect the Court to say so ?

There was no institution of which the prestige was more important than that of the Permanent Court of International Justice. It could not be predicted what its answer to the present question would be ; but he would remind his colleagues of the League's practice in the past few years. The opinions of the Court, such was the prestige that body had acquired, had in all cases been accepted without hesitation by the Council. If it were now to be definitely laid down that a majority of the Council could seek the Court's opinion, it was necessary to consider what the effect of such a rule would be. Was it likely that the minority — against whose desires the question had been formulated — would accept that solution ? The almost inevitable result of the crystallisation of the doctrine that opinions might be asked for by a majority vote would be to divide the Council itself with respect to its practice of adopting without question the opinions rendered. Could that be a good result from the point of view of the Court's prestige ? It would reduce the Court to the level of a mere committee of enquiry.

True, the Committee did not know what the Court would say, but whether it was fully realised or not, what had really been happening had been that a " jurisprudence ", a practice, had been gradually shaping itself within the Council, a practice which was governed by the best interests of the League itself. A short cut was never the best method of reaching a perfect result. It would be better to leave it to experience to show what would ultimately constitute the best and most useful rule for the League to follow. The purpose for which the Court existed was to answer legal questions ; and the question as to what was in the best interests of the future of the League, what was in the best interests of the relations between States, was emphatically not a legal question.

In 1926, during the discussions on the American reservations, the Special Conference had deliberately declined to try to take a short cut on that very question, because it had felt that the circumstances were inopportune. The Powers participating in that Conference had in their reply given their considered opinion to that effect. What had happened in the two years that had since elapsed to render the position now in any way different ? The reasons that prevailed in 1926 existed, and continued just as strong, to-day. It might even

be that to do now, for no particular reason, what previously it had been decided not to do would create an unfavourable impression in the United States of America.

Those were the considerations that seemed to him to be important, and, unless some entirely new argument should emerge in the further course of the debate, he trusted that M. Burckhardt would be willing to withdraw his proposal rather than force some of his colleagues, who doubted its wisdom, to vote against it.

M. Politis (Greece), who was due to speak, preferred, owing to the lateness of the hour, to reserve his views till the next meeting.

EIGHTH MEETING.

Held on Tuesday, September 18th, 1928, at 4 p.m.

Chairman: M. Scialoja (Italy).

16. Advisory Opinions of the Permanent Court of International Justice: Draft Resolution proposed by the Swiss Delegation (continuation).

M. Castberg (Norway) said that the Norwegian delegation had welcomed with great satisfaction the proposal made by the Swiss delegation. The question was one of the greatest importance both for the Assembly and for the Council of the League of Nations. He was unable to see what real disadvantages could result from its adoption.

If the Council put the question to the Court and the Court gave the opinion that for such questions a majority vote was sufficient, this would not prevent the majority of the Council from taking into consideration the opinion of the minority. Above all, the Council, both before and after the rendering of such an opinion by the Court, would always be entitled to take into consideration the fact that one of the parties to a dispute did not desire the questions of law to be taken to the Court.

It might also happen that the Court, in applying the maxim of the Chairman, *Omnis definitio in jure periculosa*, might not find one single rule applicable to all cases, but would be of the opinion that in some cases a majority vote would not suffice. On that supposition he was still less able to perceive how the Court's reply could put in danger the interests of any State whatsoever.

It had also been contended that the prestige of the Court might be liable to suffer, as its opinion would perhaps not be accepted by all the States. Everybody was, however, agreed that the Court's opinion would have no binding force from the legal point of view. A possible disavowal of the Court's opinion would therefore certainly not be fatal to it. It seemed more likely that such a disavowal would put in peril the prestige of the Government that made it, rather than that of the Court.

The interesting discussion that had taken place in the Committee on the previous day had revealed yet a further very good reason for having the question settled as soon as possible. The discussion had shown that in the Council itself, and indeed among the representatives of its permanent Members, there was a sufficiently serious divergence of views on the question whether or not the opinion of the Court could be asked for by a majority. What more appropriate authority could there be than the Court to put an end to that difference of opinion within the Council ?

M. Politis (Greece) desired to put before the Committee some complementary observations.

It had been asserted, he said, that the distinction between law and fact must be observed. In law an advisory opinion was not binding, and M. Fromageot had justly pointed out that it was owing to a rather too complete assimilation of the procedure followed in advisory matters to that followed in contentious matters that the Court had come to invest its advisory opinions with their indirectly binding moral force.

The existing situation was not in exact accordance with what the authors of the Covenant had had in view : which meant that the sense of the Covenant had been somewhat altered in practice. It could not, however, have been otherwise, and if anyone could be held responsible for it, it was certainly not the Court, but the authors of the Covenant. Indeed, the Court had been inevitably led, in its advisory procedure, to establish the same guarantees in favour of the interested parties, in the way of opportunities of meeting argument with counter-argument, and publicity, as in its contentious procedure, for the very simple reason that, according to the very wording of Article 14, advisory opinions might be asked for on " any dispute ".

Under Article 12, if the parties preferred, not the path of arbitration, but that by way of the Council, the dispute was brought before the Council ; and the latter might seek an advisory opinion from the Court. The Court, which acted with the utmost circumspection, was unable to form an opinion without having heard the parties ; for the opinion it was to give would be binding upon it since, in the event of the same question coming once more

before it by way of litigation, it would be unable to take a different view. What was true in the case of questions which, when they came before the Council, were already the subject of disputes might equally be applied to a question which was not yet the subject of contention but might ultimately become such.

The Court had therefore been led to establish that procedure, and in consequence, the procedure being marked by the same interchange of argument and counter-argument and the same publicity, the Court's opinion was, in point of fact, equivalent to a judgment : it was binding.

That advisory function ought not, he thought, to have been conferred upon a tribunal, but rather upon a truly and exclusively advisory organ that would have been able to dispense with the formal disputation, and — more important still — the publicity.

The situation so created could not be remedied by inviting the Court to change its procedure. The Court could not do that without injury to its prestige. The only means of remedying the disadvantage to which reference had been made would be by means of an amendment conferring an advisory jurisdiction on an organ which would be a kind of superior college of jurisconsults continually at the Council's disposal.

Advisory opinions, being in reality no longer such, were accordingly equivalent in the eyes of the Council, of public opinion and of the interested parties to a judgment; and the requirement of unanimity became therefore a matter of inflexible rule. M. Fromageot had explained the reason for this in the most conclusive fashion. The rule of unanimity was the safeguard of the parties : without it, there would be imposed upon them, contrary to Article 12, an obligation that they had not accepted; thus, in an indirect way, recourse would be made obligatory to an organ which, under an advisory form, would reach a judicial sentence, *i.e.*, a binding decision.

The unanimity rule must therefore be applied in the greater number of cases; the majority could not be taken as sufficient except on questions of procedure. But the difficulty consisted in determining when a question was a question of procedure.

He would not, like M. Scialoja, go so far as to declare that *omnis definitio in jure periculosa*; he thought it would be possible to proceed by way of enumeration, and considered that, in the treatment of a matter which was in the course of evolution, with experience increasing every day, it was that empirical method which was the most suitable.

Who was qualified to perform the task ? On this point he completely disagreed with the Swiss delegation; he thought that the Court was not the right body to undertake it. The Chairman had shown why this was so. If the Court were to be asked for an advisory opinion there would always be a possibility, whether for Members of the League which were not in the Council or for those having changed their opinions, to contest the binding validity of the solution offered. The discussion that would arise concerning the Court's opinion would be a bad thing, for it would tend to lessen the credit of the Court.

It was, he thought, the Member States of the League of Nations themselves that alone were qualified to perform that task, for it involved a simple interpretation of the Covenant — an interpretation of Article 14, on the question how the procedure for asking opinions was to be regulated, and of Article 5, regarding the matters which might be considered as questions of procedure.

For an interpretation unconnected with any dispute there must be an agreement among the contracting parties. An amendment of Article 14 or of Article 5 might thus be effected, but, when it was a question of an interpretation or an amendment, only the Members of the League of Nations were qualified to act in the matter.

The study in question ought, he thought, to be made in the first place by the Council, or by a Committee formed within it, or else by a special committee of jurists appointed to consider to what extent questions of procedure could be defined. If such a study were successful, a report could be made to the Assembly, together with a proposal for either an official interpretation or an amendment of the Covenant.

If the study were undertaken and pursued with the thoroughness which the question demanded, it would probably be found that it was Article 14 that required to be amended in the sense he had suggested, namely, by transferring the advisory function from the Court to a special organ. The question as between the unanimous and the majority votes would so disappear, for the majority would be sufficient in every case.

He did not think that the solution of the question should be adjourned *sine die*. This matter had been before the League of Nations ever since its inception and had frequently arisen in the Council. Public opinion would be disappointed if its consideration were once more postponed to a later date. Something would have to be done — not by asking the opinion of the Court, but by constituting a special Committee which would undertake a thorough study of the question and make a report on the necessity or otherwise of an interpretation of Articles 14 and 5, or an amendment of Article 14.

M. Fromageot (France) had had no intention of criticising the Court. He had merely made a statement of fact. Nor did he think he had said anything to suggest that he desired to criticise the advisory function given to the Court by the Covenant.

The Chairman took formal note of this statement.

M. Rolin (Belgium) was very pleased that so vital a problem for the League of Nations had been raised by the Swiss proposal. He noted, however, that this question had lost part of its importance as arbitration and conciliation conventions developed, which tended to abolish the competence of the Council in cases of dispute. Nevertheless, the question whether

unanimity or a majority was necessary had been under consideration for a considerable time and the uncertainty that existed was a cause of dissatisfaction in certain quarters.

A distinction should, he thought, be made. The question presented itself under very different aspects according as it concerned the constitutional or administrative province of the Council of the League or, on the other hand, the subject-matter of a dispute.

In the former case, the arguments that had been heard with reference to the change that had occurred in the character of advisory opinions did not seem to have any force. Such opinions, he thought, remained essentially what they had been at the outset, namely, the replies to a simple consultation decided upon by a majority.

As regards disputes, two problems arose : Was it unanimity or a majority that was necessary ? Were the votes of the parties in dispute to be included ? Those two problems were entirely distinct, and the arguments that had been put forward in favour of unanimity were relevant, he thought, solely to the second question.

As regards the first point, since it was a question, as the Chairman had pointed out, of measures of investigation intended to assist the Council in forming an opinion, it was difficult to see why a majority would not suffice.

Article 5 appeared to be rather limitative. But he thought members of the Committee ought to notice that, in Article 15, where it dealt with the functions of the Council in cases of dispute, there was a definite provision to the effect that the Council might, even on a point of substance, make a recommendation voting by a majority. The article specified that a report was adopted " either unanimously or by a majority vote "; there were therefore not two reports, one by the majority and the other by the minority, but only one " containing a statement of the facts of the dispute and the recommendations that were deemed just and proper in regard thereto ".

The Council therefore, in dealing with the subject of a dispute, might make recommendations on the substance of the matter, voting by a majority; the effect of it might be extremely limited, but it was quite constitutional.

How could the Council be unable, in consulting the Court, to do what it had power to do in dealing with the substance of the case ? It was inconceivable that a member of the Council not a party to the dispute should be entitled to oppose the desire of the majority of his colleagues to consult the Court on a point of law arising in connection with a dispute.

The situation of the disputant parties was altogether otherwise.

It had been observed that the procedure for advisory opinions had been very closely moulded on that for judgments. This was bound to be so. The Committee of Jurists, in drawing up the Statute of the Court, had at first proposed an identical procedure for advisory opinions and judgments. It had later been decided that the Court itself should settle its own regulations. The Court had not taken long to perceive that it would be unjust, in view of its own composition, as well as that of the Council, if, in a question which, even though raised by way of advisory opinion, was of direct interest to a State represented neither on the Council nor the Court, the Court were able to deliberate without giving such a State the same guarantees as it would have had had one of its nationals been a judge of the Court, or if it had been able to state its views.

A State would be in a very unfortunate position if the Council, without that State being represented thereon, sent to the Court a request for an opinion and if its opponent in the dispute had a judge sitting on the Court while the State was itself excluded.

Assimilation, therefore, was necessary. The Court had then naturally come to the conclusion that since, from the point of view of procedure, opinions were assimilated to decisions, and since the Court's jurisdiction was obligatory only for States which had accepted it, and since in some cases the question raised by way of an advisory opinion might necessarily constitute a decision on the substance of a case, it would be impossible to impose that jurisdiction in a roundabout way upon a State which had not assented to it. In other words, it was impossible that a third State which had not secured the signature of another State to an arbitration agreement, or to Article 36 of the Statute of the Court, should obtain by the indirect way of the Council an opinion that would constitute a decision on the point of substance.

The Court had accordingly stated, in its opinion on Eastern Karelia, that, where an interested State had not accepted its compulsory jurisdiction and where, in the second place, the question touched the substance of the dispute, it would be inadmissible for the Council, without that State's consent, to ask the Court for an advisory opinion.

He summarised his point of view by stating that the request for advisory opinions only required a majority vote, but that, if such an opinion was capable of prejudging the main issue, the votes of the States parties to the dispute would have to be included in that majority — at all events, if those States had not accepted the compulsory jurisdiction of the Court. The discussion, however, had shown that agreement did not exist on that interpretation.

To arrive at agreement several alternative solutions were possible. A first one was the Swiss proposal, according to which the Council would ask the opinion of the Court. But the Assembly had no power to give instructions either directly or indirectly to the Council. There was, however, a neat way of surmounting that difficulty: the Assembly itself had also the right to ask for advisory opinions under the same conditions as the Council ; it could therefore consult the Court on the procedure it had followed in this matter, and such a method would be quite regular.

A third solution was to be found in the proposal of M. Politis, namely, that the Council should be asked to arrange for an enquiry into the matter. Another suggestion had been made to the effect that the Assembly itself should institute an enquiry. Finally, the cautious

suggestion had been made that it might be better to refrain from forming any opinion this year and to adjourn the matter, if necessary, for twelve months.

He could accept any one of these solutions : the only one to which he could not agree would be to adjourn the matter *sine die* or for ten years. In that regard he was only expressing his personal opinion, for he had not been able to consult the head of his delegation.

He recognised that when the Council had abstained, in the presence of a particular dispute, from passing judgment upon a question of principle and of competence, its attitude might have been due to political wisdom or a desire to maintain perfect objectivity.

He realised that it was a good thing that the Council and, still more so, the Assembly should walk circumspectly, and, though having power to decide by a majority, should only very rarely be satisfied to do so, seeking rather, as often as possible, to reach unanimity or so large a majority as to give it the certainty that it was not making a mistake.

No one questioned the vital necessity of preserving that spirit of unanimity on which the political influence of the Council depended, but no one could suppose that it was useful to maintain uncertainty on a point of law. The prudence which the Council should continue to exercise would not retain its value in the eyes of the public if the latter saw that it left uncertainty on the question of the Council's legal capacity to act. The indefinite continuance of doubt on that point could be of no advantage.

He went on to recall that, even at the time of the Conference of the Signatories to the Statute of the Permanent Court of International Justice regarding the American reservations, he himself had suggested that the Court should be consulted on the conditions under which its advisory opinion might be sought. The United States Senate had proceeded upon the idea that unanimity was necessary in all cases. The reply had at that time been made : " We do not know whether unanimity or a majority is required. What we are able to tell you is that our state of uncertainty will be shared with you, and as it comes to be cleared up, you will have the advantage of that clarification ".

That reply had not served to bring the United States into the Court. Could it be essential to the success of any further attempt that that fundamental uncertainty should be maintained ?

Speaking from the point of view of the League of Nations, M. Rolin saw in the present situation an element of weakness. Doubtless, as regards differences that were not particularly acute, the Council had been able hitherto to exert its influence by postponing solutions, without compromising itself unduly. But it was conceivable that the Council's rôle would become a matter of vital importance in some tragic situation involving peril to the peace of Europe or of the world, should some one of the belligerents, or some State, raise at the Council table some legal point and the Council not be able to turn for an opinion to the Court which was the only organ possessing real moral authority in the eyes of the world. Those whose prudence had led them to ask that the existing situation should be maintained would in such case have incurred a certain measure of responsibility.

M. Djuvara (Roumania) wished in the first place, in view of the speeches which the Committee had heard from highly competent personages, to apologise for offering a few remarks regarding the difficulties in the way of an adoption of the resolution proposed by the Swiss delegation as formulated.

While admitting certain doubts as to the expediency — at a time when some very difficult questions were pending before the Council — of the Swiss proposal (doubts to which M. Burckhardt had himself referred), he nevertheless desired to pay a most sincere tribute to the spirit by which it had been dictated.

It was a manifestation, indeed, of those generous hopes for a partial transformation of the League of Nations, simplifying its machinery, and allowing, in the taking of decisions, for the substitution of a majority for that unanimity which it was too often difficult to obtain. The tendency he referred to was a direct outcome of a movement on the part of a section of public opinion asking for a change in the conception which the States held of their sovereignty.

The League of Nations was founded on a contractual basis, and its main principles were those of the equality of States and universality. In those conditions the decisions it required to take could only be taken with the consent of all its Members without exception. Regrettable as the fact might perhaps be, the League was not a super-State.

He would admit that, both personally and as a representative of a small State, he was sorry that the League had not been organised in such a way that it could not, by the procedure of its resolutions and by the real sanctions they would carry, already effectively occupy the place it must be expected to attain. It was doubtful if the moment had yet come for taking that great stride towards what was nevertheless a highly desirable progress.

He then proceeded to touch upon various points of fact and of law.

As regards the facts, M. Scialoja, with the wide experience he had of the action of the League of Nations and its future possibilities, had already shown with what difficulties the adoption of the Swiss resolution was at the moment confronted.

It might be of interest to observe that the Permanent Court of International Justice had hitherto in all cases dealt with concrete points of law, and that what it was now being proposed to ask of it would be an opinion of an entirely general character. It might be asserted that, in the majority of modern systems of law, the duty of the magistrate was, in principle, concerned with the concrete, and that he was bound to avoid getting opinions in the abstract. This reflection received added weight from the fact that what was to be asked of the Permanent Court was an interpretation of the Covenant of the League of Nations.

It might perhaps be well to recall that, when the Covenant was being drafted, the French delegation, represented by M. Larnaude, Dean of the Faculty of Law in Paris, had proposed the insertion of a clause conferring on the Permanent Court jurisdiction to interpret the Covenant; that proposal, resisted by Lord Robert Cecil, representing England, and M. Orlando, representing Italy, had been defeated.

At any rate, when the precedents were considered, and when it was seen that the Court had never pronounced an opinion in the abstract, and again, when the generally admitted principle was taken into account whereby the jurisdiction of a judicial tribunal was confined to the settlement of concrete cases exclusively, it might be asked whether, in spite of the somewhat vague language of the last paragraph of Article 14 of the Covenant, it would be wise to fly in the face of those principles, confirmed as they were by experience.

He would, moreover, add that, unless he were mistaken, the Council had, whenever a decision to ask the Court for an opinion was involved, in all cases decided by unanimity. That was undoubtedly very significant evidence of the Council's experience hitherto. He thought that the only contrary case had occurred in connection with the decision concerning the question between Iraq and Turkey; but that had to do with the application of a special document, namely, the Treaty of Lausanne.

It was idle to insist further on the difficult situation in which the Council would be put if it should decide not to comply with an advisory opinion of the Court, a situation which would strengthen the idea that that kind of opinion constituted in fact a decision. The Court itself appeared to have expressed this when dealing with Eastern Karelia. It had declared that " to reply to the question would be substantially equivalent to deciding a dispute qetween the parties ". Could it be suggested that a dispute might in that way be decided even against the dissent of one of the parties to be judged ? A State that refused to take a question to the Court could not be bound either legally or morally by the reply that the tribunal might give; and if that State were a Member of the Council, the situation would be extremely difficult The authority of the Court's opinions must therefore be reinforced, in accordance with al past practice, by basing the requests for those opinions upon a unanimous vote.

On the other hand, and lastly, it might be asked whether the fact of asking the Court to express an opinion regarding the competence of the Council and of the Assembly would not be to deprive those organs of the power which they possessed.

He desired, next, to pass to a few purely legal considerations.

Article 5, paragraph 1, of the Covenant, in laying down that the decisions of the Assembly and of the Council were to be taken by unanimity, was in reality based, as M. Fromageot with his wonted authority had shown, upon one of the fundamental pillars on which the entire structure of the League, as set up by the Covenant, was supported. It had, in fact, never been admitted that the League of Nations could be anything resembling a super-State, and the principle had thus been sanctioned that its decisions must be taken with the consent of all its Members.

Article 5, nevertheless, contained reference to certain exceptions and an express indication of certain others.

The first question to ask, and to which he did not think a jurist could offer more than one reply, was in what manner those exceptions must be interpreted. Ought it to be done in a restrictive sense, or in an extensive sense ? If the Committee would seriously consider the fundamental principles of the Covenant as he had just stated them, and if it would also recall the generally admitted principle that, in such cases, exceptions must always be interpreted in a restrictive manner, he thought it was plain that the second alternative must be accepted. It was in the light of that rule of strict interpretation that Article 14, and especially Article 5, of the Covenant should be read.

Article 5 provided that " all matters of procedure at meetings of the Council or the Assembly " might be decided by a majority vote.

He wondered in the first place whether, in view of that wording, the reference there could be to questions of procedure other than those arising in connection with the action of the Council or the Assembly; whether, in fact, the application of that provision could be extended to questions of procedure that arose in connection with the action of other organs of the League of Nations, such as the Permanent Court. It might be that some authoritative writers considered that the Permanent Court of Justice was not even an organ of the League of Nations. It might be supposed that that opinion, if expressed in an absolute form, was an over-statement. Anyhow, the Court was another organ — an organ other than the Assembly or the Council, and, consequently, to ask it for an opinion was not an act of procedure arising in connection with the action of the Assembly or the Council. This seemed to him to be the meaning of the article.

Paragraph 2 of Article 5 went on as follows : " including the appointment of Committees to investigate particular matters ". The text said then : " Committees ". Could the Permanent Court be regarded as a Committee except on an extremely extensive interpretation of the text ? The Covenant itself, in Article 14, referred to the Permanent Court by name and as a body distinct from the Assembly or the Council, and consequently also distinct from their Committees of Enquiry, which could only be regarded as outgrowths, as it were, of those bodies.

The text made an exception for acts of procedure. But what, after all, was an act of procedure ? The definition was very difficult to give. The idea might, however, be invoked that, in taking a decision by a judicial act upon the rights and obligations of one or of several

parties, it was no longer an act of procedure, and the prior statement of the question whether a given act was an act of procedure could not itself be considered as an act of procedure and must accordingly be decided by unanimity.

Furthermore, in most modern systems of law, the distinction was commonly made between those decisions which more or less prepared or prejudged the question of substance and those which prejudged nothing. In as far as a decision prejudged, in however slight a measure, the substance of a question, it could not be concerned with a simple act of procedure.

In order to appreciate the very important question of law raised by the Swiss proposal, it was thus necessary to make a full legal analysis of the act by which the Council decided to ask an opinion from the Court.

It was first to be observed that the Court, under its very constitution, was without power to judge any but the legal aspects of a question, whereas the Council had both the right and the duty to pronounce from the political point of view, which would normally embrace incidentally the legal point of view. The first step for the Council, therefore, when it was deciding to approach the Court for an opinion, was a decision whereby it would separate the political and legal sides of a question, for it was plain that it could only submit to the Court the legal side. That involved, it might be supposed, a true decision, which, as experience abundantly showed, might affect the rights or obligations of the parties.

On the other hand, the Permanent Court, in giving its opinion on a question the legal aspect of which the Council had isolated, was pronouncing on a point of law, pronouncing, consequently, a decision. This, therefore, was why it appeared to be the constant tendency of the Court to consider its opinions as decisions. As it had itself declared, it would, in that indirect manner, decide legal disputes. Plainly, such an advisory opinion could not bind the Council in a purely legal and absolute sense ; the Council must, in fact, cover in its decision not merely the legal side of the case settled in that way by the Court, but also that far wider point of view which represented the political aspect. But it did not appear to him possible for the Council to decide that, from a purely legal point of view, the Court had judged amiss. It might decide, quite simply, that, notwithstanding the legal solution given by the Court on one aspect of the case, the political situation dictated a different solution. It was very difficult to assert that the Council could, from a purely legal point of view, declare bad the solution given by the Court. It was in that sense that the opinion given by the Court was final ; it was a " decision " ! And yet, after all, it remained an advisory opinion, for it did not operate to bind the Council's decision, that being of a political character.

This detailed analysis of the act whereby the Council invited an opinion of the Permanent Court might, if necessary, be used to throw light upon the problem as a whole.

Before any other consideration, however, there was a further decisive question that arose. In the Swiss proposal it was asked that the Court should be invited to interpret the Covenant, but was an interpretation of the Covenant an act of procedure ? It certainly involved deciding a great many conventional rights and obligations. It represented an infinitely more solemn step than a simple act of procedure ; it might even be looked upon as an amendment of the Covenant, as an article or a paragraph added thereto. Moreover, in actual fact, the Covenant had hitherto always been interpreted, not by the Court, but by the Assembly voting unanimously as the result of suitable investigations conducted by Committees appointed by the Council for that very purpose. He therefore thought it very difficult to admit that an interpretation or a request for an interpretation of the Covenant should be regarded as an act of procedure.

Those were some of the reasons for which he would conclude by declaring that it would be difficult to maintain the Swiss proposal in the form in which it had been submitted.

M. Limburg (Netherlands) considered that, if a vote were taken, the majority of the Committee would decide at the moment against the proposal of the Swiss delegation ; nevertheless, the Committee should be grateful to it for having brought so important a question before the Assembly.

No doubt the Swiss delegation could not have expected to encounter so many and such great difficulties. It might have supposed that, taking into account the degree to which the League of Nations had developed, the proposal would have been adopted unanimously and with very little discussion. It might have thought that, the question being that of an interpretation of the Covenant, the highest existing legal organ, namely, the Permanent Court of International Justice, was exactly fitted to give an opinion. It might also be that the Swiss delegation had remembered the words used a year ago in the Council itself by Dr. Stresemann and M. Scialoja. (He then read two extracts from the Minutes of the forty-ninth session of the Council.)

His idea in reading those passages had not been to suggest any criticism, but to show that in the discussions in the Council it was, if he might so put it, the purely legal question which alone had been considered. That under-side which existed in so many legal questions had not been brought out. The discussion had not gone into detail. There were, however, real difficulties, and to vote immediately on the Swiss proposal as it stood would not be a good thing either for the League of Nations or the Court itself.

The preceding speakers had revealed all the facets of that legal diamond. He desired to be allowed to add a few remarks to what they had said.

M. Fromageot had said — and other speakers had endorsed his view — that it would never be possible for parties which were in dispute and which were unwilling to come before the Court, to be bound by the Court's opinion given as an advisory opinion. He was not impressed by that argument. Parties which were not Members of the League of Nations were,

as M. Rolin had pointed out — and the Court itself in the Eastern Karelia case — in a separate category, for they were not bound; but Members of the League of Nations which brought a dispute before the Council had signed the Covenant and knew therefore to what they were exposing themselves, for Article 14 made provision for the Council to ask for an advisory opinion on " any dispute ".

In the second place, the advisory opinion, under the Covenant and from a purely legal point of view, was binding neither on the Council nor on the parties. It was true that up to the present the Council had always conformed to such opinions, but it would be perfectly possible for it to do otherwise.

In the third place, when it was stated that the parties which did not wish to come before the Court were none the less bound by the Court's opinion, one thing was forgotten : before the question went to the Court it had already been before the Council and many points had been cleared up. The shadows had disappeared and it was only on a few final points of a legal character that the Court's opinion was sought. It was not, therefore, the Court which decided the whole affair. The Council and the parties had, so to speak, prepared for the Court the legal points which required elucidation.

It had also been stated — though after M. Fromageot's interjection the word " criticism " would not be in place — that the Court's procedure was much the same in non-contentious and in contentious matters.

Like M. Politis, he considered that the Court could not act otherwise. In order to be fully documented it must receive information from both parties. If it asked the Council for that information, the Council would have to hear the parties — even if it had already asked the opinion of the Court — and would thus become overburdened with work. Moreover, the Court would have to give its opinion with no information other than that which it could obtain from the documents it had received from the Council, and, as everyone who had pleaded before the Court on a question of an advisory opinion knew, the Court had on several occasions, even after the oral debate, called for further documents from the parties. It did not seem possible, therefore, for the Court to act otherwise.

M. Politis had said that it might be desirable to amend the Covenant and to set up a special committee of jurists. To adopt such a solution, after eight years of experience of advisory opinions from the Court, seemed to be an unsatisfactory method of settling the matter. The committee in question would have to be composed of competent jurists. Would it not be regarded, nevertheless, as a committee of secondary rank ? Apart from this consideration, might it not be supposed that after two or three years the same difficulties would recur, since, the opinions being given by very eminent jurists, the Council would generally follow them ?

Much had been said on the question whether or not the matter was one of procedure. Here, again, M. Politis had drawn a distinction between an advisory opinion asked of the Court on a question of procedure and one asked on a question bearing upon a point of substance. Among those opinions which had hitherto been asked for, there was hardly one, he thought, which concerned a question of procedure. Almost all of them, or even all, related to a question of law, which in its turn concerned the substance of the dispute.

The Chairman of the Committee had put the question under discussion as follows : Was the request for an advisory opinion a matter of procedure or did it affect the substance of the question ? For his part, he, M. Limburg, while deferring to the authority of M. Scialoja, would not have put the problem in that form. He would rather ask how the Covenant should be interpreted on that point.

Sir Cecil Hurst had said he wished the Committee to know that the Anglo-Saxon mentality would interpret Article 14 in the same way as a request for an opinion from the Privy Council was interpreted in England. He had added that his reason for mentioning the fact was that the Continental mind might prefer a different interpretation. M. Limburg would reply to that statement that even the Continental jurists, whose mentality was more or less impregnated with Roman Law, might perceive arguments in favour of unanimity in connection with that point of interpretation.

It was in Article 14 that the Covenant spoke of requests to the Court for an advisory opinion. It was Article 15 that dealt with the procedure in the Council for the settlement of disputes.

It was possible that in the latter case only a scientific question or a possible dispute was involved. If unanimity were required in that case, although it was not a question of procedure, it would be strange to interpret Article 14 in such a way that sometimes a majority vote, and sometimes unanimity, was required. However that might be, it was, he thought, necessary to consider the right to ask for an advisory opinion from the Court as being *sui generis*, which was not a question of procedure.

He did not think the moment was opportune for a vote on the Swiss proposal in its present form. It would, on the other hand, be very regrettable if the discussions led to no results. He recalled how M. Rolin had asked what solution the Committee proposed, had asked it do something.

He did not wish to propose a different wording, but he thought that now all the facets of the diamond had been studied — and M. Rolin had even added one, the majority including the votes of the disputing parties — the Swiss delegation might be able to amend its proposal and invite the Council or the Assembly to study the problem as a whole. In that way it was possible to contemplate a thorough consideration of the highly important questions that had been discussed during the past two days.

M. Burckhardt (Switzerland) admitted that, after the speeches he had heard, it would be difficult to obtain complete agreement on the question whether unanimity or a simple majority was necessary, and in which cases unanimity was necessary and in which the majority would suffice. But he did not propose to yield to the temptation to present further arguments. He would confine himself to putting before the Committee a modified proposal which, he hoped, might be adopted at least by a large majority of his colleagues.

It had been said that the Swiss proposal was inopportune, and that the Court should not be asked for an opinion because that opinion might lead to a position from which it would be difficult to extricate themselves.

On the question of expediency he was aware that, if the Council took that view and deemed it inopportune to consult the Court, it was the duty of the Committee to take account, so far as possible, of that objection. Everybody knew what a difficult task the Council had to perform and nobody would dream of interfering with its functions or creating new difficulties for it. Such a result had been far from the intention of the Swiss delegation. It simply desired to clarify a question that seemed to it to call for an answer.

The Swiss delegation also desired to take account of the second objection that had been raised, to the effect that the Court was not the proper organ to reply to the question that had been put. He would be satisfied if the Council would have the question examined in any way it thought fit, provided only that its solution was not too long delayed and that it was not adjourned from year to year, from generation to generation.

He concluded by reading the amended Swiss proposal in the following terms :

> " The Assembly,
>
> " Beng convinced of the necessity for putting an end to the prevailing uncertainty as to the conditions for voting on requests for advisory opinions addressed by the Council or the Assembly to the Permanent Court of International Justice,
>
> " Recommends the Council to submit to study, as soon as circumstances, permit the question whether the Council or the Assembly has power, by a simple majority, to ask for an advisory opinion in the sense of Article 14 of the Covenant of the League of Nations. "

That new wording took account of the Council's feelings on the question of expediency, as also of the objections that had been raised in regard to the method of investigation.

He added that the Committee would understand that the situation of States not represented on the Council was a little different from that of the States which were represented there, and it was important for them, in a question of that kind, to have a clear law on which, if necessary, they might be able to reply. On the other hand, it could only be for the advantage of the Council to be able to say : "That is the law, those are the rules under which we shall take the advice of the Court ".

M. Frasheri (Albania) approved the motives which had led the Swiss delegation in the present situation to come to the assistance of the small nations by putting forward a proposal expressing the need for an interpretation of Article 14 and Article 5, paragraph 2, of the Covenant, by means of a preliminary request for an advisory opinion from the Court.

In internal law, when the interpretation of a text was in question, the authorities having power under constitutional law to render such an interpretation were bound, on pain of being guilty of a denial of justice, not to refuse such an interpretation. The Assembly was in the same position, and to ask the Swiss delegation therefore, for reasons of expediency, to withdraw its proposal would amount to encouraging a denial of justice. It would be the same if the proposal were adjourned for five or ten years.

He thought that, in the interests of all the Members of the League, it would be well, at any rate, to begin to seek a solution for the question raised, failing which the very existence of the League might be put in peril. The beginnings of a solution, he continued, would consist in the adoption of part of the proposal of M. Politis referring to paragraph 2 of Article 5 of the Covenant. Moreover, it was possible to point to several cases which were unquestionably cases of procedure.

In those circumstances, he thought that the Council should be asked to set up a committee of jurists to consider what concrete cases were matters of procedure. It would not, of course, be a radical solution, but it would, at any rate, be a beginning in that direction.

M. Burckhardt (Switzerland) observed that M. Frasheri's proposal was not inconsistent with his own, except that it referred specifically to a committee of jurists. The Swiss delegation was proposing to leave a wider liberty to the Council and M. Frasheri would, he thought, be able to support it.

M. Frasheri (Albania) acquiesced.

Sir Cecil Hurst (British Empire) did not feel in a position to pronounce upon a text which had not yet been distributed, and asked that the discussion should be postponed until the next meeting. He added that, in so important a matter, he felt it would be proper to seek the opinion of the head of his delegation.

M. Fromageot (France), for the same reasons, also asked for an adjournment.

M. Frasheri (Albania) suggested that M. Burckhardt, M. Politis and he should have a small meeting to put the proposal into final form.

(The continuation of the discussion was adjourned until the next meeting.)

NINTH MEETING

Held on Thursday, September 20th, 1928, at 5.30 p.m.

Chairman: M. SCIALOJA (Italy).

17. Advisory Opinions of the Permanent Court of International Justice: Draft Resolution proposed by the Swiss Delegation (continuation).

M. BURCKHARDT (Switzerland) informed the Committee that, in order to take into account certain objections that had been raised, he had made the following change in the text submitted during the meeting of September 18th: the beginning of paragraph 1 now read: " Noting the divergences of opinion existing in regard to the conditions of voting . . . ".

That change did not touch the substance of the question, and he hoped it would secure the unanimous acceptance of the Committee.

Sir Cecil HURST (British Empire) recalled that he had been one of those who had raised the strongest opposition to the text originally submitted. He declared that the new wording gave him complete satisfaction and that his delegation was quite ready to accept it. He thanked M. Burckhardt for having agreed to a change.

M. ERICH (Finland) said he entirely appreciated the idea upon which the Swiss proposal was based, an idea which answered in a special way to the interest which the States, and particularly the small States, had in knowing which way they were to look in a matter involving the application of the Covenant. It was also in keeping with contemporary movements in favour of fixing and determining the content of the principal provisions of the Covenant.

Those who had followed the activities of the League of Nations would recognise that the present proposal did, in fact, affect a question which, so far from being essentially theoretical, was of great practical importance. Those who had taken part in the Conference in 1926 had been greatly struck by the difficulty in which the Conference had been put by the fifth reservation of the United States of America. Indeed, it was at that time that the idea had been mooted of leaving it to the Court to give an authoritative interpretation on that important question, which had always been a source of some degree of uneasiness from a political point of view.

Taking the Covenant as it stood, it might be affirmed that its intention had been to entrust the Court with the duty of assisting the Council and the Assembly, so far as might be necessary, by means of its legal wisdom and perfect impartiality — though without thereby weakening the responsibility which belonged to those bodies and of which they could not divest themselves. It seemed very evident that, according to Article 14, an advisory opinion was and remained an advisory opinion, as was implied in the very idea embodied in that instrument.

On this point M. Erich entirely associated himself with the view expressed by M. Scialoja as to the nature of the Court's opinions from an uncompromisingly legalistic point of view.

The Statute of the Court clearly adopted this theory. The fact — which was a matter of positive law — that, according to the Statute, only in contentious cases was there a national judge, had already been quoted in this discussion in proof of the difference between decisions and opinions. It was only the amendment to Article 71 of the Rules of Procedure, dated September 7th, 1927, which had introduced the contrary principle, namely, that Article 31 of the Statute would be applicable when the Court was asked for an opinion on a question relating to a dispute, which had actually arisen between two or several States or Members of the League of Nations.

Other arguments could also be adduced along similar lines. Nowhere was there any indication that an opinion had the authority of a *res judicata*; although the advisory procedure was often concerned with the interpretation of a multilateral convention, it did not involve any intervention; the serving of notices, the communications, etc., provided for in Article 73 of the revised Rules of Procedure of the Court did not represent an intervention or produce the effects characteristic of one. Finally, nobody would dream of applying to an opinion the rule of Article 13, paragraph 4, of the Covenant, with respect to the execution of an award.

It was very significant to notice that, in 1924, when the Protocol was being drawn up, it was stated, *inter alia*, in the famous report submitted by M. Politis and adopted by the Assembly:

> " Nevertheless, consideration had been given to the possibility that the arbitrators need not necessarily be jurists. It has therefore been decided that, when called upon to deal with points of law, they shall, if one of the parties so desires, request, through the medium of the Council, the advisory opinion of the Permanent Court of International Justice, which must, in such a case, meet with the utmost possible despatch. The opinion of the Court is obtained for the assistance of the arbitrators; it is not legally binding upon them, although its scientific authority must, in all cases, exercise a strong influence upon their judgment. "

When, in commenting upon and interpreting Article 4 of the Protocol, this opinion on the nature and effects of advisory opinions had been expressed, this article had not been regarded as in any sense an innovation, but, on the contrary, as an application of the Covenant, a conclusion to be drawn from its general principles.

If, in 1924, it had been considered that the opinion of the Court would not be legally binding upon the arbitrators, who themselves were called upon to render a binding award, it seemed a little difficult to prove the binding force of an opinion supplied to the Council or the Assembly, neither of which was a judicial authority.

There was on this point, in the first place, the difficulty that by the general rule neither the Council nor the Assembly imposed its will upon the parties, although a unanimous recommendation of the Council or a resolution taken by the Assembly in the conditions set out in Article 15, paragraph 10, was calculated to fetter the freedom of action of the parties. If this were so, how could it be supposed to be otherwise where the recommendation was based upon an opinion of the Court? The fact that an opinion was given during the proceedings before the Council could not affect the character of the Council's resolution. A party was able either to comply or not to comply with it, and that freedom applied to the whole resolution, including the opinion of the Court, often inseparable from the resolution as a whole.

Moreover, great as was the value of an opinion of the Court, highly as it was esteemed by the organ that had asked for it, necessary as it was that its authority should be fully acknowledged — it was necessary to contemplate cases in which considerations of expediency would decide either organ, the Council or the Assembly, not to follow entirely the opinion; such an attitude on the part of the Council or the Assembly was quite compatible with the great respect due to the Court; it was explained by the different functions which those various organs performed. Again, if a friendly settlement were contemplated between the parties in accordance with Article 15, paragraph 3, on some other basis than that which the Court's opinion indicated, the Council would undoubtedly be justified in contributing to such a settlement, as was contemplated in paragraph 3.

Consideration of what might be described as the fundamental nature of the advisory opinion brought to light another point that must not be forgotten. An opinion, like a decision of the Court, might have been adopted by a very small majority of the judges, or even it might have been settled by the President's casting vote. In the case of a decision, there was no alternative but to submit to it. In the case, however, of an advisory opinion where half or nearly half the judges had expressed a view differing from that of the majority, it would hardly be possible to question the right of a Member of the Council or the Assembly to declare in all sincerity that it was not the conclusions of the majority but those rather of the minority that seemed to it decisive. Notwithstanding the very greatest respect for the authority of the Court, such a decision was the simple consequence of the responsibility resting upon the organ whose duty it was to take the pertinent decision.

Further, suppose that, in a special question, two parties had conferred on the Council the exceptional task of settling a dispute by a binding and final decision. Unanimity in the Council was necessary, as Opinion XII of the Court had affirmed. If the Council invited the opinion of the Court and that opinion were to be recognised *ipso jure* as binding, it was then in reality not the unanimous Council, but a majority, perhaps a very slight majority, of the Court that took the decision.

In practice, the Council, on receipt of the Court's opinion, had not regarded itself as bound immediately and *ipso jure* by that opinion, but had, on the contrary, considered itself free either to accept or to reject it; this attitude was entirely in conformity with the nature of an advisory opinion.

Such, in M. Erich's opinion, were the conclusions to be drawn in regard to the character of the opinions, both from the texts and procedure taken into consideration and from the Council's practice.

True, they must be grateful to the Court for having from the first based its advisory opinions upon enquiries of a most thorough and conscientious character. It was natural that the Court should insist that an opinion it had given should not remain a dead letter. It was equally natural that the organ which had sought the opinion of the Court should duly take account of its authority and ascribe the very greatest value to the opinion of the judges. Finally, it was both natural and desirable that, in the ordinary course, the Council (or the Assembly) should adhere to the Court's authority. But neither from the theoretical nor from the practical point of view could these considerations be exclusive as regards the procedure to be followed in the Council or in the Assembly, and as regards the ultimate consequences of the opinion. M. Erich did not, for his part, believe that these considerations could prejudice the authority of the Court; if, however, they could really do so, the question might be considered, when the Statute was ultimately re-examined, whether it would be a good thing to restrict the liberty given by the Covenant to the Assembly and the Council to ask for advisory opinions.

If it were desirable therefore that the Council and the Assembly should not be bound by an advisory opinion in the same way as they were by a decision, it should, it seemed, be concluded that an opinion might be sought without the consent of the parties. If, for instance, a Member of the League of Nations particularly interested in the case, and consequently invited to sit on the Council, was not disposed to avail itself of that opportunity, it could not, for that reason, question the Council's competence to ask for the Court's opinion on a doubtful point.

Similarly, the Council, having invited, under Article 17, a non-Member State to submit to the obligations incumbent upon Members, might propose such steps as appeared to it the best and most effective in the particular case; it might proceed to such measures without awaiting the response to the invitation it had given. Thus, in the Eastern Karelia case, the Council had approached the Court before any invitation had gone to the interested State, which, as was known, was a State not belonging to the League of Nations. It would perhaps be objected that it was precisely in that case that the Court had declared itself unable to give an advisory opinion. A study of the reasoning in that answer by the Court, however, showed that the determining factor had been the negative attitude of Russia regarding the proceedings before the Court and its abstention from participation in that procedure; the Court had not made any declaration to the effect that the absence of Russia from the Council at the time of its decision to make the application ought to have deterred it from submitting the question to the Court. That was a point which deserved to be emphasised.

Mention had already been made in the discussions in the Committee of a dispute which had occurred in the actual experience of the Council, when the Court's opinion was asked for, without the consent of one of the parties. The Court having in that particular case considered the requisite conditions to have been fulfilled in spite of the abstention of one party, it might accordingly be taken as settled that, in accordance with the very nature of the opinions, the consent of the States directly interested or, better, the consent of the parties, did not in law constitute an indispensable condition for the validity of the request for an opinion. The fact that such consent was considered in the highest degree desirable and that there was some hesitation in approaching the Court against the wishes of one party was entirely to be explained by considerations of prudence and expediency, as also by the desire to avoid endangering the Court's authority. It would certainly be a mistake to belittle the possible importance of such considerations.

So much for the States directly interested in the dispute; there yet remained the question whether the unanimity of the States not interested was or was not required, a question which had not as yet been settled by the Council's practice. In this connection, there arose the question whether the request for an opinion was or was not a matter of procedure. The affirmative answer would no doubt be the more consistent with the conception of an opinion, but in certain cases there was some risk that such a reply was scarcely compatible with the character of the dispute and the importance of the opinion asked for and given. Certainly, taking into account only the intentions of the Covenant, the reply would undoubtedly be in favour of the majority principle. If, under Article 15, paragraph 10, the Assembly were able, given the approval of the Members represented on the Council and a *majority* of the other Members, to adopt a report with the consequences set forth in Article 15, paragraph 6; if, consequently, unanimity in the Assembly was not required on the question of substance, it would seem to be difficult to insist on unanimity when nothing but a mere request for an opinion was involved. If, however, this were true as regards the decision to be taken by the Assembly, it might be wondered what arguments existed in favour of a different rule as regards the Council.

A further remark might be made, relating to the political aspect. If the votes of the parties did not count, would it be consistent with sound doctrine to grant to a single Member of the Council not involved in the dispute the right to cause a failure of the advisory procedure recognised as useful or necessary by all the other uninterested Members?

Whatever the answer, this was the crucial point. It might be asked whether requests for opinions were really to be regarded in all cases as matters of procedure. If it were possible to establish general and fixed rules on this point, they would be of the greatest advantage for the regular operation of the pacific methods for the settlement of international disputes.

M. D'OLIVEIRA (Portugal), while regretting the lateness of his intervention, desired to give his sympathetic support to the initiative taken by the Swiss delegation, and, having been ready to accede to M. Burckhardt's original proposal, he was equally ready to support the amended text, even though it appeared to be somewhat weakened. The Swiss delegate had shown himself convinced of the necessity of putting an end to the uncertainty, and he was of the same opinion. Instead of suppressing this phrase, as M. Burckhardt had done, the word "necessity" could have been replaced by the word "utility", which was less affirmative. However, in presence of the unanimity which appeared likely to be reached, he would not propose any amendment.

He had listened attentively to the learned speeches that had been made. If he did not feel quite clear on the question, this was no doubt because quite opposite doctrines had been sustained with equal ability.

M. d'Oliveira, however, did not speak as a jurist; speaking as a mere diplomat, still less as the "man in the street", he thought he was entitled to observe that the speakers to whom he had listened were not perhaps infallible, and the question that had withstood their examination up to the present should continue to be studied with a view to reaching a result as soon as possible.

The Swiss proposal had sustained an imposing bombardment. Maybe it had been hit in one or two vital spots, but it had come through alive all the same — invested, indeed, with a sort of halo of sympathy which extended to the Government represented by M. Burckhardt, and whose initiatives were always so prudent.

The conclusion arising out of the discussion which had taken place was, first of all, that the problem raised was extremely delicate; secondly, that it arose, and had arisen, very frequently: which meant that, if its solution was not easy, it was none the less very desirable.

Everybody had recognised that, whenever there was a question of seeking an advisory opinion from the Court, unanimity would be preferable to a majority vote. In fact, when the Council decided to ask for an advisory opinion, it meant that it had already exhausted all the other means that its wisdom could suggest for settling the dispute.

Any solutions that it might have been open to the Council to adopt would have been in the nature of " judgments of Solomon ", and it could have accepted them without the need for any reference to the Court; it was only when it could find no such solution that it resorted to the latter measure. At that moment it decided by a majority vote, though in that majority there were various degrees; it was more or less large. Or, again, that majority might represent more than one decision. On the first occasion, the Council might have been unable to take any decision owing to the fact that unanimity had not been reached and that a mere majority vote had been obtained, that was to say, half the total number of votes plus one. At a subsequent session, the same point being under discussion, the majority in favour of a request to the Court for an advisory opinion might have increased and become stronger.

That would prove that within the Council, always so prudent, a steadily swelling current of opinion was manifesting itself in favour of taking the course which would make it possible to put an end to the dispute. That was, he thought, a noteworthy indication that the step of asking the Court for an advisory opinion ought to be adopted.

M. d'Oliveira dealt next with the second objection which had been raised, and on which he would timidly express a doubt.

The advisory opinion, it had been said, was not in fact advisory; by reason of its form, it assumed in fact, if not in law, the character of a true decision binding on the parties. Should one of them not conform to that decision, the authority of the Court would be impaired. M. d'Oliveira was not impressed by that argument. If the opinion of the Court had taken on an imperative character, that was less on account of its outward form than by reason of the solution it supplied, which was the most equitable and the most reasonable solution possible. Should one of the parties then refuse to endorse it, it was that party, much more than the Permanent Court, which would lose prestige in the eyes of the world.

In those conditions, would it not be in conformity with the spirit and the essential principles of the League of Nations to impose morally so to speak, not indeed legally and as though by virtue of a litigation, the acceptance of the Court's decision ?

M. d'Oliveira concluded by repeating that he would be happy, speaking in the name of the Portuguese delegation, if this very important question, which arose so often and the results of which might be of such value in the pacific settlement of international disputes, might, in the course of its enlightened examination by the members of the Council, be finally settled.

M. Westman (Sweden) said that, consistently with the attitude Sweden had always taken, the Swedish delegation was ready to vote for the Swiss proposal in its original form. Sweden did not in any way overlook the difficulties, both of substance and of form, that were raised from certain points of view by the Swiss proposal — difficulties which had been fully developed in the course of the discussions. Sweden was, however, of opinion that the Permanent Court, which had, in all circumstances, done such splendid work, would certainly have been able to find the necessary ways and means to reply to a request for an advisory opinion, without entailing any detriment to its authority, while largely contributing by its reply to the solution of the problem.

In view of the actual position of the debate and the opposition encountered by the Swiss proposal at the hands of a considerable number of delegations, the Swedish delegation thought it could but vote for M. Burckhardt's amended proposal. It did so in the hope and with the expectation that the proposed study would be undertaken without delay and that it would contribute to the elucidation of the problem and prepare the way for its early and satisfactory solution.

The Chairman put to the vote the Swiss proposal, the final text of which was as follows :

" The Assembly,

" Noting the divergences of opinion which exist as regards the requirements for voting in the Council or Assembly a resolution requesting an advisory opinion from the Permanent Court of International Justice :

" Expresses the desire that, when circumstances permit, the Council may have a study made of the question whether the Council or the Assembly may, by a simple majority, ask for an advisory opinion within the meaning of Article 14 of the Covenant of the League of Nations. "

The proposal was adopted.

The Chairman proposed that the Committee should request M. Burckhardt to make an oral report to the Assembly.

This proposal was adopted.

18. Pacific Settlement of International Disputes: Consideration of the Draft Conventions on Conciliation, Arbitration and Judicial Settlement prepared by the Committee on Arbitration and Security: Report of the Liaison Sub-Committee.

The Chairman invited M. Politis to present the report which the Liaison Sub-Committee had instructed him to render.

M. Politis (Greece) reminded the Committee that it had entrusted the Liaison Sub-Committee with the duty of studying the Conventions on Conciliation, Arbitration and Judicial Settlement drawn up by the Committee on Arbitration and Security. The Sub-Committee had undertaken that study with the greatest care, and had instructed him to give an account of its work. He felt bound to apologise for the fact that, for want of time, it had been impossible for him to draft a written report. He would therefore submit an oral statement, and would do his best to do so as simply and shortly as such a complicated subject would allow.

The principal question that the Sub-Committee had had to consider was, whether it would be better to maintain the three Conventions drawn up by the Committee on Arbitration and Security with their several preambles and the common resolution of submission, or whether it would not be preferable to amalgamate them in a single text which would reproduce, with the necessary changes, the texts comprised in those three Conventions.

It was hardly necessary, he thought, to recall in what circumstances the question had come before the Committee. The Swedish delegate, M. Undén, had pointed out that the three Conventions as submitted, separate one from another, presented one serious practical disadvantage : they had no bond of connection between them, so that as between States of which some should have accepted one of the Conventions and others another, there would have been no contractual obligation, although practical common sense might suggest that, having adhered to Conventions parts of which contained provisions common to both, they ought to have been mutually bound to the extent of those common provisions. The absence of such a bond of connection was both juridically inelegant and practically absurd.

That was the situation for which it had been desired to find a remedy. Two remedies had soon suggested themselves : either to establish the missing link between the three Conventions in a sort of common Protocol that should serve as a nexus between the three texts, or else to amalgamate them in such a way that the engagements, however limited, incurred by one State in that common instrument would correspond with similar engagements incurred by another country in subscribing either to the same or to a larger part of that common instrument.

After a long and detailed study, the Sub-Committee had arrived at the conclusion that the second remedy appeared preferable. The only objection that had been raised during the plenary meeting against the amalgamation proposed by M. Undén had been of a purely technical character. It had been put forward by M. Tumedei and appeared to have had the sympathy of several of his colleagues.

The Sub-Committee's first care had been to ascertain whether that technical obstacle was really insuperable. To that end, M. Undén and M. Rolin undertook to try and draw up a single text. With a devotion and a skill to which M. Politis felt bound to do reverence, they had very soon produced a text. After having examined it carefully, the Sub-Committee came to the conclusion that the technical difficulty that had seemed to stand in the way of the establishment of a single system had been overcome.

The Sub-Committee then went on to consider whether the single system presented the same practical advantages as the tripartite system. After thinking the matter over thoroughly, it had arrived unanimously at the conclusion that not only were the advantages of the old system preserved but, with the single system, they were even greater than with the tripartite system.

What were those advantages ? He would summarise what appeared to be the four principal ones.

In the first place, there existed in the single system, as between the various engagements which the States might within its framework incur, that bond which had been lacking as between the three separate Conventions. That bond not merely existed — the Committee would readily understand it — but it was apparent and visible from the very fact that the engagements were included in the same instrument and that it was in virtue of the same instrument that the States would be bound.

Secondly, that codification, which the Committee on Arbitration and Security had sought to effect, of the progress achieved in practice by pacific procedures, was better ensured by the unitary than by the tripartite system. Indeed, this single Act which embraced the three Conventions resembled a sort of charter of the League of Nations in the matter of the pacific settlement of international disputes. This single text was calculated to produce the same impression on public opinion and to exercise the same moral influence as did the 1907 Convention drawn up by the Second Peace Conference at The Hague upon the same subject — the pacific settlement of international disputes.

In the third place, the unity of the text presented greater simplicity, not merely in appearance but in actual fact, as well as greater practical facilities both for its adoption and for its application. Henceforth, supposing that the instrument which had just been drawn up, and which M. Politis would in a moment analyse, had been adopted, the complications involved in saying when referring to the text : " Article 13 of Convention A ", " Article 13 of Convention B " or " Article 13 of Convention C " would be avoided. It would only be necessary to refer to a single text and there would be no possibility of confusion. Further, from the practical standpoint of the approval of the text — particularly by the Parliaments — the Sub-Committee had thought it would be infinitely simpler and easier to bring the peoples' representatives to understand the mechanism of the system of settling international conflicts when the procedures were gathered together and logically co-ordinated in a single text than it would be were they dispersed in three elaborate and independent Conventions.

The fourth and last advantage — which in M. Politis's view was the greatest of all — was that elasticity and flexibility with which the Committee on Arbitration and Security had sought to endow the Conventions concerning pacific settlement in order to adapt them to every need and to all the particular circumstances that occurred in international life. That flexibility and elasticity were better guaranteed with the single system than with the tripartite system. As this was a point which he considered to be of very great importance, he begged to be allowed to lay some stress on it.

How were elasticity and flexibility obtained in the tripartite system? They were obtained, first, through the fact that the Conventions were separate, a country being enabled either to accept the simplest and least burdensome, namely, that dealing with conciliation; or to take a further step by accepting judicial settlement of those disputes where the parties were in conflict in regard to a right; or again, to take yet another step and accept arbitration for all disputes, even where the elements of a contested right was absent.

Moreover, the elasticity of the system had been ensured in the article dealing with reservations. It had not been without regret on the part of many of the members of the Committee on Arbitration and Security that the reservations had been admitted, but they had in the end been agreed to precisely in order to allow States that were not yet ready to accept the system of arbitration for all conflicts, at least to accept it with a reservation excluding from the procedure those conflicts in which they considered the essential interests of their national life to be involved.

That measure of elasticity and flexibility secured by keeping the Conventions separate and by allowing for reservations was even better guaranteed in the single system in that all those provisions were perfected and given greater scope.

The possibility of a limited acceptance of the proposed obligations was established in the most important text in the draft, namely Article 36[1]. It was there provided that, the Convention being divided into four chapters, of which the last, containing the general provisions, was common to all the subject-matters, the three others dealing respectively with conciliation, judicial settlement and arbitral settlement, it was provided, he would repeat, in that Article 36 that adhesion could apply either to the entire document, that was to say, to the four chapters; or else to the provisions relating to conciliation and judicial settlement (Chapters I and II) as well as to the general provisions relating to those procedures (Chapter IV); or else to the provisions dealing with conciliation (Chapter I) as well as to the general provisions in regard to that procedure; and, of course, the reciprocity rule operated; each State became bound to each other State only to the extent to which it and the other State had incurred equal commitments.

The last part of that article read as follows:

> "The Contracting Parties shall be able to rely on the adhesion of other Parties only to the extent to which they shall themselves have subscribed to the same obligation."

With only one text, the possibility of limiting the commitments entered into was even more apparent and practically easier to make use of than with the system of the three Conventions.

Article 37[2], dealing with reservations, had been modified and completed. An improvement had been made, if he might say so, by an indication given in paragraph 2 (second sub-paragraph), where it was said that amongst the disputes which might be excluded from the pacific procedures were disputes bearing upon — the original words were: " particular, clearly-defined subject-matters "; the phrase was now — " disputes, bearing upon specified questions or particular subject-matters ".

This inclusion of the words " specified questions " gave the system more elasticity in the sense that it was not only *in abstracto* that a State might desire to exclude certain classes of controversy from arbitration; it was also *in concreto*, with a specific view to any given question which existed or might come to exist not merely as between it and any other State whatsoever but in relation to some specified State; and there would, under the terms of this formula, be nothing against a State mentioning, in adopting this reservation, some specified questions and even adding an indication of the particular States with which they were at the moment involved in such difficulties.

Nor was that all: Article 38[3] had increased the elasticity of the system by permitting the extension of the engagements entered into, and Article 43[4] extended it in its turn by permitting a partial denunciation. This meant, for example, that when a State had incurred an obligation in respect of conciliation only, it was not prevented under this system from enlarging its obligation — it is even offered the possibility of doing so — by saying: " I also accept the chapter relating to judicial settlement ". Similarly, as regards denunciation, the provision in Article 43, No. 3, paragraph 2, was particularly conducive to elasticity by saying:

> " Denunciation may be only partial or may consist in a notification of new reservations. "

If a country which had committed itself to a certain extent by the Act dealing with the settlement of international controversies found in it later some objectionable feature — instead of being obliged at the end of the period to make a complete denunciation which would take it out of the Treaty — it was given the possibility of denouncing the treaty only

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[1] This article became Article 38 in the text adopted by the Assembly.
[2] This article became Article 39 in the text adopted by the Assembly.
[3] This article became Article 40 in the text adopted by the Assembly.
[4] This article became Article 45 in the text adopted by the Assembly.

in part; that was to say, if it had accepted two chapters, it might denounce one chapter and remain bound in respect of the other; or, supposing it had made no reservations, it would be able to make some reservations, in the next ensuing period of the Treaty's application, which would restrict its obligations.

That was how the single system was made up; it did not appear to the Sub-Committee to raise any objection of a technical kind, and, as regards its application, it seemed to offer several more advantages, in certain respects, than the system of the three separate Conventions.

M. Politis wished next to indicate briefly the theory contained in the General Act before the Committee.

The theory of this General Act was exactly the same as that of the three Conventions. The first chapter corresponded to Convention C, the second to Convention B, the third to Convention A, and, finally, the fourth brought together the general provisions, in many instances identical, which had been repeated in each of the three Conventions.

The articles of the Act had, for the most part, retained the form they had borne in the separate Conventions, and, in order to facilitate comparison and verification, references had been made in the margin of the document before the Committee to the numeral in the Convention from which the text had been borrowed.

A few purely formal changes have been made in order to adapt the provisions of this Act to its present form. For instance, the words " in conformity with any given article of the present Convention " had been replaced by the words " in conformity with any given article of the present Act ". In the course of hurried drafting, one or two slips had occurred. M. Politis would mention in passing : in paragraph 11 of the preamble which served as a draft resolution, the words " within the framework of the General Conventions " should be replaced by the words " within the framework of the General Act ".

The form had also been adapted in one or two details. The word " State " was not used throughout. The word used was " Parties ", as it had been pointed out to the Sub-Committee that this expression was more in keeping with the organisation of the British Empire.

Certain of the articles had been modified more or less extensively to meet the observations submitted either in the plenary meeting or in the notes that several delegations had sent to the Sub-Committee. M. Limburg had supplied the Sub-Committee with a very thorough piece of work which had occupied it for a considerable time. The Sub-Committee had considered his observations one by one, it had taken account of all of them, either in order to make sure as to the desirability of the text adopted, or, after being convinced of the justice of the particular observation, to alter, entirely or partly, the provisions in question.

In the rapid analysis which M. Politis wished to make of this General Act, it would be sufficient, then, to speak of the articles which had been somewhat modified, or of those that, despite the observations which had been made to the Sub-Committee, had not been modified.

Article 6.[1]

He would refer first to Article 6, paragraph 2, which read as follows :

> " If the agreement [the agreement with a view to the constitution of a Conciliation Commission] is not reached on this point, each Party will name a different Power and the appointments will be made conjointly by the Powers so chosen. "

M. Limburg had asked what would happen if one of the Parties failed to name the Power of its choice. Would the system operate in spite of the bad faith of the Parties — and, if so, how ?

The Sub-Committee had not thought it necessary to alter this wording — for two reasons. First, because in any Convention a certain measure of good faith and confidence on the part of the Contracting Parties must be assumed. Next, and more particularly, because if, in the application of this text, bad faith were to be manifested, there would be two possible sanctions.

The first was as follows : It was provided that all disputes with regard to the application of the Treaty were to be submitted, at the request of one of the Parties, to the Permanent Court of International Justice. That Party which failed to obtain from the other the nomination of a Power would thus have recourse to the Court for an injunction to be addressed for the purpose to its opponent.

The other sanction was this : If one of the Parties was unwilling to name a Power, it was because it was unwilling to engage in conciliation. The conciliation accordingly broke down. In such cases the contentious procedure continued. The Party, which was in the position of plaintiff might take direct action in bringing the substance of the matter before the Court or arbitral tribunal as provided for in the General Act.

Article 12.[1]

This article read as follows :

> " In the absence of any agreement to the contrary between the Parties, the decisions of the Conciliation Commission shall be taken by majority vote and the Commission may only pronounce on the substance of the dispute if all its members are present. "

[1] This article retained the same number in the text adopted by the Assembly.

M. Limburg had asked whether the expression " in the absence of any agreement to the contrary between the Parties " applied only to one or whether it applied to both of the possibilities mentioned in the text.

M. Politis would reply that it applied to both.

Article 15.[1]

Paragraph 3 of this article read as follows :

" Unless the Parties should otherwise agree, the labours of the Commission shall be terminated within a period of six months from the date when the dispute is referred to the Commission. "

M. Limburg had remarked that this period of six months was perhaps rather too short, especially in certain contingencies, and that it might perhaps be better to indicate a longer period.

The period of six months was provided for in the majority of Conciliation Conventions. It was the fashionable period. It was, for instance, provided for in Article 8 of the Locarno Agreements. This had seemed to the Sub-Committee to be a sufficient reason for making no change in the text.

Article 17.[1]

The words of this article were :

" All disputes in which the Parties are in conflict with regard to a right shall, subject to the possible reservations provided for in Article 37, be referred for decision to the Permanent Court of International Justice, except where the Parties shall have agreed under the terms of earlier articles to have recourse to an arbitral tribunal. It is understood that the above-mentioned disputes include in particular those indicated in Article 36 of the Statute of the Permanent Court of International Justice. "

A discussion had already taken place in the plenary meeting with regard to the desirability of using the expression " disputes in which the Parties are in conflict with regard to a right ". It had been asked : " Why not use the more usual phrase : ' disputes of a legal nature ', keeping for the disputes covered by Chapter III the expression ' disputes not of a legal nature ' ? "

The expression used had been preferred for two reasons. First because the expression " controversies of a legal nature " was severely criticised nowadays in textbooks. It was considered to be too lacking in precision to permit of States adopting it in a treaty with any certainty as to what they were undertaking.

The second was that the expression used had the hall-mark of the Locarno Agreements and several other treaties which had been concluded since. There was a certain danger, where no serious reason existed for it, in altering a formula.

However, one very important point had been adopted from the observations that had been made : since the expression from the Treaty of Locarno was being used, it was right that it should be quoted in its entirety. In the original text there had been lacking the last sentence which had now been added to Article 17 :

" It is understood that the above-mentioned disputes include, in particular, those indicated in Article 36 of the Statute of the Permanent Court of International Justice. "

Article 13 of the Covenant might have been added as its substance was the same. It had been preferred, however, to mention only the Statute of the Court owing to a sort of hesitancy in regard to those countries that did not belong to the League of Nations and might desire, as was hoped, to accede to this General Act.

Article 18.[1]

It was provided in Article 18 that, when the compromise did not contain a sufficiently precise direction on the point, the provisions of the Hague Convention of October 10th, 1907, on the Pacific Settlement of International Disputes were *ipso jure (de plein droit)* to apply.

M. Limburg had asked what was the meaning of that expression " de plein droit ". The text meant that, when gaps were found in the compromise, they were to be filled in by recourse to the Rules of Procedure contained in the Hague Convention.

Article 20.[1]

This article was new. It was based on Article 8 of Conventions A and B.

In the first paragraph, the situation as regards preliminary procedure of conciliation which was optional as regards legal cases was explained.

Paragraph 2 dealt with cases which were excluded, by a reservation, from judicial settlement. They were then submitted to the procedure of conciliation.

In paragraph 3 a reply was given to the criticism advanced against the old wording of Conventions A and B : " Shall be *(seront)* referred to the Permanent Court of International

[1] This article retained the same number in the text adopted by the Assembly.

Justice or to an arbitral tribunal. " This verb " seront " had been substituted for the original term " pourront " (may be). It had been pointed out that it was difficult to understand why only the option had been offered, since, in that case recourse was compulsory. The somewhat indeterminate word " seront " had then been proposed — a word which, while it indicated that there did exist an obligation, in the sense that, should one of the parties go to the Court, the other would be obliged to follow, left unexpressed the fact that there was no obligation to take the case to Court. In view of the criticisms that had been made, the Sub-Committee had thought that it ought to be more explicit. Clearly, when conciliation failed, recourse to the judicial process was a matter of obligation, but such a course was not compulsory. If one of the parties chose to take proceedings, access to the Court was open to it and the other party was bound to submit to the process. If, however, during the conciliation procedure, one party became convinced that the complaints it had been making had not sufficient foundation to warrant its risking an unfavourable decision, it would be incongruous to oblige that party to take proceedings notwithstanding.

The very definite language of the new draft read as follows :

> " In case of a recourse to conciliation and a failure thereof, it will be permissible *(loisible)* for either of the parties, after the lapse of a period of one month from the close of the labours of the Conciliation Commission, to take the dispute before the Permanent Court of International Justice or to call for the constitution of the arbitral tribunal contemplated in Article 18."

Article 21.[1]

This article was merely an adaptation to the present Act of Article 25 of Convention A.

Article 28.[1]

This was the old Article 32 of Convention A.

This text had given rise to many discussions in the plenary meeting, and had received the most careful consideration by the Sub-Committee.

It related to the category of disputes in which the parties were not in controversy with regard to a right, disputes which might be merely conflicts of interest. The question was what, in such case, was the function of the judge ?

It had been stated at the outset that the arbitrator was to apply the rules indicated in the compromise, assuming that the parties chose to indicate the rules which were to form the basis for a decision. If, however, the parties did not fix any rules, it was intimated that :

> " The tribunal shall apply the substantive rules indicated in Article 38 of the Statute of the Permanent Court of International Justice ",

i.e., the rules of convention and custom, and, failing these, the " general principles of law ".

The old text read :

> " In so far as the dispute cannot be settled by the application of the rules of law alone, the Tribunal may exercise the functions of a friendly mediator. "

This expression, " friendly mediator ", had come in for criticism. It had in some quarters been regarded as lacking in precision and even as inaccurate. Reference had been made to the final provision of the Statute of the Court, where it was laid down that the Court might, if the parties agreed, decide *ex æquo et bono.* The Sub-Committee had been asked to keep as closely as possible to the Statute of the Court. It had accordingly adopted the following wording :

> " In so far as no such rules applicable to the dispute are in existence, the tribunal shall adjudicate *ex æquo et bono.* "

This meant that, if a rule of law existed, it was binding upon the judge, but that, if no rules of law existed, he might decide the matter *ex æquo et bono.*

M. Politis wished to draw attention to one objection that had been made, because it might be very important in practice. It had been said, that the existence of a rule of law did not make much difference. Supposing there were such a rule, the judge deciding the case in accordance therewith did not settle the dispute. The relations between the Parties remained strained.

It was in view of such a contingency that some members of the First Committee had stated that, even in such a case, the arbitrator should be given the power to decide as a friendly mediator. It had been unanimously recognised in the Sub-Committee that that would be to authorise the removal of the very basis of international relations. No treaty, not even a treaty of commerce, could continue to exist if one country, complaining of the application of a treaty of commerce by the other contracting party, went before a tribunal and if that tribunal, after noting that the Party to whose action exception had been taken had merely been applying the treaty of commerce, could have the power to alter the treaty and say to the Parties, " For the future, your affairs will be settled by such-and-such rules which I will lay down ". Obviously, in spite of a rule of law which the arbitrator had noted as existing, a dispute might continue on the plane of interests ; if relations continued to be

[1] This article retained the same number in the text adopted by the Assembly.

strained, only one course remained open, namely, to seize the Council, whether in virtue of Article 11 or in virtue of Article 15 of the Covenant.

Such were the explanations regarding Article 28 as it was understood by the Sub-Committee when drafting it. M. Politis had wished to explain it to the Committee to prevent all misunderstanding.

Article 35.[1]

In order to meet one observation that had been made by the Registry of the Permanent Court of International Justice, and which revealed a certain contradiction between the old texts drawn up by the Committee on Arbitration and Security (Article 35 of Convention A) and the corresponding texts of the Statute of the Court, the Sub-Committee had taken up the whole matter afresh and had made a thorough examination of the texts.

The conclusion it had reached was that, to avoid any kind of confusion or contradiction as between what was being done in the Committee and what was already in force in the Statute of the Court, the simplest thing would be to introduce at this point the actual terms of the Statute of the Court. In paragraphs 3 and 4 of this article, it had reproduced those terms : paragraph 3 was merely Article 62 of the Statute of the Court; paragraph 4, in its two parts, was simply Article 64 of the said Statute.

The beginning of paragraph 3 ought to read as follows :

" In the judicial or arbitral procedure, if a third Power . . . "

Article 41.[2]

This article was one of primary importance, because it was, so to speak, the essential piece of the machinery for putting into operation the General Act. It was the text in which provision was made for adhesions, for the way in which they were to be received, the conditions under which they came into effect. Finally, a classification, in series, of these adhesions — made by the Secretariat of the League of Nations — was contemplated, so that the interested Parties, *i.e.*, the Members of the League of Nations, or the public itself might thereby at any moment inform themselves of the progress made, whether in regard to conciliation, arbitration or judicial settlement.

The system of adhesions already adopted in Conventions A, B and C had been slightly modified to take into account the proposals made by the British delegation, as well as the possible extension by the Parties, under Article 38, of their commitments.

Paragraph 3 established a procedure for a practical way of informing public opinion on the progress of undertakings in regard to pacific settlement. It said :

> " The Secretary-General shall cause to be drawn up three lists marked with the letters A, B and C, and corresponding respectively to the three variants as regards the adhesions contemplated under Article 36 of the present Act, in which lists there shall appear the adhesions and the additional declarations of the Contracting Parties. Those lists shall be kept constantly up to date, and shall be published in the annual report made by the Secretary-General to the Assembly. "

Article 43.[3]

Finally, the last article to be mentioned was Article 43, containing a new text for part 2 of paragraph 3. M. Politis had mentioned this text a moment ago. It ran :

> " The denunciation may be only partial, or may consist in the notification of new reservations. "

This provision would help to give the Act that elasticity which must be one of its essential qualities.

Finally, the Sub-Committee proposed that, the General Act should be submitted to the Assembly, with a draft resolution. This draft resolution was composed of twelve paragraphs and contained several elements.

First, part of the preamble which stood at the head of Conventions A and B contained certain declarations, which were borrowed for the most part from the Locarno Agreements, and which had been included in the resolution. The General Act had no preamble.

A certain number of provisions had been added which had formerly appeared in the Convention, and which it had been thought simpler to put into the resolution. He would deal with the paragraphs one by one, so that they might be perfectly clear.

Paragraphs 1, 2 and 3 were a reproduction of paragraphs 4, 2 and 3 of Conventions A. and B.

Paragraph 1 was a new text.

Paragraph 5 was based on paragraph 2 of the preamble to Convention A and Convention B.

Paragraph 6 summarised Articles 37 and 39 of Convention A, which had also been reproduced in Convention B (Articles 30 and 32) and in Convention C (Articles 24 and 26).

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[1] This article had been cut into three parts in the text adopted by the Assembly, and was represented by Articles 35, 36 and 37 of the final text.

[2] This article became Article 43 in the text adopted by the Assembly.

[3] This article became Article 45 in the text adopted by the Assembly.

Paragraph 7 was based on the draft resolution which had been drawn up by the Committee on Arbitration and Security for use in the presentation of Conventions A, B and C.

Paragraph 8 was based on the Preamble of Conventions A, B and C.

Paragraph 9 was a modified form of paragraph 4 of this draft resolution.

Paragraphs 10 and 11 were the reproduction of paragraphs 5 and 6 of the same draft resolution.

Finally, the twelfth and last paragraph was a new formula which completed paragraph 8 of the same document.

M. Politis would conclude by saying that the system which was proposed to the Committee by the Sub-Committee included, for the entry into force of the obligations, the rules of all the three Conventions. It was indicated in paragraph 7 of the Introductory Note which accompanied the Conventions A, B and C how and for what reasons the Committee on Arbitration and Security had been led, after much thought, to abandon the system of signatures and adopt, as being simpler and more practical, the system of adhesions. This system consisted, as indicated in the " Protocol clauses " of Conventions A, B and C, reproduced at the end of the General Act, in regarding these texts — the three Conventions, when there had been three; the General Act now — as a League of Nations document. The three Conventions D, E and F, on the contrary, were " model treaties " offered to the States which desired to take them as the basis for negotiations. The General Act, he would repeat, was a League of Nations document which the Assembly, it was hoped, would consider worthy to be accepted by such States as desired to do so, and which would become alive, and enter into force, as soon as even two States should have accepted any part of it. Two adhesions, therefore, would be sufficient, even though they related only to the simplest part of the Act, the section dealing with conciliation, in order to bring the General Act into force; and it would, without any period of delay, become and remain indefinitely open to the adhesion of all States, whether Members or non-Members of the League of Nations. The States would be invited by the Council to adhere either to the whole or to a part of the Act, with the various possibilities for an extension at any time of the undertakings first accepted, and the possibility of total or partial denunciation at the end of the period.

This system had therefore qualities of simplicity and logic which seemed to M. Politis to be of great value. If the Committee accepted it, and if the Third Committee accepted it later, and if the Assembly approved it after the Third Committee, M. Politis, for his part, was convinced that a great piece of work would have been done. The Assembly would have laid the basis for an institution which he had long been hoping to see, in view of the rapid progress made by compulsory arbitration. It would have laid the basis for a sort of " judicial union " between the States, similar to the Postal Union, the Telegraphic Union and various other unions existing between civilised States for international purposes.

He had no doubt whatever that, if this document won the approval successively of the above three bodies, it would very soon come into force, and would, he felt sure, receive adhesions — cautious and restricted at first, confined perhaps at the outset to conciliation only, that was to say to Chapter I. But very soon, he was equally sure, those adhesions would extend to the forms of judicial settlement; his conviction was born, not merely of sentiment, but of reflection and study.

When M. Politis saw what rapid progress compulsory arbitration had made in the past years, and when he observed the very satisfactory curve this movement was following, he felt certain of success.

At Prague, when the three Rapporteurs of the Committee on Arbitration and Security were meeting under the chairmanship of M. Beneš, to co-ordinate their preliminary efforts, M. Politis had said — and indeed he had written — that it might be useful and highly instructive to have a map, at least of Europe, indicating by lines connecting the various capitals — lines similar to those of a railway, or lines of telegraphic or telephonic communication — the obligations entered into by the States which had agreed to accept arbitration. Such a map might, moreover, be rendered clearer by a very expressive table, a graph in fact.

M. Politis was glad to be able to say that this work had been done and he would like the Committee to see to what it amounted. From the map his colleagues would see, in the middle of each country, a little circle with a figure showing the number of treaties in force. They would be astonished at the large number of treaties — treaties either of conciliation or of arbitration or of judicial settlement — that the majority of European countries, including some of the great Powers, had concluded, and which were in force.

The Committee would find, as he had found, that the graph which accompanied the map was even more eloquent and illuminating. There were three lines — the conciliation movement, the conciliation and arbitration movement, and the movement of those two procedures combined with judicial settlement. There was one curious thing : up to 1925, the line of the conciliation movement had risen rapidly; since that year, however, it had run parallel to the other lines, and it tended even to drop; the second line was rising bit by bit; the third had risen brilliantly.

He would ask his colleagues to look at that graph to observe the movement that was in process all round, and which it would be well to take into account. Doctors followed this method in drawing up a diagram recording the progress of epidemics. The Committee also would have to make a study of the same sort, but happily it would deal, not with an epidemic, but with a great advance that was now being made.

When, by a study of that graph and that map, the Committee would have appreciated the importance of the movement made by arbitration, it would agree with him that the work it was about to accomplish was surrounded by such a particularly favourable atmosphere that there was ground to hope that good, early and fruitful results would be obtained.

The continuation of the discussion was postponed to the next meeting.

TENTH MEETING.

Held on Friday, September 21st, 1928, at 5.30 p.m.

Chairman: M. ERICH (Finland).

19. Pacific Settlement of International Disputes: Consideration of the Draft Conventions on Conciliation, Arbitration and Judicial Settlement prepared by the Committee on Arbitration and Security: Report of the Liaison Sub-Committee (continuation).

Sir William Harrison MOORE (Australia) expressed, on behalf of his delegation, the embarrassment caused to the representatives of a country 12,000 miles away by the substitution, for the draft Conventions and resolutions previously distributed, of a new draft instrument regarding which it was, in effect, impossible for him to seek fresh instructions. The principle of universality in the Covenant imposed on all Members of the League the duty to share actively in its deliberations — a duty that they would discharge badly if they merely refrained from participation in the voting on matters particularly interesting other Members. Certain States thus found it impossible to take an active and important part in the League discussions, and this was not calculated to deepen in such States the sense of their responsibilities.

He would reserve any further remarks to a later stage of the debate.

M. POLITIS (Greece), Rapporteur, replied that he fully appreciated the difficulty of the situation for any delegation whose instructions did not enable it to take an active part, and that he was anxious that the entire liberty of every delegation should be maintained. He thought it his duty, however, to return to his statement of the previous day, namely, that there was no difference of substance between the General Act now under discussion and the three separate Conventions previously communicated to the Governments, which had been merged into the General Act.

M. HOFFINGER (Austria) had thought that the three Conventions could not be amalgamated, and had felt it his duty to propose connecting them by a system of bridges. The edifice proposed by M. Politis, however, constituted a solid and well-balanced building, and one to which he could give his support without any regrets. In the first place, this system would avoid classifying States into three different categories. That was a result apparent to the eye and of definite advantage from the psychological point of view.

Another characteristic of the system was its very great flexibility; it allowed for every reservation. It might even in that respect contain an element of danger; and, without in the least intending to insinuate that a State might, by an abusive reliance on Article 37 and the operation of reservations, give the appearance of having committed itself while remaining, in fact, entirely free, he thought the preamble or the report might express the hope that no abuse would be made of the facilities offered to States unwilling to commit themselves otherwise than subject to reservations.

A third advantage of the General Act consisted in the fact that the States which wished to advance slowly could do so. It was to be hoped that in this way, the States, seeing that the road led towards better things, would in the end give their complete adhesion.

He stated that the work of the Sub-Committee was worthy of admiration and gratitude, and his remarks were not intended as a criticism of its work. He would reserve for a later stage his remarks on points of detail.

M. ITO (Japan) said he would like to ask M. Politis for a few explanations on the scope of the Act then before the First Committee for its consideration.

The Sub-Committee had first considered whether it was desirable to merge the three Conventions into one or to maintain them as they were. It had preferred the first solution. In the system adopted, partial or complete adhesions were permitted. A country would be able, for instance, to say that it accepted Chapters I and IV. In Chapter IV, however, there were several provisions not dealing with the procedure of conciliation. Doubtless, it would be understood that in such a case the provisions not relating to conciliation would not apply. However that might be, it was an element of complication.

During the general discussion, M. Hoffinger had indicated another system; he had just said that he had abandoned it. The method in question had appeared to M. Ito at first sight to be interesting, because it made it possible to establish a connecting link between the three Conventions, while preserving them intact. He enquired why the Sub-Committee had not thought it well to employ the method suggested by M. Hoffinger.

There was a further point on which he would like some information. M. Politis had stated on the previous day that the General Act was a League of Nations document. He, M. Ito,

did not very well understand the precise nature of that document; he did not quite see what distinguished it from any other document of the League. If it were a convention, it must be signed and ratified. If, on the contrary, it was an important instrument, like the Statute of the Permanent Court of International Justice, would it not be necessary to open a Protocol for the signature of the States ?

The General Act provided only for *adhesions*. Hitherto, the process of adhesion had been contemplated for those States that had not participated in the framing of a Convention or had not signed it in due time. In the General Act, the term *adhesion* was used with an entirely new significance. Was there any advantage in adopting such a method ? Would it not be better to use a different term for a different solution, the more so as in Article 42, paragraph 2, the same term was again employed in a different sense from that given to it in an earlier passage ? That was calculated to cause some confusion.

Lastly, he recalled how, during the discussion in the Security Committee, certain countries had contemplated a general convention, while others had emphasised the advantage of bilateral engagements. To-day, the Sub-Committee was submitting a single text. If that were accepted as submitted, the impression would be created that the Assembly had chosen to take one of the roads indicated by the Security Committee, while disregarding the other road, which, nevertheless, had also been accepted by the Security Committee and the value of which several delegations had emphasised.

Why had the Sub-Committee felt that it ought to set aside bilateral conventions ?

Before giving his opinion on the problem as a whole, he would be glad to have an answer to the questions he had put.

M. Politis (Greece), Rapporteur, replying to M. Hoffinger as regards reservations, recalled that the Committee on Arbitration and Security had shown no enthusiasm in its acceptance of the reservations system, but had accepted it as a necessary evil.

The recommendation of which M. Hoffinger had spoken was already contained in a note to Chapter III of the document before the Committee, at the end of the third paragraph (document A.20.1928.IX).

M. Hoffinger (Austria) asked whether that passage of the Introductory Note would be maintained in the report.

M. Politis (Greece), Rapporteur, said it would. Furthermore, as regards reservations, a limitative enumeration had been made. Finally, this new system of reservations would be free from that arbitrary character which the old one had possessed. In the old days, when a country made a reservation, it regarded itself as still the sole judge of its applicability, whereas now it was stipulated that the applicability of a reservation could always be submitted to judicial control.

The reservations system was thus deprived of some of its dangers and so rendered less objectionable.

As regards the question put by M. Ito concerning the rejection of the method suggested by M. Hoffinger, M. Politis said that it had been very carefully studied, but that it had been seen that, in spite of all, the establishment of a connection between all the Contracting States would be more perfectly done by the General Act than by three Conventions joined by a common additional Protocol.

As to the second question put by M. Ito, he pointed out that the General Act made no innovation; it retained the provisions relating to adhesion to Conventions drawn up by the Committee on Arbitration and Security. That Committee had noticed that the system of lists of Heads of States, of the insertion of the names of the plénipotentiaries, and of the procedure of signatures was somewhat complicated and that, neither from the political nor from the practical point of view, did it offer any real advantages. It had thus been decided that it would be better to replace that system by the system of adhesions. There was no longer reason to fear that ratification would be lacking. Adhesion normally suppressed ratification. There would no longer be the risk that countries would give their signature without attaching any great importance to it while awaiting the submission of the question to a Parliament which might perhaps not give its approval. Too often, treaties bearing numerous signatures awaited ratifications which did not come. With the new system, a Government would give its adhesion after having obtained the approval which was necessary under the Constitution.

Not long ago, the League of Nations had been asked whether it was possible to accept an adhesion subject to subsequent ratification. That procedure had not been encouraged. It had been definitely indicated that a provisional adhesion was more or less of an anomaly. Diplomatic practice required that a Government should not adhere to a treaty without being sure of Parliamentary approval; an adhesion once given was something definite by which a country became committed.

He had not very well understood M. Ito's remark to the effect that paragraph 2 of Article 42 would be a relic of the old system. The word " adhesion " had there precisely the same sense as in the other passages : it was the declaration of the willingness of a Government which, it might be supposed, after having previously taken the precaution of obtaining the authorisation required under the Constitution, undertook to assume, to such-and-such a degree, the obligations indicated in the Act to which it was adhering.

His reply to the third question put by M. Ito was that the Committee on Arbitration and Security had had in view at the same time general conventions and bilateral conventions,

The First Committee had had referred to it the whole of the work of the Committee on Arbitration and Security. Bilateral conventions had not been abandoned; they would simply be adapted to the text of the General Act, such as it would be after amendment. It might be hoped that the utility of the system of bilateral conventions would become less if the General Act were adopted, and if it came quickly into force after obtaining some adhesions.

He recalled that, alike with the systems of general conventions and with that of the General Act, it had been specifically foreseen, in a paragraph of the resolution drawn up by the Committee on Arbitration and Security, that those countries which were indisposed to adhere to one of the general conventions lest they should find themselves contractually bound in relation to undetermined States — which desired, in short, to choose their partners — had opened to them a very simple possibility of which they could make such use as they pleased : it was, in fact, the possibility of choosing their partners and of basing any bilateral conventions they might conclude on the provisions of the General Act.

Sir Cecil HURST (British Empire) wished to say something about one of the points upon which M. Ito had touched, namely, the position of those States which preferred to conclude their arbitration agreements in the form of bilateral conventions. Some remarks which M. Politis had made on the previous day had made him feel that one passage might perhaps give rise to misunderstanding; he was quite sure that the passage in question did not correspond with what M. Politis himself meant, because it seemed to be inconsistent with what he understood to have been the general conclusions of the Committee on Arbitration and Security. The passage to which he referred was the following :

> " It was his considered conviction that such action by the Assembly would have the effect of inaugurating what he might call a ' judicial union of civilised States ' analogous to the Postal and Telegraphic Unions long since so firmly established. "

He felt sure that this passage was apt to give rise to misconception. M. Politis himself would remember that the epithet which preceded the words " Postal Union " was " Universal ", and it had never been intended that that method of a general convention should be the only method by which the States would proceed to secure their ends.

Some very interesting memoranda had been distributed to all the Governments, and one of them dealt with arbitration and the best method of developing it; the Government in London had indicated that it very much preferred the system of bilateral engagements. He would like to read a passage from the speech delivered on February 23rd, 1928, by Lord Cushendun, head of the British delegation, and which referred to this matter :

> " I was interested in the speeches made last night by the delegates from two South American States (Chile and the Argentine), both of whom brought to our attention the totally different circumstances with which they are familiar, and the totally different conditions for which they have to provide from those familiar to us in Europe. I was not surprised to hear that; it seems to me to be common sense. What possible object will you gain by having a general treaty in identical terms for all of us, whether big States or small States in Europe, Republics in South America, or Canada or other Dominions of the British Crown ? That all these countries with utterly dissimilar conditions should think they are getting or giving better security by signing some pact in identical terms is a thing I have never been able to understand. I believe that it is a pure delusion. "

This opinion was justified by the fact that, on the very next page, M. Politis said :

> " I quite agree in substance with the representative of the British Empire. I think that at present it is absolutely impossible in practice to conclude a general arbitration treaty between all States and covering all disputes. "

It had transpired, as the discussion had progressed, that while certain representatives were in favour of bilateral treaties, others were in favour exclusively of general treaties, namely, treaties open to any State. Accordingly, at a later stage of the same session, Lord Cushendun had said :

> " I should like to associate myself with what was said just now by the Japanese delegate and I agree that the answer you were good enough to give is satisfactory so far as concerns the point raised by M. Sato ", etc.

That was a very clear statement of the position reached in March. Everybody was interested in arbitration, but it was realised that, on account of the diversity in the position and conditions of States, two doors were open to them : there was the door of the general agreement and the door of bilateral agreements. But both doors led to the same point, namely, obligations to accept arbitration for the settlement of disputes.

That, he thought, was a fair statement of the position, which remained unchanged. The position had been defined with precision over and over again in the meetings of the Committee on Arbitration and Security. It was the duty of all the Members of the League to try and make progress with regard to disarmament, which was inevitably bound up with security. Security could be increased by arbitration, and therefore it was necessary to hasten the development of arbitration. But States were not all in the same position, and therefore it was necessary to allow for a passage by what he had described as the two doors.

Whichever door was chosen, the result would be the same. One door must not be labelled : " For the good boys ", and another " For the bad boys ".

He asked what was meant by " bilateral obligations ". It was hoped that the States would be able to bind themselves by uniform obligations, and the general system of reservations had been included in the acceptance of the general convention. Equally, there was the method by which the terms of the general convention could be accepted by an exchange of notes. He hoped, however, that it was understood by everybody that this did not prevent a State from negotiating its own bilateral agreements, in order to conclude, in the way most suited to its needs, its arbitral obligations.

It was in the light of these observations that he thought there was a little possibility of misconception in the remarks made by M. Politis before the Committee on the previous day. M. Politis had compared the new system to be created by the General Act with something similar to the Universal Postal Union, and he had thus left out of account the other door through which equally good boys could walk, namely, bilateral treaties and special negotiation, which would lead to the same results.

Sir Cecil Hurst did not in any way intend to criticise anything that had been said; he wished merely to say that, in his opinion, the terms of paragraph 10 of the draft General Act before the Committee were perhaps calculated to give rise to some misunderstanding. He read paragraph 10 and said that it was perfectly correct but that it did not go quite so far as he would like, for, as it stood, it was liable to misconception. It looked as if it were intended to proclaim that the only form of bilateral agreement permissible was the acceptance of this General Act by means of special agreements. He noted M. Politis making the sign of negation, which was what he expected; nevertheless, that was a possible interpretation of the text, which might lead to a misunderstanding. He had not an exact amendment in his mind, but, if M. Politis or the members of the Committee who had produced the draft would help him with it, he would be grateful. The amendment to be made, so far as he was concerned, must make it clear that those States which preferred to contract their arbitral obligations by means of bilateral arrangements negotiated between themselves, even if the terms of those treaties differed from the formulæ suggested, would be perfectly at liberty to do so. He had already indicated that his Government thought that it could do more good by concluding bilateral agreements, even if their terms were different from those of the present instrument. What he had said necessarily led to the conclusion that the British Government would not accept the General Act because it would be endeavouring to arrange arbitration treaties which would not form part of the composite whole which had been drafted.

What the Sub-Committee was apparently intending was that this General Act should be an instrument which would become an integral part of the structure of the League. That was the real difference between a unified general convention, which was M. Undén's original proposal, and the new form of a General Act which was to be accepted by the League. His Austrian colleague had likened it to something similar to the Statute of the Permanent Court. That was not an exact analogy, but a very near one. The wish felt by Great Britain to proceed by way of bilateral engagements, not drawn up precisely in the present terms, was shared by other States as well. For instance, judging by what M. Sato had said, the Japanese Government would prefer a bilateral treaty and so also would General de Marinis. Supposing there were many States in that position, what would result ? There would be a General Act, intended to be a part of the structure of the League, which was not going to be accepted by a good many States. Was there not some risk that conditions would be produced similar to those of 1923 and 1924 ? Would it not be wise, before opening the instrument for final acceptance by the Governments concerned, to ask the Governments whether or not they would be prepared to adhere to it in the present form ? He offered that as a suggestion, because it was not for the representative of any State who felt that his own Government would not be likely to accept it, since it preferred bilateral engagements, to offer anything in the way of opposition. That was why he had said that his remarks were merely intended as candid and friendly criticism. He might have been wrong in his attempt to diagnose the difference in essence between a general convention and this General Act, but, as he understood it, a general convention would merely be a convention open to signature, and the number of States which signed it, even if only moderate, would not in any way run counter to the prestige of the League. He thought that, if the Act were adopted in its present form, and if it were not accepted by a great many States, the interests of the League would be compromised.

M. Politis (Greece), Rapporteur, wished to dispel a misunderstanding. It had at no time been the intention of any member of the Sub-Committee to change in the slightest degree the system settled by the Committee on Arbitration and Security. That Committee had desired to leave open the two doors to arbitration of which Sir Cecil Hurst had spoken. Indeed, every State was absolutely free to refrain from passing through either door, and if it did desire to assume an engagement in the matter of arbitration, it could choose whatever form it preferred, bilateral or collective. Not only had there been no desire to show a theoretical preference for either system, but the Committee had refused to show even a political preference, lest the effect should be to put moral pressure upon those States which, in their independent judgment of what their own interests required, were able to accept only bilateral conventions. The General Act was, at any rate, open to such States as were prepared to accept collective undertakings; it was not imposed upon anybody.

It might well be that paragraph 10 justified Sir Cecil Hurst's criticism; it was, however, the literal reproduction of a draft framed by the Committee on Arbitration and Security. It would be easy to put it right, either by adding a mention of the fact that the bilateral conventions were not necessarily to be founded on the General Act, or in any other way.

The expression " judicial union " used by him had caused alarm to Sir Cecil Hurst: but it did represent something that he, M. Politis, hoped might come. It was not such a very long time since the Postal Union had first become universal. In 1867, the French Minister of Posts had gone to Berlin on the invitation of the Prussian Minister, but the French Government had manifested hostility to the conclusion of a general convention, regarding it as contrary to the sound notion of national sovereignty. The state of feeling had undergone a certain evolution since then. Why should it not be the same in regard to the Convention on Arbitration?

He would ask Sir Cecil Hurst to let him have the text of his amendments, which would doubtless be readily accepted.

As regards the supposition that the General Act was to be considered as a constitutional document, a sort of annex to the Covenant, its authors had never had any such intention. Its adoption would simply signify that the League of Nations would think well of any States which, being willing to accept collective engagements, should adhere to the Act.

He hoped his explanations were such as to give Sir Cecil Hurst complete satisfaction.

ELEVENTH MEETING.

Held on Saturday, September 22nd, 1928, at 10 a.m.

Chairman: M. SCIALOJA (Italy).

20. Pacific Settlement of International Disputes: Consideration of the Draft Conventions on Conciliation, Arbitration and Judicial Settlement prepared by the Committee on Arbitration and Security: Report of the Liaison Sub-Committee (continuation).

The CHAIRMAN opened the discussion on the draft Assembly resolution and called on Sir Cecil Hurst to speak (Annex 6).

Sir Cecil HURST (British Empire) wished to submit several amendments to the text before the Committee (Annex 6 *a*).

In the first place he proposed the insertion at the very beginning of the text of the resolution of a new paragraph which should run as follows:

> " The Assembly,
>
> " Firmly convinced that effective machinery for ensuring the peaceful settlement of international disputes is an essential element in the cause of security and disarmament;"

Then would come paragraphs 1, 2, 3, 4 and 5 of the draft proposed by the Sub-Committee, which would become paragraphs 2, 3, 4, 5 and 6 of Sir Cecil Hurst's draft. Then paragraph 7 would read:

> " Invites all States, whether Members of the League or not and in so far as their existing agreements do not already achieve this end, to accept obligations in pursuance of the above purpose either by becoming parties to the annexed General Act for the Pacific Settlement of International Disputes or by concluding particular conventions with individual States in such terms as may be deemed appropriate. "

Paragraph 8 would run:

> " Draws the attention of Governments to the fact that, if they may not feel able to become parties to the General Act, they may bring the rules therein contained into force as between themselves and individual States by means of special agreements or by a simple exchange of notes; "

Then paragraph 9:

> " Resolves to communicate the annexed General Act to all Members of the League of Nations and to such States not Members of the League as may be indicated by the Council, for accession thereto in the manner and form indicated, and subject, if so desired, to such reservations as are laid down; "

Then paragraph 10:

> " Requests the Council to give the Secretariat of the League of Nations instructions to keep a list of the engagements contracted in accordance with the terms of the present resolution, either by general acceptance of the provisions of the General Act, or by the acceptance of these provisions as between particular States, or by the conclusion of particular conventions with the same object, so as to enable Members of the League and States non-Members of the League to obtain information as soon as possible. "

Paragraph 6 of the draft resolution proposed by the Sub-Committee ought to be embodied in the General Act in order that such a stipulation might become binding upon those States not Members of the League of Nations that might adhere to the General Act. The mere fact of its inclusion in the Assembly resolution would not bind such States.

M. Rolin (Belgium) wished to make a few remarks in confirmation and support of the statement of the Rapporteur, and in reply to some objections or apprehensions that had been expressed during the preceding meeting.

The observations that had been made were of three kinds — technical observations, political observations and, what might be called, observations of expediency — which were also somewhat political in aspect.

From the technical point of view, it had been stated that the Sub-Committee had substituted a single instrument for the three separate models. Questions had also been raised about the idea of adhesions and the meaning of the designation " General Act ".

He could reply to the first point quite shortly. M. Ito had merely expressed regret that the suggestions of the Austrian delegate had not been utilised, suggestions which that delegate had himself abandoned. He, the Rapporteur, had told the Committee that an attempt had been made to work along that line, but that great difficulties had revealed themselves. If it were intended that adhesion to Convention A should, by implication, carry with it adhesion to Convention C, and that, conversely, adhesion to Convention C should entail contractual relations between the signatories of C and A, it became necessary to produce, not identical Protocols for the three Conventions, but one single Protocol. Each State, even though its desire was to adhere only to the least burdensome of the Conventions, would have been obliged to explain to its Parliament the substance of the two others, since the adhesion of other States to those Conventions would be able to create certain legal relations with the State adhering only to the third. Really, the system was too cumbersome.

M. Hoffinger had himself said to M. Rolin on the previous day that he had tried to draw up the Protocol whose general character he had indicated, and had convinced himself of the difficulties which that task presented.

In regard to the idea of adhesions, M. Ito had very clearly stated that general adhesion was a procedure already familiar in connection with labour conventions, and had, moreover, been long in use in the case of conventions open for the acceptance of States other than those which had signed them.

It was that traditional and old notion which underlay the procedure proposed, and which the Committee on Arbitration and Security had had in mind. An examination of the model Conventions A, B and C would show that, although the contractual form was given to them, there was nevertheless no mention of plenipotentiaries. The texts had not in reality been negotiated by a Conference of Plenipotentiaries, for a great many States had not been represented on the Committee on Arbitration and Security, nor had the members of that Committee themselves been given the power to negotiate and sign a convention.

For practical reasons, the Committee on Arbitration and Security had therefore contemplated that the States should be able to become parties to the Conventions by simply adhering to them. There was thus at the same time an absence of the elements of an immediately existing contract and the existence in law of an Act which was capable of becoming a Convention.

It had been asked what was the significance of that Act. The word signified an instrument and nothing more, *i.e.*, a Convention *in spe*, which would become a Convention when two States had adhered to it. The word "Convention " would therefore be inaccurate and premature, whereas the word "Act" appeared to be appropriate. It involved no idea of special solemnity. It had seemed that this was the only suitable technical word apart from the word " model ", which had been discarded as it might give rise to ambiguity.

As regards the provision made for signature by the President and the Secretary-General, he explained that this was a formality which was merely intended to give authenticity to the document, which would ultimately have to be laid before the Parliaments. It was necessary to supply some equivalent for the signing by the States of a Convention negotiated by a Conference.

There was no more reason for objecting to the submitting of this Act for approval by Parliaments than there had been, in the case of the Treaties of Peace, to the submission of the Covenant for the approval of the Parliaments of non-signatory States.

The Act was a *res inter alios acta*, and would continue as such for as long as the Governments should not have adhered to it. There was therefore no ground for criticising the work of the Sub-Committee from a technical point of view. The most serious objections were those of a political kind.

Sir Cecil Hurst had expressed his preference for special conventions. He, M. Rolin, had heard with considerable pleasure the declaration made by Sir Cecil Hurst. Although the British Empire took a justifiable pride in having made more use than any other State of arbitration, it had, in past years, for reasons both psychological and constitutional, raised very serious objections against the adoption of abstract obligations — even those having the form of special conventions — which contemplated arbitration in the case of a large number of disputes.

The British Government had contented itself with renewing its pre-war conventiont and, while remaining faithful to arbitration, had taken no share in the recent movemens.

for multiplying conventions. It now appeared that the British Government regarded the development of the procedure of special conventions as beneficent and fruitful.

The countries which showed the greatest desire for a single Act, which was capable of becoming a general convention, might not have had a very long experience of arbitration, but they had had experience of special conventions. They had, in recent years, gone farthest along that road, and, having passed through the little door favoured by Lord Cushendun, now desired to pass through the other little door.

Having negotiated a great many treaties, they had come to the conclusion that, though there might, indeed, be political differences between the conventions, most of them were technical in character and were due to the accidental circumstances of the preferences of such-and-such negotiator. Such divergences, having no real justification, might in the long run become a serious evil.

It was perhaps therefore a practical juridical necessity rather than a desire for the development of arbitration that had led certain States to contemplate the standardisation, or — to employ a not altogether accurate term that was sometimes used — a codification, of the regulations laid down in two hundred special conventions. Different terms were frequently attached to practically equivalent obligations, and the Permanent Court of International Justice, when it should have interpreted one of those special conventions, would not have established a judicial tradition or created the indispensable legal security; the States signatory to other conventions would not have had any certainty as to the interpretation that might be put upon their engagements.

It was therefore necessary to simplify and unify the terminology of conventions on arbitration, nine-tenths of which, since the Locarno Agreements, had been based upon those latter agreements. What was desired was to internationalise the formulæ by generalising and simplifing them. The need for a unification of arbitral procedures had been realised and the Committee had endeavoured to do this.

He desired to reply to another remark that had struck him as being rather more serious.

Sir Cecil Hurst and other speakers had talked of the constitutional rôle that that Act was going to fill within the League of Nations. The British delegate, considering that his Government was not able to adhere to it, had said : " You are going to create within the League of Nations an internal arrangement from which certain Members will be excluded. Will you not in that way have injured seriously the indispensable unity of the League of Nations ? "

If those fears had seemed to him well founded, he, M. Rolin, despite his desire to attain to a unification in arbitral matters, would have preferred to give up his idea, for the interest of the League of Nations must come before everything else. But, in his view, no such danger existed. In point of fact, arbitration and conciliation had a much longer history than the League, though they had been much discussed in Geneva during the past eight years; nor were those procedures peculiar to the League. Arbitration and conciliation might be described as institutions concurrent with, but not competing against, the League of Nations. for they aimed at the same objects. Arbitration procedure had existed from the earliest antiquity and it would have been impossible for the Covenant not to make provision for it.

Mention had been made of the Statute of the Permanent Court of International Justice. That Court, though created by the League of Nations, was only in a partial sense one of its organs. It did indeed render advisory opinions, but, in addition, it was an international organ appointed to give decisions on disputes between States. States not Members of the League had been invited to accede to it and they had not raised any objection of principle, for it would not entail for them legal relations with the League of Nations.

What was partly true of the Permanent Court was entirely true of arbitration. The intervention of the Council of the League was not implied as a matter of necessity in the General Act; the latter had been regarded as being of use in connection with the general work of the League, but it had no administrative or constitutional relation with it. Doubtless, the undertakings covered by Articles 13, 14 and 15 of the Covenant had been extended. It had been desired to give States the means of carrying to the extreme point their arbitration obligations, but it had not been proposed to annex this procedure to the League of Nations.

It had been in order to allay the very apprehension expressed by the British delegate that there had been eliminated from the Act those two articles in the old models A, B and C, which referred to the Council of the League of Nations, articles which, by what appeared to him a contradiction, Sir Cecil Hurst desired to see restored in the General Act.

The Sub-Committee had considered it impossible to declare the Act open to all States and at the same time to ask the States which were not Members of the League to recognise the obligations and the functions of the Council.

As regards the maintenance of peace, the carrying out of obligations and of arbitral awards, the relations between Members of the League and non-Member States — the Committee had sought to maintain intact the provisions of the Covenant.

The last question raised had been that of expediency. The Australian delegate had drawn the Committee's attention to the special difficulties in which his delegation was put by being confronted during the session with proposals which appeared to put on one side those that his Government had been able to consider.

It was to be noted that no substantial difference between the models A, B, and C and the new General Act had been pointed out by the Australian delegate or the other speakers. On the other hand, this recommendation of the Assembly in which the Australian

Government would have participated would not give rise to any obligations for that Government; there were no innovations as regards procedure, except in points of detail. There had merely been an extension of the facilities for adhesion and a development of the system of possible reservations. What important element was there which could be characterised as new ?

Sir Cecil Hurst's explanations had seemed to be in harmony with those of the Australian delegate. Australia and the British Empire were not at the moment contemplating the possibility of adhering, in the future, to the General Act; under those conditions, he would ask the Australian delegate whether it was necessary to allow further time for reflection.

He could quote two precedents which proved that the League of Nations had already been in the position where several of its Members had felt it necessary to make use of their Geneva meetings in order to carry their international obligations further than the other Members had felt it possible to go. The first precedent concerned the Statute of the Permanent Court of International Justice.

At the first ordinary session of the Assembly, the question whether the jurisdiction of the Court was or was not to be obligatory had arisen. The Preparatory Committee had proposed that there should be a general obligation to arbitrate disputes of a legal nature, and proposed it unanimously. In the Assembly two schools of thought had revealed themselves. Some Members considered that the time had not yet come to set up such an obligation, while others were very much in favour of it. On the initiative of M. Raoul Fernandes the Assembly had decided that those States which wished to take that step should be free mutually to enter into an engagement by means of an independent Protocol.

No one had at that time thought that the spirit of the League of Nations was in that way being disregarded and the recent important adhesions to Article 36 of the Statute of the Permanent Court sufficiently showed how well advised the Assembly had then been.

The Act in view merely developed and gave greater flexibility to Article 36. On the one hand, Article 36 of the Statute was, so to speak, completed in two distinct directions, by the organisation of conciliation and by the organisation — which was optional — of arbitration for non-legal disputes. On the other hand, adhesions could be limited to conciliation only.

M. Rolin would make one last remark : the Statute of the Court had been adopted in the form of a resolution and a Protocol, whereas to-day only a resolution was involved.

In 1920, the Assembly had discussed the organisation of the Court of Justice provided for in the Covenant and given under the Covenant a constitutional rôle; in that case a resolution and a Protocol were indispensable. To-day, the States were not proposing to create an organ of the League; the League was merely going to give those which desired them facilities for completing and extending their obligations in regard to arbitration.

There was another precedent, furnished by the Assembly at its second ordinary session.

In 1921, in a far less important matter, the Fifth Committee, having before it some recommendations of a Conference convened for the suppression of traffic in women, decided by a majority that it was desirable to change the recommendations into a Convention. The delegate of France and several others had raised the most serious objections to such a procedure ; it was impossible for the delegations to take a decision, for they had no instructions, since the text of the recommendations had been altered, and the Convention submitted committed the Governments more than the recommendations adopted by the previous Conference. M. Hanotaux had then specified the new provisions which appeared in the Convention and which were not to be found in the recommendations of the Conference.

First in Committee, then in a plenary meeting, the Assembly, after having heard the urgent appeal of Professor Gilbert Murray and Lord Balfour, had thought it essential to carry out what the majority of the States desired. The President of the Assembly, being called upon to give a ruling as to whether the Assembly should take a majority or unanimous vote in pronouncing on a recommendation to establish in the form of a convention open to the signature of the States what had been nothing more than the recommendations of a previous Conference, had decided in favour of a majority vote.

Several votes having been taken on proposals for adjournment or amendment, the Assembly had finally decided, by 30 votes out of 51, to establish the Convention. M. Rolin was convinced that, if his British colleagues would read again the discussions regarding that matter, they would perceive that the objections they were now putting forward were less cogent to-day than those the French delegation had raised.

There were serious reasons for adopting immediately the present Act, which was calculated to facilitate the work of that Disarmament Conference which everybody so greatly desired; no one would be able to blame the majority of the Committee, which asked the British delegation not to resent its wish to achieve one step towards arbitration.

M. D'Oliveira (Portugal) had been the first to support the proposal of the Swedish delegate for the joining together in a single text of the three model Conventions referred to the Committee. The accomplishment of such a piece of work as was now before the members of the Committee had been more than he had dared to hope for; in the name of his delegation and his Government, he wished to pay a tribute to that achievement. He added that the General Act that had been prepared was the most important result of the work of the ninth ordinary session of the Assembly. Nothing that had been done in the past three weeks would attract so much the attention of that public opinion which watched over the League of Nations.

Like M. Politis, he would remind the Committee that a building was now being set up which the Hague Convention twenty-one years ago had tried to build. Its foundations and its objects were the same.

Having been privileged to take part in the discussions at The Hague, he recalled that it was a Portuguese proposal which had then formed the basis for the discussion of a model treaty of compulsory arbitration.

Those discussions were calculated to put the Committee on its guard against the undue emphasising of precautions and reservations with which, with the best intentions, it might be tempted to surround the draft convention submitted by the Sub-Committee.

The Portuguese proposal had had the support, among many others, of the British, French and United States Governments.

He further pointed out that the idea of rendering easier for the States the signature of a convention proportioned to what their interests or their needs would allow had not been put forward for the first time when the Statute of the Permanent Court of International Justice had been under consideration. It had already been suggested at the Conference of The Hague, where, to satisfy the desire of certain States not to commit themselves entirely, there had been prepared a schedule offering the States the means of binding themselves towards as many States as they pleased and to any extent that suited them.

That Protocol had been drafted by Sir Eyre Crowe, and he well remembered the joy and hope with which the friends of compulsory arbitration had welcomed that innovation. The Protocol, together with the several articles of the world convention for compulsory arbitration, had been adopted by 33 States to 8, with 5 abstentions.

He added that, if success had not at that time been achieved, it was desirable to recall the wave of public feeling that had been aroused by the attitude of those States that had opposed the concluding of that convention. That wave of feeling, he declared, had not yet passed and would only be intensified if a similar failure were to result at the present time.

Some were saying that indifference towards a world convention did not imply indifference towards bilateral conventions, nor that there was a laxity or want of confidence in the practice of arbitration. He would remind the Committee that this was no new argument. Already at The Hague, certain Governments had considered that bilateral conventions were more worthy of encouragement than a world convention.

He would quote, in answer to these objections, the plea voiced at The Hague by Léon Bourgeois, one of the fathers of the League of Nations. (He read some passages from the Minutes.)

Recalling what M. Rolin and M. Politis had said about the countries that were not in a position forthwith to sign a world convention, namely, that they would hardly wish to prevent others from doing so, he (M. d'Oliveira) would go further.

In point of fact, all the reservations and legal difficulties that had vexed the negotiations at The Hague had to a large extent disappeared. There was no longer anything said about the possible contradiction between arbitration treaties and the decisions of national courts, or between those same treaties and the decisions of the Parliaments; it had at that time been supposed that a treaty that did not mention the clause concerning vital interests and the national honour of a State would be Utopian. How many treaties had not now been concluded by States, both great and small, without any reservation at all ? Had there not been some exaggeration in the fears expressed at The Hague by certain countries ?

No one must expect, of course, to reach perfection, but that ought not to prevent the League of Nations from carrying on its work, and if what was being attempted could be only of limited scope, why so many objections to it ? Even if it had no more than a moral value, it was necessary to give satisfaction to public opinion and to carry forward in the current of compulsory arbitration those States which might be more or less refractory in the matter. That was a step forward which had been promised to the world, and which the Committee had no right to refuse to take.

M. Politis had spoken of a judicial union which had to be created between the nations of the world. Twenty-one years ago he, M. d'Oliveira, had expressed the same opinion. Moreover, why should the idea be so disturbing, considering that the Covenant itself contained the general obligation to resort to arbitration ? All the States had accepted the Covenant and, in order legally to observe its terms, there were some general provisions which were of universal application, although as regards certain details, the obligation could be limited to dealings with specified States. But if it were a question of recourse to an arbitral tribunal, to the Permanent Court, to the Council, or to a Committee of Conciliation, what State could conceivably be refused the benefit of such procedure ? How could anyone declare at Geneva that it was not possible to establish a world convention for compulsory arbitration, which would amount to saying that arbitration must be excluded from the code of international law that was in process of being prepared ? It would be impossible to include arbitration there as a general and universal provision, for it was to be confined to bilateral treaties.

What sense of security, however, the peoples would have if there were instituted a general convention for compulsory arbitration almost without reservations ! No doubt such a result was premature, but that was no reason for not starting on the path which would lead to this.

Portugal had traditions in the matter of arbitration, and had herself experienced the happy effects of that institution.

M. d'Oliveira thought that the proposal had perhaps been sufficiently studied by members of the Assembly. He would beg the Committee not to lose sight of the general interest that ought to guide it in that matter, and not to exaggerate the difficulties that might confront it. He would ask it to approve the charter of compulsory arbitration now before it.

The League of Nations ought not to attend exclusively to European interests. The document referred to it answered a worldwide desire. A failure in that regard would thus

be particularly hurtful to the prestige of the League of Nations. People must not be able to say of the jurists that those who speak of the law are afraid to apply it.

Sir William Harrison Moore (Australia) desired, in the first place, to observe that the procedure which the League of Nations wished to evolve did not seem as yet to be clearly understood by everybody. On the other hand, he would add that the terminology employed was not always sufficiently self-explanatory.

Returning to the principal point under discussion, he recalled the two conclusions that had been arrived at when, during the eighth ordinary session of the Assembly, the First Committee had considered that question — on a motion from the Norwegian delegation. Two principles had been laid down : first, that conciliation and arbitration were of equal importance and worthy of the same measure of attention ; secondly, that general conventions or bilateral conventions were also of equal importance and ought to be studied simultaneously.

The question had then been submitted to the Committee on Arbitration and Security, which had endorsed those two conclusions. The report of the Sub-Committee did not appear to have paid heed to both of those conclusions. It seemed to have put on one side the bilateral conventions. True, it was possible to read between the lines that complete liberty to contract bilateral conventions had been recognised — but these latter conventions had not been openly placed on a footing of equality with general conventions.

Sir Cecil Hurst's draft appeared to remedy matters somewhat by giving bilateral conventions their proper place.

M. Politis (Greece) wished to reply to the speech of the Australian delegate. He had on the previous day slightly criticised the Sub-Committee for having left rather on one side the bilateral conventions prepared by the Committee on Arbitration and Security. M. Politis would repeat that this had never been the intention of the Sub-Committee. He wished to put at ease those who, preferring the method of bilateral engagements, were anxious that the model bilateral treaties should be recommended, together with the General Act, for the approval of the States.

M. Limburg (Netherlands) wished to make a declaration covering four points :

1. The Sub-Committee's work was in every respect excellent. From the juridical point of view it was above reproach, and it was worthy of a very warm tribute.

2. Inasmuch as the General Act was a perfect combination of the three model Conventions, no one could raise opposition to it without making the same opposition against the three model Conventions.

He would, in passing, reply to M. Ito, who had asked whether difficulties might not arise in the case of a State adhering to Chapters I and IV, which concerned, respectively, conciliation and the general provisions.

It would be sufficient to read successively the provisions of the several articles of Chapter IV in order to perceive that no complications could arise ; no article could apply unless there was a basis for that article. It was true that Chapter IV contained articles which had nothing to do with conciliation, but it was, on the other hand, beyond dispute that a country which adhered only in respect of conciliation had nothing to do with those articles.

3. He agreed with the Rapporteur's explanations to the effect that the place given to bilateral conventions was exactly the same as that given to the General Act. Sir Cecil Hurst ought therefore to be entirely reassured.

4. He had not the least fear that the edifice which was being raised could injure the prestige of the League of Nations. The League was merely contributing, by that General Act, to the development of conciliation and the judicial settlement of disputes. The question whether the extent of that contribution would be greater or less would receive a reply in the future. It was not therefore the League of Nations which was threatened with any detriment whatever. That could only happen to the States which were unwilling to adhere to any part of the General Act.

He wished to thank the Sub-Committee for having partly taken into account the written remarks he had sent in. While he was not altogether satisfied, he was, nevertheless, grateful to the Sub-Committee. He was particularly happy to see that the definition of legal disputes had been amended and amplified by the addition of the new sentence which contemplated the four categories of legal disputes mentioned in Article 13 of the Covenant and in Article 36 of the Statute of the Court.

Finally, he would propose the suppression of reservation (*c*) in Article 36.

M. Cassin (France) announced that the French delegation was in favour of the adoption of the proposals of the Sub-Committee. Nevertheless, some of the points that had been made during the discussion called for a few comments.

He desired, in the first place, to reassure Sir Cecil Hurst with regard to the opinions of the French delegation on the procedures of general and special agreements. He was sure M. Politis had not intended to modify the general sense of the conclusions of the Committee on Arbitration and Security. The French delegation had therefore decided to support Sir Cecil Hurst's amendments if they could have the effect of reassuring him. The French delegation would, however, ask for an opportunity to compare the French and English texts. In the interest of efficient working methods, his delegation hoped that the resolutions of the Committee on Arbitration and Security would be altered as little as possible in order that nothing should be done to weaken the recommendation to the States to sign general or special arbitration treaties. It was possible that there were some special treaties which would shortly

be coming to an end, and he hoped that various States, having a good model, would base their new treaties upon it. The same remark applied to treaties of conciliation.

As regards the unitary structure of the Act, the French delegation, having desired that the draft of the Committee on Arbitration and Security should be interfered with as little as possible, had not proposed that unitary form. There was, however, no doubt that, from a technical point of view, the result had proved excellent and there could be no reason for objecting to it.

He wished, in the next place, to reassure those who had made observations and expressed fears with regard to the general form. He remembered that, in the draft Protocol of 1924, the part relating to the settlement of international controversies had contemplated amendments to the Covenant. In the draft now under discussion, on the other hand, the Covenant, which constituted the common law of all the States, was left untouched.

Those, therefore, who feared that the new form might work a change in the structure of the Covenant could be entirely reassured. It might be hoped that in the future, as the advantages of the General Act became clear, the reservations would disappear.

The third point on which he wished to speak was what had been referred to as the " maturity " of the draft. Some of the speakers, though they had not said it in so many words, had thought, or appeared to think, that the work that had been done had taken an unexpected turn. Having been particularly struck by that suggestion, he had, like Sir Cecil Hurst, referred to the work of the Committee on Arbitration and Security. After having done so, he had formed a different opinion.

Even during the February session, the discussion in that Committee had clearly foreshadowed the submission of a text by the Assembly for the adhesion of the States. The expression used had been not " one draft " but " three drafts ", but the idea that some document should emerge from the present session of the Assembly had occurred in most of the conversations. In support of this contention, he quoted several passages from the Minutes of the Committee on Arbitration and Security. In February, a declaration had been made by M. Paul-Boncour and, in July, declarations by M. Beneš and M. Politis, to the effect that the drafts would become documents of the forthcoming session of the Assembly of the League and that the Convention would become a reality as soon as it had received two adhesions. So, too, Lord Cushendun, while reserving the liberty of his country, had declared that he had no objection to make.

Finally, on page 32, of document C.358.M.112, there was a draft resolution of the Committee on Arbitration and Security which had been discussed and adopted, whereby all the States, whether Members or not of the League of Nations, were recommended to adhere to the model general Conventions.

The Committee ought therefore to be reassured. The Sub-Committee had not, in its work, made any unconscious transition; it had scrupulously confined itself to developing what the Committee on Arbitration and Security had originally had in view.

Lastly, he thought it would be a serious thing, when the Paris Pact had just lately been signed and everybody had been proclaiming the necessity of resorting to pacific procedures, to miss the present opportunity for organising such procedures.

He would pass now to his last point : the relation between the work of the First and Third Committees. In the Third Committee a few days previously, some pacts of mutual assistance, that was to say, pacts of security, had been approved. It must not be forgotten that there was an intimate connection between regulations relating to pacific procedures, security and the question with which the Preparatory Commission was now dealing, namely, disarmament.

In those circumstances, he would support Sir Cecil Hurst's amendment in favour of putting at the beginning of the General Act a reminder of the connection existing between arbitration, security and disarmament.

M. Tumedei (Italy) observed that the discussion had been focussed on the following essential question : Ought the Committee to confine itself to preparing models, or ought it to draw up a General Act ? He would not go back, as M. Cassin had done, to the discussions in the Committee on Arbitration and Security. It would not have been difficult for him to quote numerous passages in the opposite sense. The truth was that there had, perhaps, been at that time a variety of views.

Since it was possible to find anything one wanted in a volume of 356 pages it would be better, he thought, to discuss the question itself. To him there seemed to be a substantial difference between the simple models and the General Act. M. Politis and M. Rolin held a different opinion, but the reasoning they had used, to the effect that every State was free to accept or to refuse the General Act, was rather too simple. From the theoretical point of view it was true, but in actual fact it was, no doubt, less so. In point of fact, when the General Act was in force, the States which were already parties to it would naturally wish to see the other States give their adhesions, and indeed to see them do so to the widest possible extent. Thus, a sort of moral pressure would be exercised.

He cited the example of the Statute of the Permanent Court at The Hague, observing that adhesion to that Statute was more and more taking on the character of a political act. Furthermore, in the proposals drafted by the Committee on Arbitration and Security, was it not stated that it would be for the Council to use its good offices with a view to the conclusion by the States of treaties of arbitration and security ?

When the General Act was adopted, it would probably be desired that those same good offices should be used to obtain from the States a very wide adhesion thereto.

It would not, however, be right to ignore the difficulties which many States might see in the way of accepting the General Act. The reason for this was that no State could know in advance the States in relation to which it was becoming bound. It would never be possible to know this, since there would always be States which might sign subsequently.

He recalled the comparison often made between arbitration treaties and clothes : it was not desirable to make them before they were needed : tailors should make them to the measurements of each customer. It was no doubt a similar idea that underlay Article 37 of the General Act, where, in paragraph *(d)*, the possibility had had to be admitted of a reservation in respect of disputes concerning specified questions or special clearly defined subject-matters. Nothing else would have been possible. When a State was concluding bilateral treaties, special treaties, it very well knew which would be the specific questions and the special subject-matters which, in the existing state of affairs, it would not be possible to refer to arbitration, though it might perhaps become possible at some subsequent time. That being so, only a very moderate use would be made of that reservation.

In the case, however, of a general treaty, it was not possible to foresee what those matters would be, differing as they would, according as one or another State was involved. Consequently, a very wide use of the reservations would be made, a greater number of points being enumerated.

The Portuguese delegate had spoken of the " mountains of reservations " which had been put forward at The Hague; he said they had terrified him. M. Tumedei had the same feeling. It would never do, at one and the same time, to declare that reservations were not to be recommended and to create a situation in which they would, by the force of circumstances, be caused to multiply.

He recalled that M. Rolin had not dwelt on the fact that certain States would not be able to accept the General Act. In M. Tumedei's view, this was a serious element, for, when that Act had been signed by some States and not by others, the unity that ought to dominate the work of the League of Nations would be prejudiced.

M. Rolin (Belgium) recalled that the case was similar as regards Article 36 of the Statute of the Permanent Court.

M. Tumedei (Italy) said he none the less thought the situation would be one of some delicacy.

Moreover, he added, the Committee ought not to let itself believe that it would be possible once for all to crystallise the form of arbitration treaties. True, he did not deny the usefulness of a certain measure of unification; the models which had been drawn up were a step along that path. That was why he had assented to them, but he doubted if unification could be carried beyond certain limits. Otherwise, a mistake would be made from the juridical point of view.

The Committee was concerned with a subject which was, at the moment, in process of continuous evolution. The evidence for this was that, up to 1914, conciliation had been applied only by a small number of South American States; the idea was quite foreign to European practice. That fact alone sufficed to show the difficulty there would be in crystallising a matter which was still in course of development.

It was for these reasons that M. Tumedei preferred model conventions to a single Act, even though it should have three divisions. The three models better emphasised the liberty left to the States to conclude either bilateral treaties or general treaties.

It was true that the Committee had had no idea of depreciating bilateral treaties, but it was equally true that, given a unified Act, the treaties would be pushed into the background. His point might perhaps be rather subtle, but it was an important one.

He had not been convinced by M. Limburg's reasoning. He agreed with M. Ito in regard to Article 36 and, like him, he thought that that article might sometimes cause embarrassment to States in requiring them to distinguish in each article parts relating to the procedures respectively of conciliation, arbitration and judicial settlement.

In conclusion, he recalled that he had not concealed his preferences. He was not, however, in a position to make any concrete proposal. He would confine himself to saying that the Committee ought to think carefully before making its choice between the three models and the General Act. In any case, he would support, in principle, the amendments Sir Cecil Hurst had proposed.

M. Undén (Sweden), as a member of the Sub-Committee, endorsed the statements of M. Politis and M. Rolin upon the general character of the draft. At the same time, he thought that, by accepting an amendment in the form suggested by Sir Cecil Hurst, the Committee would be expressing with additional clearness the thought of the Sub-Committee.

He wished to lay stress upon a special question dealt with in the preamble and also in the text, and which had been discussed in the Sub-Committee in connection with a note from M. Castberg, the Norwegian delegate. It concerned the provisions contained in Convention A dealing with the powers of an arbitral tribunal to decide, on non-legal questions, in the capacity of friendly mediator, an expression replaced in the new text by the rule in Article 28 whereunder the tribunal would have power to decide *ex æquo et bono*. The Norwegian delegate had urged that that rule in Convention A was in contradiction with the preamble, the latter laying down that an arbitral tribunal was bound by existing treaties and the rules of international law, and he had proposed that the preamble should be amended.

The discussion in the Sub-Committee had revealed a difference of opinion as to the meaning of the provision conferring on an arbitral tribunal the power to take decisions *ex æquo et bono*, or in the capacity of friendly mediator, in the case of non-legal disputes.

No doubt there did exist arbitration treaties which contained similar clauses and which, giving effect to the intentions of the two parties, conferred on a tribunal an even wider power than was vested in the Council of the League of Nations by the Covenant. Nevertheless, the Committee was not now concerned with the interpretation of the existing arbitration treaties, but with the drafting of a new convention. Members of the Sub-Committee had accordingly agreed to make no change in the preamble. They had confined themselves to amending the wording of Article 28 so as to indicate better that the arbitral tribunal was bound by the rules of law in force at the time, which meant that it must not regard itself as authorised to revise existing treaties.

But even so, it was still difficult to determine the exact meaning of the rule dealing with the right of a tribunal to decide *ex æquo et bono*. In the draft before the Committee, that rule was specially intended to cover cases where existing international law furnished no rules for a solution of the question referred to the tribunal.

Again, questions which, under Article 15, paragraph 8, of the Covenant, were to be considered as falling within the exclusive jurisdiction of the parties might none the less form the subject of a decision *ex æquo et bono*. On the other hand, however, a State might, under Article 37, by means of a reservation, exclude such questions from the sphere of arbitration.

He wanted to make that reply to the considerations M. Castberg had advanced on a problem of particular interest to those States that were prepared to accept arbitration in the widest sense of the word, in conformity with the fundamental ideas of the draft submitted by the Norwegian Government to the Committee on Arbitration and Security.

Mr. Costello (Irish Free State) desired, in reply to some of M. Rolin's remarks, to put on record that the Irish Free State was entirely in favour of the draft which M. Politis and the Sub-Committee had submitted, and considered that a great step would have been taken in the development of arbitration throughout the world if that draft should be adopted.

Sir Cecil Hurst was of the opinion that the adoption of the General Act would be a source of danger to the League of Nations, and that the danger would not be so great if the General Act were replaced by a convention. There might be some risk if those observations were correct, but he did not think they were.

From the point of view of principle, the amalgamated draft did not seem to him to differ in the slightest degree from the separate drafts; and if the work of the Committee was to end in a set-back, the explanation would have to be sought, not in the mere form of the draft, but elsewhere.

M. Castberg (Norway) pointed out that the draft General Act gave the arbitral tribunals jurisdiction to decide, in the absence of express reservations by the parties, on disputes concerning questions left by international law to the exclusive jurisdiction of the States. The draft Assembly resolution at the same time laid down that respect for the rights of States resulting from international law was obligatory upon international tribunals.

While maintaining that there was here a certain contradiction as between the principles enunciated in the draft resolution and the text of the draft General Act, he would vote for the proposed resolution.

He agreed, however, with the opinion of M. Undén that the resolution of the Assembly could have no effect upon the interpretation of other arbitration treaties which already existed or might in future be concluded.

Dr. von Simson (Germany) declared, in the name of the German delegation, that he accepted the text submitted for the approval of the Committee by the Sub-Committee.

The amendments suggested by Sir Cecil Hurst seemed to him calculated to meet the objections made by several delegations. Those objections were due to fears lest the bilateral treaties should be pushed into the background, although those treaties were preferred by several States and had one special quality which was to enable a State — as the Italian delegate had noted — to go further than it could go in a general treaty.

He therefore agreed to those amendments, though he desired to make one remark about the note appended by Sir Cecil Hurst to the draft resolution. The British delegate had proposed that the old Article A 39 (B. 32, C. 26) should be included in the General Act, and had given as his reason the fact that a clause of that kind, being merely embodied in the Assembly resolution, would not be binding upon States not Members of the League that might accept the General Act. He, Dr. von Simson, thought it better that that clause should remain in the resolution lest it should create difficulty for non-Member States that might desire to accept the Act.

Reference had been made during the latter part of the discussion to Article 28. One general remark was necessary here. The General Act might be considered essentially as an attempt to cover all the possibilities of arbitral procedure : this was evident from the very text of Article 21 of Chapter III, which dealt with non-legal disputes without exception.

Article 28, however, which gave the rules on which the tribunal must base its decision, showed that there were certain disputes that remained outside the scope of that entire procedure. The Sub-Committee had been led to word Article 28 in such a way that, even in non-legal disputes, the tribunal would apply the rules of substance indicated in Article 38 of the Statute of the Court, and that it would only be able to decide *ex æquo et bono* if there did not exist any such rules applicable to the disputes in question.

It was clear that there might arise disputes which were due precisely to the existence of a legal position which could not as such be questioned. Such disputes could not be solved

by the application of Article 28; that being so — and it seemed to be the view of M. Politis — the procedures laid down in the Covenant, as for instance that under Article 15, would accordingly remain applicable even if the two parties might have adhered to the General Act in its entirety.

It might therefore be said that the General Act did not embrace every imaginable category of dispute. He did not mean to say that this was a flaw, for it would be difficult in an instrument dealing exclusively with judicial and arbitral procedures to establish detailed rules in regard to those disputes to which he had been referring. This point, however, should be noted.

M. CABALLERO (Paraguay) said he would reserve some of his remarks for the discussion of the several articles. Nevertheless, he desired at once to say that the spirit of moderation, conciliation and compromise which had governed the work of the Sub-Committee in the preparation of the unified Convention now before the Committee was a reason for great satisfaction. It revealed the desire to enlist the maximum number of adhesions, whether of Members or non-Members of the League of Nations.

The draft unified Convention constituted, in his opinion, an organic and coherent whole. Its guiding principles took into account the experience and practice of Geneva and the failures of 1923 and 1924, which had been preceded by detailed technical researches. In that way the continuity of the League's work in the field of arbitration was being safeguarded.

The outstanding characteristic of the Convention — and this it was which made it such a sound and meritorious piece of work — was its elasticity, which was assured in spite of its universal scope. There was reason, in fact, to be suspicious of over-rigid machinery; this Convention after all constituted the development and the complement of Article 12 of the Covenant.

In a word, this unified Convention was capable, by reason of its technical qualities of becoming an important element in the international organisation — and this in spite of its subsidiary character in relation to the general and special obligations created by other conventions — that the States had concluded or might conclude between them.

The CHAIRMAN put to the vote the adoption of the draft General Act, it being understood that the bilateral Conventions A, B and C remained in principle unchanged. Only the articles would then need to be reviewed.

The draft General Act was adopted.

The CHAIRMAN invited any members of the Committee who had amendments to submit to send them in writing to the Secretary of the Committee.

TWELFTH MEETING.

Held on Saturday, September 22nd, 1928, at 6 p.m.

Chairman: M. SCIALOJA (Italy).

21. Date of Meeting of the Conferences on Disarmament and Codification of International Law: Letter from the Fourth Committee.

The CHAIRMAN read a letter from the Chairman of the Fourth Committee stating that it would be impossible for the Conferences on Disarmament and on the Codification of International Law to be held simultaneously in the autumn of 1929. Consequently, the Fourth Committee had decided to suppress the credit set aside for the Conference on Codification in the budget for 1929. This credit would remain for use at the beginning of 1930, unless the Conference on Disarmament had not taken place in 1929. In the latter case, the credits voted for Disarmament could be used for the Conference on Codification up to the sum of 208,500 francs.

The Dutch Government had undertaken to support any further expenditure over and above the sum of 208,500 francs up to an amount not exceeding 128,500 francs.

This communication was noted.

JOINT MEETING OF THE FIRST AND THIRD COMMITTEES

Held on Monday, September 24th, 1928, at 9 a.m.

Chairman: M. SCIALOJA (Italy).

1. Pacific Settlement of International Disputes: Detailed Examination of the Articles of the General Act.

The CHAIRMAN explained that he had decided to call a joint meeting of the two Committees to consider the draft instrument on the Pacific Settlement of International Disputes, the general discussion of which the First Committee had already terminated.

He proposed that the meeting should first consider the preamble, paragraph by paragraph (Annex 7).

This proposal was adopted.

Paragraphs 1, 2 and 3.

Paragraphs 1, 2 and 3 were adopted without comment.

Paragraph 4.

M. POLITIS (Greece), Rapporteur, proposed that, to avoid any confusion, the paragraph should be worded as follows :

" Recognising that the rights of the several States cannot be modified except with the consent of the holders of those rights. "

The CHAIRMAN thought to say, more simply :

" Recognising that the rights of the States cannot be modified except with their consent. "

M. MROZOWSKI (Poland) said he would prefer the singular to the plural, as the plural might be construed in a different way. There might exist rights belonging cumulatively to several States. In those circumstances, he thought the first formula the right one.

The CHAIRMAN observed that the text covered also the rights belonging to a group of States. In such cases, the consent of all the States was necessary.

The Chairman put to the vote paragraph 4, worded as he had suggested.

Paragraph 4, in that form, was adopted.

Paragraphs 5 and 6.

Paragraphs 5 and 6 were adopted without comment.

Paragraph 7.

Dr. VON SIMSON (Germany) said it was also necessary to provide for those cases which were not capable of being settled by arbitral or judicial proceedings. He therefore proposed that the second part of paragraph 7 should be redrafted as follows :

" . . . where a dispute cannot be submitted to arbitral or judicial proceedings, or cannot be solved by those means, or where the conciliation proceedings have failed. "

Count APPONYI (Hungary) observed that there was a difference between the draft under discussion and the original text. The words " regardless, however, of any conciliation or arbitral proceedings " had, in fact, been deleted from paragraph 7.

He was grateful to the Sub-Committee for having proposed that omission, which had largely contributed to dispel the anxiety he had felt in regard to that paragraph.

He recalled that a very important proposal had been made during the discussion of that question in the Sub-Committee, namely, to add the words " without, however, interrupting the action of the arbitral or judicial tribunal ". Having agreed in the Sub-Committee to the text now submitted to the joint meeting, he, Count Apponyi, would not propose the addition of those words, but he would beg the Rapporteur to refer to the point in his report, for it accurately expressed the ideas of the Sub-Committee. In that way, any kind of anxiety that some delegates might feel would be allayed.

M. POLITIS (Greece), Rapporteur, admitted that it had indeed been understood in the Sub-Committee that mention would be made in the report that the action of the League of Nations would not involve an interruption of the proceedings provided for in the Act. On that point Count Apponyi might be entirely satisfied.

Replying to Dr. von Simson, he thought his observation was a sound one. The second part of paragraph 7 contemplated only one of two possible contingencies, namely, that in which the pacific procedure had not been organised; it did not contemplate a different possible contingency, that, namely, in which for want of legal rules the proceedings had not been able to produce a result. It would therefore be well to terminate the second part of paragraph 7 as follows :

" ... Articles 15 and 17 of the Covenant, where the dispute cannot be solved by means of the above-mentioned procedures or, finally, where conciliation proceedings have failed. "

M. CASSIN (France) accepted Dr. von Simson's amendment.

With regard to the deletion of the words " regardless, however, of any conciliation or arbitral proceedings " to which Count Apponyi had referred, M. Cassin explained that the reason why the Sub-Committee had agreed to their suppression was that it had considered that to have entered into the particular circumstances of the League's action would have been to diminish the importance of the principles formulated. At that point the meeting was formulating principles; it was not the moment to enter into their detailed application.

Paragraph 7 was adopted.

Paragraph 8.

Paragraph 8 was adopted.

Paragraph 9.

Dr. VON SIMSON (Germany) proposed that, in paragraph 9, the words " by means of special agreements or " should be suppressed, the possibility of grafting special agreements upon the annexed model having been indicated in the preceding paragraph. The only element of novelty was the form of an exchange of notes.

General DE MARINIS (Italy) thought it would be better, for the sake of greater clearness, to maintain the expression in question.

The CHAIRMAN remarked that one of the clauses in paragraph 9 was unnecessary, for what it stated went without saying, and the mere notes would be of no value if the constitution of a State did not permit of them. It would be better in those conditions to eliminate paragraph 9.

M. POLITIS (Greece), Rapporteur, explained that that paragraph was a reproduction of a formula that had appeared in the draft resolution framed by the Committee on Arbitration and Security with a clearly defined purpose : namely, to allow those States that were unwilling to accede to general conventions, as imposing on them engagements in relation to all the world, to select their associates.

It had been contemplated in the resolution that this might be done by means of negotiations resulting in a special agreement that would reproduce the clauses of the General Conventions — now of the General Act — or even, if their constitution allowed of it, by a simple exchange of notes. The possibility was thus offered to a State of becoming indirectly, and without assuming obligations in relation to all the world, a party to the General Act.

This indication to the States of what was possible to them had been given with a view to encouraging their adhesion to the General Act.

The CHAIRMAN observed that in a legal instrument anything superfluous was dangerous. At bottom, paragraph 9 merely meant that there was no copyright in the text proposed by the League of Nations.

He would continue to press for the elimination of that paragraph.

Paragraph 9 was suppressed.

Paragraph 10.

Sir Cecil HURST (British Empire) said the French text did not seem to him to be quite clear, and he would be glad if the words " dans l'Acte " were added at the end.

M. POLITIS (Greece), Rapporteur, replied that the words " d'y adhérer " showed that the reference was to the General Act. If, however, it was clearer in English to repeat the equivalent of the words " dans l'Acte " at the end of the text, they might say " laid down in the General Act ".

M. ROLIN (Belgium) announced that he was not satisfied with the existing wording because it might give the impression that both the reservations and the conditions were " prescribed ". The intention, on the contrary, was to indicate the choice open as between certain modes of procedure and at the same time the possibility of certain reservations. It would be possible to say " d'y adhérer à leur gré suivant les modalités indiquées ou éventuellement, avec les réserves prévues ". The word " éventuellement " slightly lessened the emphasis on the reservations.

Dr VON SIMSON (Germany) proposed to stop after the words " à leur gré ".

M. ROLIN (Belgium) preferred that suggestion.

The CHAIRMAN thought it necessary to specify that adhesion would also be possible under those conditions, since they were different from the conditions laid down in the other parts of the Act.

M. ROLIN (Belgium) thought that, if everybody was in agreement on the point of substance, the question of drafting might well be left to the Rapporteur.

Sir Cecil HURST (British Empire), while having the fullest confidence in the Rapporteur, said he would like to see the text before it was adopted.

Mr. McLACHLAN (Australia) pointed out that paragraph 10 as submitted to the Committee mentioned that the General Act would be communicated to all States whether or not Members of the League of Nations, but was silent with regard to the bilateral Conventions referred to in paragraph 8. Since, however, those bilateral Conventions were to be on the same footing as the General Act, it would be desirable, in the text of paragraph 10, after the words " resolves to communicate the General Act ", to add the words : " and the model bilateral Conventions ".

M. POLITIS (Greece), Rapporteur, recognised the force of this suggestion. It was in accordance with the desire constantly manifested during the work of the Committee on Arbitration and Security that the views of no State should be disregarded, and that no preference should be marked between the system of general conventions and that of special conventions. It was therefore entirely proper to desire that there should be a mention in that paragraph of bilateral Conventions on the same footing as the General Act.

It might perhaps be possible to say :

> " Resolves to communicate to all States Members of the League and to any other States that might be indicated by the Council, on the one hand, the annexed General Act and, on the other, the model bilateral Conventions, in order that they may, if they so desire, conclude special agreements. "

He made this suggestion subject to the possibility of revising the wording.

M. ROLIN (Belgium) wished to remind his Australian colleague that a mention of the annexed bilateral Conventions already occurred in paragraph 8. Those Conventions therefore were already annexed to the resolution before the meeting.

He could perfectly well understand the communication to States, not Members of the League, of the General Act, to which they were being invited to become parties, but he saw no use in the addition proposed. Indeed, it would cause considerable astonishment, for, while it was easy to understand that the States not Members of the League should be invited to participate in an Act which was regarded as being of interest to them, it would not be understood how the League of Nations could, without exceeding its proper sphere, address, for instance, to the United States of America the model bilateral arbitration Conventions.

The Australian delegate's doubts were answered in paragraph 8. The paragraph now under discussion might be left as it stood.

Mr. McLACHLAN (Australia) said he was not qualified to estimate beforehand how much astonishment the United States might feel upon receiving a document of that kind. He did, however, recognise that there was something in what M. Rolin had said.

He would, however, observe that the paragraph as drafted, in speaking of the communication of the General Act, seemed to give to that Act a preponderant importance as compared with the bilateral Conventions. As, however, it had been understood that the two possibilities were to be placed on a footing of perfect equality, he would ask how that equality might be ensured.

M. POLITIS (Greece), Rapporteur, replied that the Australian delegate's point was certainly a sound one. If, in whatever connection, a superiority seemed to be given to the General Act, it would be a departure from the compromise reached in the Arbitration and Security Committee. If there was to be a communication of the General Act, there must be a similar communication of the bilateral Conventions.

In order to avoid any kind of misunderstanding, the communication might be made to all the Members of the League of Nations and to States not Members indicated by the Council. The latter would consider whether it was politically expedient to communicate both the General Act and the bilateral Conventions to any given non-Member State. No indication would be given as to what the States should do after having received the communication. They would take action upon it at their own discretion.

Consequently, he would suggest that paragraph 10 should be drafted as follows :

> " Resolves to communicate the General Act, together with the annexed model bilateral Conventions, to all Members of the League and to such States not Members of the League as may be indicated by the Council. "

M. LANGE (Norway) had a question to put with regard to those States to whom the documents in question were not to be communicated. He had not been priviliged to take part in the discussions in the First Committee nor had he had time to read the Minutes. He would, however, like to know the purpose of the discrimination that had been made between the States. There were some diminutive States to which it was obviously of no importance to communicate the documents, but to an uninstructed observer the discrimination was a little disturbing.

M. POLITIS (Greece), Rapporteur, replied that the provision in question was common form. Had it not been inserted, the Secretariat would have been obliged to communicate those documents to all the States. It might in some instances have been puzzled to know whether a particular community was really to be regarded as a State. That was a political question which could be settled only by the Council.

M. LANGE (Norway) formally took note of the Rapporteur's statement and of the fact that there was no idea of giving the Council power to make discriminations based on political grounds.

M. ROLIN (Belgium) did not propose to insist upon his point but noted that it was the first time that there had been a decision to send model conventions to States not Members of the League of Nations. He thought such communication was calculated to detract from the effect of the communication of the General Act.

The text as proposed by the Rapporteur was adopted.

Paragraph 11.

Paragraph 11 was adopted without discussion.

CHAPTER I. — CONCILIATION.

Article 1.

Sir Edward CHAMIER (India) thought that, before the discussion opened, it would be well to make clear the point of view of his delegation. It could not view without misgivings the discussions that were proceeding in the " Drafting Committee ", which consisted of more than a hundred members. It was very unlikely that India would accede to the General Act. Moreover, the Indian delegation did not propose to take any part in the discussion, for it considered that the debates up to that point had been much too hurried. Nor was it its intention to take any definite position in regard to the value of the bilateral Conventions. It was less than one hour since the Indian delegation had been able to ascertain the final form of these Conventions. The resolution proposed left all the States free to choose either the General Act or one of the bilateral Conventions or some other Convention drawn up in any form they might consider suitable.

The CHAIRMAN proposed to strike out the words " which may arise ", not merely because they served no useful purpose, but because they might be dangerous — as it might be supposed that that article covered only those disputes which arose after the conclusion of the treaty. Since, however, the question was that of conciliation, the article ought to cover equally those disputes already existing at the time of adhesion.

M. POLITIS (Greece), Rapporteur, saw no objection to the change, more especially as, if any States desired to exclude disputes already existing, Article 39 allowed of their doing so by means of reservations.

Article 1 was adopted subject to the deletion of the words " which may arise ".

Articles 2, 3 and 4.

These articles were adopted without discussion.

Article 5.

M. ROLIN (Belgium) asked that, after the word " appointed ", the words " for the examination of this dispute " should be added.

Article 5 was adopted with this addition.

Article 6.

Paragraph 1.

The CHAIRMAN asked that, after the words " between the parties ", should be added " or the Council of the League of Nations ". Should the parties find difficulty in choosing a third Power, they might, in order to save time, let the Council make the necessary appointment.

M. POLITIS (Greece), Rapporteur, said that the question had been discussed at great length in the Committee on Arbitration and Security. At the first reading of the text, the plan proposed by the Chairman had been adopted. At the second reading, there had been a change of opinion due to the reasons given in the Introductory Note to Chapter II (No. 3). The procedure chosen was based on the provisions of the Hague Convention on the Pacific Settlement of International Disputes.

The CHAIRMAN replied that he did not propose that the Council should be substituted for the parties, but that they should have the option of having recourse to the Council. Should the parties prefer to adopt this procedure, they ought not to be prevented from doing so, for it would allow of a saving of time.

M. POLITIS (Greece), Rapporteur, saw no objection to the proposed procedure since the provision was to remain of an optional character. The existing wording had kept distinct the system of nominating the Conciliation Commissions and that for recruiting the arbitral tribunals; the objection that had troubled the Committee on Security no longer existed.

M. ROLIN (Belgium) proposed the wording " chosen by agreement between the parties or, if they desire, by the Council ".

M. DE PALACIOS (Spain) suggested the text " will be entrusted, by agreement between the parties, to a third Power or to the Council ".

M. POLITIS (Greece), Rapporteur, suggested " chosen by agreement between the parties or, at their request, by the Acting President of the Council of the League of Nations ".

Paragraph 1 as thus amended was adopted.

Paragraph 2.

Paragraph 2 was adopted subject to an amendment consequent upon that effected in paragraph 1.

Paragraph 3.

Paragraph 3 was adopted without discussion.

Articles 7, 8, 9 and 10.

Articles 7, 8, 9 and 10 were adopted without discussion.

Article 11.

Paragraph 1.

M. POLITIS (Greece), Rapporteur, proposed changing the words " failing any provision to the contrary " to read " in the absence of agreement to the contrary between the parties ".

The paragraph as amended was adopted.

Paragraphs 2 and 3.

Paragraphs 2 and 3 were adopted without discussion.

Articles 12, 13 and 14.

Articles 12, 13 and 14 were adopted without discussion.

Article 15.

Paragraph 1.

Paragraph 1 was adopted without discussion.

Paragraph 2.

The CHAIRMAN proposed that, at the end of the paragraph, instead of " taken by a majority vote " the words " taken unanimously or by a majority vote " should be used.

Paragraph 2 as amended was adopted.

Paragraph 3.

Paragraph 3 was adopted without discussion.

Article 16.

Article 16 was adopted without discussion.

CHAPTER II. — JUDICIAL SETTLEMENT.

Article 17.

Article 17 was adopted without discussion.

Article 18.

M. Rolin (Belgium), expressing, as he believed, the idea of his Australian colleague, pointed out that, in spite of the intentions expressed, the substantive rules remained ill-defined, it being difficult to say that the principle of equity optionally admitted by Article 38 was a substantive rule. The stipulation which was being considered would in no way detract from the power of the Court, should the parties agree, to decide *ex æquo et bono*. To make it quite clear, the concluding words of the article should be rendered more precise by putting " the substantive rules indicated as obligatory in Article 38 ".

M. Politis (Greece), Rapporteur, proposed saying " the substantive rules enumerated in Article 38 ".

M. Limburg (Netherlands) thought the effect of that would be to exclude an agreement between the parties to have their dispute decided *ex æquo et bono*.

M. Politis (Greece), Rapporteur, pointed out that the object of the provision was to specify the duty of the tribunal if nothing were laid down in the special agreement. If the parties desired to confer on the tribunal the power to decide by equity, it would be for them to say so. In the case where the special agreement omitted to mention what substantive rules were to be applied, the principle was laid down that the tribunal was to apply the four rules in Article 38 of the Statute of the Court. If the parties desired to give the tribunal power to decide by equity, they would say so.

Article 18 was adopted, with the substitution in the last line but one of the word " enumerated " *for the word* " indicated ".

Article 19.

Article 19 was adopted without discussion.

Article 20.

Article 20 was adopted without discussion.

Chapter III. — Arbitration.

Article 21.

The Chairman thought that the concluding words of the article were unnecessary. It was his intention to suggest the insertion of the words " in the absence of contrary agreement between the parties " in the following article.

M. Politis (Greece), Rapporteur, replied that, if those words were transferred from Article 21 to Article 22, they would cover only the composition of the tribunal and not the choice of the judge. He thought it would be better to maintain the text of Article 21 as it stood. In order, however, to avoid the use of the word " sauf " twice in the same sentence, he would suggest wording the last part of Article 21 " before an arbitral tribunal which, unless the parties otherwise agree, shall be constituted in the manner set out below ".

Article 21 as amended was adopted.

Article 22.

Article 22 was adopted without discussion.

Article 23.

Paragraphs 1 and 2.

Paragraphs 1 and 2 were adopted without discussion.

Paragraph 3.

Dr. von Simson (Germany) thought the words " or if he is disqualified " were not explicit enough. It looked as if the intention had been that, if the Vice-President were ill, he was to be replaced by the oldest member of the Court; provision, however, should equally be made for the case where, like the President, the Vice-President was unable to act because he would be a subject of one of the parties.

M. Hoffinger (Austria) proposed that the paragraph should read :

> " If within a period of three months the Powers so chosen have been unable to reach an agreement, the necessary appointment shall be made by the President of the Permanent Court of International Justice. If he is a subject of one of the two parties, the power of appointment shall devolve upon the Vice-President or upon the oldest member of the Court who is not a subject of either party. "

M. POLITIS (Greece), Rapporteur, thought the simplest thing would be to deal in a single concluding sentence with the ground for exclusion constituted by the fact that the judge called upon to make the appointments was a national of one of the two parties. The following text might be used :

" By the President of the Permanent Court or by the Vice-President, or by the oldest member of the Court if they are not nationals of either of the parties. "

Mr. MCLACHLAN (Australia) thought that the insertion of the word " similarly " before the word " disqualified " would meet the objections raised.

M. POLITIS (Greece), Rapporteur, thought the following wording would be clearer :

" By the President of the Permanent Court of International Justice — or by the Vice-President or by the oldest member of the Court — if he is not a national of either party. "

M. HOFFINGER (Austria) pointed out that the wording suggested by the Rapporteur would not indicate the reasons for the exclusion — in particular, the point that the person in question must not be a national of one of the parties. It might be inferred that the parties might agree that the appointments should be made forthwith by the Vice-President or by a member.

The CHAIRMAN observed that some wording must be found that would mention as the grounds of prevention not only the fact of the Vice-President or oldest member of the Court being a national of one of the parties, but other reasons also, as, for instance, illness.

Count CARTON DE WIART (Belgium) proposed the following text :

" If, within a period of three months, the two Powers so chosen have been unable to reach an agreement, the necessary appointment shall be made by the President of the Permanent Court of International Justice. If he is unable to do so, or if he is a subject of either party, it shall be made by the Vice-President of the Court; if he is unable to do so, or if he is a subject of either party, it shall be made by the oldest member of the Court who is not a subject of either party. "

M. MOTTA (Switzerland) suggested that, as all the members of the Committee were in agreement on the substance, they should leave the wording to the Rapporteur.

This was agreed. The article was adopted subject to that understanding.

Article 24.

Article 24 was adopted without discussion.

Articles 25, 26 and 27.

M. ITO (Japan) pointed out that Article 18 in Chapter II made no mention of the substantive rules to be applied by the arbitrators. Would it not be desirable to bring the two articles — 18 and 25 — into harmony ?

M. POLITIS (Greece), Rapporteur, suggested the wording :

" . . . determining the subject of the dispute, the details of the procedure and, if necessary, the rules in regard to the substance . . . . "

M. ROLIN (Belgium) would have liked to see the wording of Chapter II more closely retained. In Chapter III an explanation was given in three articles of what was covered in Chapter II by a single article, namely, Article 18.

The CHAIRMAN proposed reducing Article 25 to the opening sentence : " The parties shall draw up a special agreement determining the subject of the dispute ". Actually, the procedure was dealt with in the following article and mention had already been made of the substantive rules.

M. POLITIS (Greece), Rapporteur, supported this proposal. In order to be absolutely logical, it was necessary to produce a single text for several articles. That would, however, involve a change in the numbering of all the subsequent articles and, moreover, it would take some time to prepare.

M. CASSIN (France) agreed with M. Ito in urging that contradictions should be avoided. If M. Politis's suggestions were accepted, Article 26 would have to be brought into harmony with Article 18 and the words " In the absence of sufficient particulars " should be substituted for " If nothing is laid down in the special agreement ".

Mr. MCLACHLAN (Australia) thought the difficulty arose from the use of the words " if necessary ". The discretion that was to be left to the parties would be better indicated by the words " if agreed ". On the other hand, if the suggestion to terminate the article at the word " dispute " were adopted, it might prevent the parties from choosing the procedure they preferred.

M. ROLIN (Belgium) urged that the reference in Chapter II to the special agreement should be reproduced textually.

M. DE PALACIOS (Spain) asked whether there was any reason for adopting different wordings on points that seemed to be similar.

Dr. VON SIMSON (Germany) proposed that the text should be maintained as it stood.

The CHAIRMAN asked that Article 25 should be entirely suppressed as, in his view, it was unnecessary. The special agreement was mentioned in Article 18, and the substantive rules in Article 26.

M. POLITIS (Greece), Rapporteur, pointed out that Article 18 was a part of the chapter dealing with disputes not of a legal nature.

M. MROZOWSKI (Poland) thought the difference between Articles 18 and 25 was only a slight one. It consisted simply in the fact that in Article 18 it was stated that the special agreement would specify the choice of arbitrators, the subject of the dispute and the procedure to be followed, whereas in Article 25 nothing was said about the arbitrators, while, on the other hand, the substantive rules were referred to.

If in Article 18 mention were made of those substantive rules, the concordance between the two articles would be exact. Article 18 would be more complete, since it went on to give the procedure to be followed if that point were not dealt with in the special agreement, and also the substantive rules to be adopted if those were not provided for.

It would be difficult to omit Article 25, which served as an introduction to the subsequent provisions.

He proposed, therefore, that, after the words " the procedure to be followed ", in paragraph 1 of Article 18, there should be added the words " and the substantive rules to be observed by the arbitrators ", and, after " in the special agreement ", the words " as to the procedure ".

Mr. MCLACHLAN (Australia) again pointed out that the question would be settled if the words " if necessary " were suppressed in Article 25 and replaced by the words " may agree ". That made it possible for the parties to agree; and if they did not agree, the other articles which followed would apply.

M. POLITIS (Greece), Rapporteur, replying to M. Mrozowski, said it would be unwise to reopen what had been a very long discussion. Article 18 laid down the rules to be applied, but went on to mention the Hague Convention, which was not applicable to the rules regarding the substance of the dispute. It had been necessary to make a break in the wording for the sake of added clearness. Reference was therefore made in the first place, only to the specification of the subject of the dispute, the arbitrators to be selected and the procedure to be followed. For the substantive rules it was necessary to refer to the Statute of the Court, and that was why the article (in the French text) had been divided into two paragraphs. If everything were put into the first paragraph, the latter part of the text would have to be amended in two places, which would complicate matters. Article 18 might be maintained as it stood, and Article 25 adjusted as far as necessary to Article 18.

The CHAIRMAN thought much time was being lost over an unnecessary article. He proposed that the drafting of Article 25 should be left to the Rapporteur.

M. POLITIS (Greece), Rapporteur, preferred that the Committee should forthwith agree upon the wording. He suggested :

> " The parties shall draw up a special agreement determining the subject of the disputes and the details of procedure. "

Article 26 would become :

> " In the absence of sufficient particulars in the special agreement, . . . the provisions of the Hague Convention of October 18th, 1907 . . . . shall apply. "

Articles 27 and 28 would not be altered.

The CHAIRMAN pointed out that the proposed text would give the impression that, in case the special agreement were incomplete, the Hague procedure, to the exclusion of the procedure laid down previously, should be resorted to. In actual fact, the two procedures were complementary.

Articles 25, 26 and 27 were adopted as amended.

Article 28.

M. CASSIN (France) remarked that, in the first sentence of Article 28, the words should be " If nothing is laid down in the special agreement, or if there be no special agreement ", for the tribunal was to be constituted, even if there were no special agreement. In that case, the substantive rules to be applied would all the same be those of the Statute of the Permanent Court of International Justice.

The CHAIRMAN read a proposal by Count Carton de Wiart to the effect that the word " indicated " should be changed to " enumerated " as in the earlier passage.

M. ROLIN (Belgium) desired to make an observation concerning the form of the article. It would be more in keeping with the intention of the text to say, at the end of Article 28, instead of " the Tribunal may decide ", " the Tribunal shall decide ". It was not merely a discretion that was being given in that article, for the reference was to disputes where the application of legal rules was in principle not possible.

M. Politis (Greece), Rapporteur, signified his assent to this change, as also to that proposed by M. Cassin for the insertion of the words " or if there be no special agreement " after the words " if nothing is laid down in the special agreement " at the beginning of Article 28.

Subject to these amendments, Article 28 was adopted.

Chapter IV. — General Provisions.

Article 29.

M. Tumedei (Italy) contemplated the contingency of States having concluded between themselves conventions providing only for a procedure of conciliation, either for all cases or for certain classes of cases, and observed that, in virtue of Article 29, paragraph 2, as now drafted, should a State accept Chapter II of the General Act concerning judicial settlement, it would be obliged to submit to judicial settlement even the cases covered by special conventions, although for those cases provision had been made for the possibility of a conciliation procedure. In that he saw a danger. It might deter certain States from signing the Act.

While ready to agree to the principle embodied in paragraph 2 of Article 29, he would have wished to see the parties afforded the possibility of making a declaration in a contrary sense.

The Chairman remarked that the phrase " in so far as the parties have acceded thereto " would meet M. Tumedei's point.

M. Tumedei (Italy) was not certain that it would. He thought the last words of Article 29 referred to Article 38, that was to say, to the possibility for any State to accept only a part of the General Act. He would have liked to see the possibility also given of making a declaration contrary to paragraph 2.

Dr. von Simson (Germany) did not consider the Italian delegate's observation a sound one. The concluding words of Article 29 referred, not only to Article 38, but to Article 39 as well. He proposed that the last sentence of paragraph 2 of Article 29 should be amended, the words " after such procedure has been followed without result " being replaced by the words " after such procedure has failed ".

M. Rolin (Belgium) did not think this entirely met M. Tumedei's observation. M. Tumedei had in mind the case where a dispute would be excluded by virtue of its category. He was taking the case of a State party to the General Act wishing to reserve entirely for treatment under special conventions particular categories of disputes that might occur between it and certain other States, and in which, contrary to the apparent requirements of paragraph 2 of Article 29, it desired to prevent its adhesion to the very wide General Act from causing the application of that Act to extend to those relations which were already regulated, though only in a partial and limited manner, by special conventions.

He did not think there was any objection whatever to mentioning this new possibility to be afforded to the States by adding the words " and in so far as they have not in their reservations expressly excluded this application ".

He felt sure that this amendment would give M. Tumedei complete satisfaction, and he, personally, was also very anxious to meet in that way an objection that had been heard among certain members of the Assembly who at the outset had had some doubts as to the value of the General Act.

M. Politis (Greece), Rapporteur, thought that this proposal would cause complication, and would render the text more cumbersome. The words " in so far as the parties have acceded thereto " seemed to him to cover M. Tumedei's hypothetical case.

As the system of reservations was of a restrictive character, the case in question would have to be covered by those reservations. M. Rolin had said : " It is in Article 39, paragraph 3, that provision is made for the possibility of excluding disputes concerning special subject-matters. The State that adhered to the General Act, desiring only to reserve the conciliation procedure in relation to those countries with which it had concluded a convention of that kind, would mention as a special subject-matter that very agreement which had already been concluded. " If that were so, why say it more explicitly ? The phrase " in so far as the parties have acceded thereto " explained everything. It was unnecessary to make any addition to it. M. Rolin's addition might give rise to the belief that there was a contradiction between Article 29 and the system of reservations which was said to be of a restrictive character. Why should any such difficulties of interpretation be allowed to arise, considering that the text was sufficiently wide to cover all possible cases ?

He thought M. Tumedei could declare himself satisfied with this explanation.

M. Tumedei (Italy) did not think the last reservation in Article 39 could cover all possible cases, for it related to particular cases or clearly specified subject-matters. It was admitted that certain States were not able to submit all non-legal matters to arbitration. If it were wished to exclude arbitration for all non-legal matters in relation to a particular State, it would not be possible to use merely the third reservation in Article 39. Why not afford a

State which was prepared to sign the General Act, but which had nevertheless judged it expedient to establish by special conventions different methods of settling disputes in relation to certain States — why not afford such a State the possibility of signing ?

M. Politis had said : " In Article 39 there are three reservations ". M. Tumedei did not deny that his proposal would involve a fourth reservation.

M. Politis (Greece) Rapporteur, said that, in that case, it would be necessary to amend, not Article 29, but Article 39.

M. Tumedei (Italy) thought the question he had raised might be reconsidered when Article 39 was being examined. It would suffice, for the moment, to reach agreement on the point of substance.

The Chairman asked if the proposal was to be referred to the Rapporteur.

M. Rolin (Belgium) thought that, in spite of all the confidence the Committee might have in the Rapporteur, such a proposal would put too heavy a responsibility upon him. A formula must be found.

M. Tumedei (Italy) said he could accept the proposal M. Rolin had made.

M. Rolin (Belgium) replied that he, on the other hand, would be obliged to withdraw that proposal because he had just noted that there was disagreement on the interpretation of Article 39. There was one point on which he felt very strongly. He did not want there to be any other reservations than those set out in Article 39, or any disguised reservations in other parts of the document. If it was not possible to find a formula for Article 39 which would give satisfaction to M. Tumedei, he would oppose absolutely the introduction of any other reservations.

M. Limburg (Netherlands) thought satisfaction might perhaps be given to M. Tumedei by the suppression, in Article 29, paragraph 2, of the words " judicial settlement ". Arbitration only would remain.

When an attempt at conciliation had broken down, there yet remained compulsory arbitration whereas no provision for compulsory judicial settlement existed.

M. Rolin (Belgium) called attention to Chapter II.

M. Limburg (Netherlands) said that this referred to States which had adhered to the General Act in respect only of conciliation proceedings. If conciliation failed, the complementary process would be arbitration, not judicial settlement.

M. Cassin (France) thought the two Committees should not lose sight of the essential purpose of their work. They had to study the drafts submitted by the Committee on Arbitration and Security. For the sake of technical harmony, the Committees had agreed, so to speak, to run together the three draft general Conventions. But it had not been intended to make any changes of substance in the work of the Committee on Arbitration and Security. Everybody was agreed in saying that that work constituted a solid basis of discussion. On the one hand, the door ought not to be opened to new reservations, which would now get into Article 29, and might soon appear in the other articles. That character of universality which it was desired that the Act should have might, in that case, be entirely destroyed. On the other hand, the Committees must not attempt to harmonise too strictly the General Act with every bilateral convention existing between States. Those States which had signed bilateral conventions and which might desire to adhere to the General Act would consider whether it would be to their benefit so to do.

He recalled that the purpose in view was to prepare a General Act, but that the Committees could not claim to establish it in such a manner as to adapt it to all the particular cases covered by bilateral conventions.

M. Tumedei (Italy) was not satisfied with the arguments used by M. Cassin. He recalled that, in the text that the First Committee had just drawn up, one of the reservations proposed by the Committee on Arbitration and Security had been dropped. Why should opposition be raised to the adding of a new reservation ? However, he would not insist upon the point.

Article 29 was adopted.

Articles 30, 31, 32 and 33.

Articles 30, 31, 32 and 33 were adopted with minor amendments.

Article 34.

Paragraph (a).

M. Rolin (Belgium) thought the words " third Powers " might cause confusion, and suggested substituting for them the words " Powers not parties to the dispute ".

Paragraph (a) *was adopted as thus amended.*

Paragraph (b).

Paragraph (b) *was adopted.*

Paragraph (c).

M. Rolin (Belgium) said his attention had been called by M. Undén to a lacuna in that paragraph. Provision was made only for reference to Article 21. It was necessary to provide also for the case covered by Article 22 and the following articles, where the arbitrators were not appointed by the parties.

Moreover, with regard to a Commission of Conciliation, it had been provided that the number of conciliators appointed by agreement was to be greater than the number of conciliators appointed by the parties. No similar provisions had been repeated as regards the arbitration tribunal.

He therefore proposed the following wording :

" . . . . Article 22 shall apply, but each party having separate interests shall appoint one arbitrator and the number of arbitrators who are nationals of Powers not parties to the dispute shall always exceed by one the number of the arbitrators separately appointed by the parties."

M. Politis (Greece), Rapporteur, accepted the reference " to Article 21 and following articles ". He also accepted the substitution of " but " for " and " after the words " shall apply ".

With regard to the last part of the amendment, he was not sure that it fitted in with what had been laid down earlier.

M. Rolin (Belgium) explained that the text he was proposing was identical with that in paragraph (*a*) in regard to the Conciliation Commission. It might happen, in cases of arbitration, that, several parties having separate interests, there would be within the tribunal a majority of arbitrators appointed by the parties.

M. Djuvara (Roumania) showed that a dispute might arise as to which of the parties was to have a commissioner on the Commission of Conciliation. That might be a delicate point to decide according as the interests of the parties were common or divergent. In the latter case, who would decide ?

M. Politis (Greece), Rapporteur, replied by quoting Article 41, giving the jurisdiction in such case to the Permanent Court of International Justice.

(At this point, the meeting was suspended for 15 minutes until 12.15 p.m.)

M. Politis (Greece), Rapporteur, declared that, a comparison of M. Rolin's suggestion with the earlier texts showed that it appeared to be in harmony with them. Consequently, paragraph (*c*) of Article 34 might be drafted as follows :

" (*c*) In the case of arbitral procedure, if agreement is not secured as to the composition of the tribunal in the case of the disputes mentioned in Article 17, each party shall have the right, by means of an application, to submit the dispute to the Permanent Court of International Justice; in the case of the disputes mentioned in Article 21, the above Article 22 and following articles shall apply, but each party having separate interests shall appoint one arbitrator, and the number of arbitrators separately appointed by the parties to the dispute shall always be one less than that of the other arbitrators. "

This text was adopted.

Articles 35, 36, 37 and 38.

Articles 35, 36, 37 and 38 were adopted without discussion.

Article 39.

Paragraph 1.

Paragraph 1 was adopted without discussion.

Paragraph 2.

M. Rolin (Belgium) drew attention in sub-paragraph (*a*) to the words " Disputes arising out of facts prior to the adhesion ", and observed that the reference was to the adhesion of the party which made the reservation. This provision had been borrowed from numerous arbitration conventions, but, in this particular case, it would have a quite restricted effect. When a convention was concluded between two States, and all previous facts were excluded, all the facts prior to the convention itself were excluded for both parties. On the contrary, when a party was excluding all facts prior to its adhesion to a General Act, the result would be that the first to adhere to the General Act would have excluded facts prior to its adhesion, but would remain bound, if the other States so desired, to accept, under conditions which were not reciprocal and which were unequal, arbitration for all facts that might arise subsequently to its adhesion and prior to the acceptance by the other State of the general engagement.

To obviate certain calculations, he would therefore suggest that sub-paragraph (*a*) of paragraph 2 should read :

" Disputes arising out of facts prior to the accession of the party making the reservation or to the accession of any other party between which and the former a dispute may arise. "

Under those conditions, reciprocity would be assured. A party would never agree to bind itself in respect of all facts arising subsequently to its adhesion except on condition that no fact arising after its adhesion but before that of another party could be excluded by a reservation made by the latter. Only so would certain States be prevented from exploiting the generous action of the first party to commit itself.

M. Politis (Greece), Rapporteur, observed that M. Rolin's proposal was similar to a matter which had given the Sub-Committee some anxiety when it was considering Article 39. At that time the Sub-Committee had searched in vain for a formula that should give satisfaction to States feeling some anxiety on the point.

The wording proposed by M. Rolin seemed to him at first sight to be satisfactory. Its effect was to prevent an unfair manœuvring against the State that had already adhered, and had excluded facts prior to its adhesion. It would thus allow a State to adhere to the Act without fear that other States — the malicious third parties pictured by M. Rolin — would lie in wait to take before the arbitral or judicial jurisdiction disputes which it had wished to exclude.

M. Undén (Sweden) did not think the addition was necessary. M. Rolin seemed to consider it a disadvantage to be convened before the Court. It was not likely that this would be generally the case, or that the States which adhered to the Act would make a reservation of that kind. He would not, however, oppose the adoption of the text suggested.

M. Rolin (Belgium) said he was personally in favour of the General Act, but the advantage it offered to States lay in the element of reciprocity. Wherever a State would be able to be cited before an international jurisdiction, it ought to be able equally to cite the other States.

This reciprocity did not always exist in the case of an open Act. A State which, owing to its recent adhesion, could not be summoned by another State could, on the contrary, be called before the jurisdiction by that State if it had previously given its adhesion. To avoid this risk, it might be made clear that the obligation was subject to reciprocity as from the moment when other States should have accepted the jurisdiction. That was an equitable rule which would strengthen confidence.

Sub-paragraph (a) *was adopted with the proposed amendment.*

M. Tumedei (Italy) said that, as the discussion he had started on an earlier article had led to no practical result, he felt obliged to ask one question.

If a State should adhere to the General Act with a declaration that it desired to exclude all disputes covered by treaties concluded with another State, would that reservation come within the ambit of sub-paragraph (*c*) ? He thought it would.

In contemplating disputes covered by a particular treaty, they were marked off clearly from other disputes : that was, therefore, a particularisation of those disputes. The only difference was that it was a particularisation *ratione personæ*, and not *ratione materiæ*. As some members of the Committee might perhaps think otherwise, it would be necessary for the question to be settled.

M. Politis (Greece), Rapporteur, thought the answer to M. Tumedei's question should be n the affirmative. Under the terms of sub-paragraph (*c*) it would be possible to adhere to the General Act with a statement that the disputes which formed the subject of a given convention were excluded from the judicial and arbitral procedures.

M. Tumedei (Italy) thought he had in that case been right in asking that there should be inserted in Article 29 an amendment referring to Article 39. In Articles 1 and 17, provision was made for the possibility of reservations. They ought also to be provided for in Article 29 if a contradiction between that article and Article 39 were to be avoided.

The point was, in his opinion, a formal one, but deserving none the less of clarification.

The Chairman thought it was a question of knowing the meaning of sub-paragraph (*c*). If that paragraph were to have the meaning given to it by the Rapporteur, the question discussed under Article 29 was settled, because it would suffice to make a reservation in regard to treaties already signed, in conformity with Article 39.

But high though the authority of M. Politis's declarations might be, the Chairman thought that the letter of the article in question did not exactly correspond with those declarations. Some better-adapted formula must therefore be found.

The Rapporteur had had in mind certain categories of cases or of subject-matters, whereas in the text mention was made only of " particular cases " and " clearly specified subject-matters ".

If it were a question of categories of cases, such as those covered by a treaty with another State, reservations in regard to them would have to be made. That seemed to be essential, more particularly as sub-paragraph (*c*) might, for many States, be the determining factor as regards the question of signing or not signing.

M. Politis (Greece), Rapporteur, suggested, by way of meeting these observations, to alter the text to read : " Disputes concerning particular cases or categories of clearly specified subject-matters ", etc.

M. Rolin (Belgium) observed that the word " categories " destroyed the effect of the words " clearly defined ". It would be better to say " subject-matters or clearly defined categories ". It was a question, in reality, of definition by subjects or definition by person. Definition by subjects gave subject-matters, definition by person gave categories.

M. POLITIS (Greece), Rapporteur, said he agreed. The text would therefore read " Disputes concerning particular cases, specified subject-matters or clearly defined categories . . . "

M. ITO (Japan) asked what categories.

M. ROLIN (Belgium) admitted that his text was faulty and that it ought to run " or coming within clearly defined categories ".

M. DE PALACIOS (Spain) thought the wording a bit confused and asked whether it would not be clearer to add a special sub-paragraph dealing with the case indicated by M. Tumedei. This new paragraph might read " Disputes covered by prior agreements . . . "

The CHAIRMAN remarked that what was needed was not merely to bring in the reservations that M. Tumedei had in mind, but to find a formula still wider and going even further.

M. POLITIS (Greece), Rapporteur, admitted that the text he had last proposed was somewhat obscure. The " particular cases " might be " particularised " in different ways, *in rem* or *in personam*, for example. Perhaps the reservation indicated by M. Tumedei might appear in the first part of the sentence, by saying " Disputes concerning cases defined individually, by subject-matters, or by categories ", the sentence continuing " or specially defined subject-matters . . . "

M. LIMBURG (Netherlands) was afraid the reservations were being extended far too widely and thought the door might thus be opened to vague and dangerous reservations.

He dare not ask for a reopening of the discussion on Article 29, paragraph 2 : otherwise, he would have proposed sacrificing the whole of the second sentence of that paragraph. He would, in fact, prefer to leave the reservations as they stood rather than adopt a new wording.

M. POLITIS (Greece), Rapporteur, did not share the misgivings of M. Limburg with reference to the widening of the sentence to appear under sub-paragraph (*c*) in Article 39 ; for even the old text seemed to offer States the possibility of excluding categories of disputes. The only innovation now proposed was to state the fact in a more formal manner.

In conclusion, he suggested the following text : " Disputes concerning particular cases, or special subject-matters, or falling within clearly defined categories ".

After a short exchange of views, M. Politis (Greece), Rapporteur, suggested the following new text :

> " Disputes concerning particular cases or clearly specified subject-matters, such as territorial status, or disputes falling within clearly defined categories. "

This text was adopted.

Paragraph 3.

Paragraph 3 was adopted.

Paragraph 4.

Paragraph 4, with a verbal improvement in the French text suggested by M. Rolin, was adopted.

New Article.

M. MROZOWSKI (Poland) proposed a new article. He desired that the General Act should be rendered a little more flexible. Some special treaties were concluded in such a way as to make conciliation proceedings obligatory for all legal disputes. Others excluded conciliation for disputes of a legal nature. Both those currents of opinion could be satisfied by putting in a new article :

> " When acceding to the present Act, the parties may declare either that they submit the disputes coming under Article 17 to the compulsory conciliation procedure or that they generally exclude all such disputes from that procedure. "

M. POLITIS (Greece), Rapporteur, replied that that proposal had been considered by the Sub-Committee. It had been impossible to include that wording, for it rendered the system too complicated. It was impossible to enter into all those details. M. Mrozowski's idea represented a legitimate anxiety, but it could not be carried out in practice.

The Polish delegation was anxious that, in disputes of a legal nature, conciliation procedure should, wherever possible, be utilised, whereas under the system under consideration it was optional, in that it required the consent of the parties. It had been observed in the Sub-Committee that, if the two parties were willing to observe that procedure of conciliation, they would come to an agreement. If one of the parties proposed it and the other assented, the present wording would suffice. If one of the parties proposed it and the other did not accept it, what would be the use of making it obligatory ? There would be an absence of the desire for conciliation. It would be better to go at once before a judge.

The proposal was rejected.

Article 40.

The CHAIRMAN, before submitting the article to discussion, desired to recall a question he had already laid before the Sub-Committee.

The system of reservations would be of very great importance but it might possibly constitute a serious danger. The Act was open for adhesion for an indefinite time. Those States which did not sign it at the outset would be in a much more advantageous position than the others, since they would, in formulating their reservations, know which of those already formulated by the other States affected them. No doubt, all reservations were reciprocal, but that reciprocity could not be a sufficient safeguard. If a State had been able to foresee the reservations which another might make, it would have taken its own precautions by making other reservations which were opportune.

He wished that, if a State made a reservation, those which had previously signed should be enabled in their turn to make other reservations which he might call " counter reservations ".

M. Politis (Greece), Rapporteur, said he would prefer to call them " reprisals ".

The Chairman went on to say that, if it were desired to have a certain number of adhesions, it was necessary that the States which signed first should not be in a position of inferiority in relation to those which signed later. Otherwise, he would probably say to his Government, " Be the last to sign ! "

M. Politis (Greece), Rapporteur, said that that question had been considered at great length by the Sub-Committee, which had tried to picture what would be the consequences involved in the proposed text. It had seemed that the complications that would result in the general system of the Act would be infinitely greater than any advantage there might be, for, after all, it was a question merely of making use of reprisals. Reprisals might, however, be used at the date of expiration of the first period of operation of the Act. A State might adhere after the first year or after the second year, so limiting its risks. A reservation made by an evilly disposed party and directed against a State which had already adhered would not become operative until after three months. With a view to such reprisals, it would be sufficient to have patience enough to wait two and a-half years. Was it necessary, so as to be able to have the pleasure of taking reprisals sooner, to put in a provision which would entail immense complications ? It would be necessary to give every State that had already adhered to the Act the possibility, as soon as another State had acceded subject to particular reservations, of itself formulating, during the ensuing month or two, reservations aimed against the opposite party. The complication which would thus result would be so great that it would be better to omit a provision of this kind, which might lessen, if not destroy, the effectiveness of the General Act.

The Chairman observed that it was to defensive, not aggressive, action that he had referred.

M. von Simson (Germany) said that he did not deny the importance of the difficulties seen by the Chairman, but, like M. Politis, he thought that matters would be made more complicated by an endeavour to find direct means of remedying them. Suppose that a given State had adhered and that a second should adhere later with reservations. It was proposed to give the first State the right to make a new reservation so as to restore the balance. The second State in its turn would then make a further reservation, and this process would go on indefinitely.

He recognised the shortcomings existing in the General Act. To his mind, the only remedy would be for the party that so desired to denounce the Act.

M. Rolin (Belgium), in reply to the inconvenience mentioned, pointed out the advantage of the General Act as now proposed. The State which was adhering to it would know the reservations made by the States which had previously adhered. Under the system suggested by the Chairman, a great uncertainty would be created, although the Chairman was proposing to avoid that very inconvenience.

The Chairman said that, in any circumstances, he thought the difficulties were many. It was, however, for the States to decide how they could overcome them.

Article 40 was adopted.

Article 41.

M. Hoffinger (Austria) recalled the observations he had submitted to the Drafting Committee on the subject of the reasonable interval during which the party might plead an exception in view of the fact that the matter in question was *sub judice* before one of its domestic courts. He had hoped to see an article inserted whereby the State which considered the reasonable interval to have elapsed would be given the possibility of taking steps.

In answer to that argument, the provisions of Article 41 had been quoted, the Sub-Committee being agreed in considering that, if a State felt that its adversary, invoking its internal law, was delaying matters, it could apply to the Permanent Court on the ground that a question had arisen concerning the interpretation or application of the General Act.

He asked that the opinion of the Drafting Committee should be included in the report.

M. Politis (Greece), Rapporteur, signified his assent.

Article 41 was adopted.

Articles 42, 43 and 44.

Articles 42, 43 and 44 were adopted without discussion.

Article 45.

Paragraph 1.

M. Rolin (Belgium) recalled that the period of five years laid down was regarded in some quarters as a minimum. It had been asked that it should be increased to ten years. If there were any objections, however, he would not press the point.

Paragraph 1 was adopted.

Paragraphs 2, 3, 4 and 5.

Paragraphs 2, 3, 4 and 5 were adopted without discussion.

Articles 46 and 47.

Articles 46 and 47 were adopted without discussion.

Model Bilateral Conventions A, B and C.

The *Committees decided* that the drafts drawn up by the Committee on Arbitration and Security should be revised to make them correspond to the General Act.

Model Treaties D, E and F.

M. Cassin (France) recalled that, in the Third Committee at the time of the voting on the draft Conventions D, E and F, one member of the Committee had declared that his vote was given subject to the understanding that that was only a first reading, to be followed by a second reading when the arbitration pacts should have been referred to the plenary meeting of the First and Third Committees. He asked the Committees to proceed — purely as a matter of form — to the second reading of the draft Treaties D, E and F prepared by the Committee on Arbitration and Security.

Count Carton de Wiart (Belgium) supported this suggestion.

Count Apponyi (Hungary) recalled the declaration he had made at the beginning of the work of the Third Committee on the subject of the model Treaties of Mutual Assistance D, E and F. He had intimated that he saw no possibility of giving an affirmative vote and would, on the contrary, abstain. There was nothing contradictory between the passive attitude taken by Hungary since then and the declaration he would make to the Assembly in order to explain his abstention.

Article 36 of the Statute of the Permanent Court.

Mr. Dandurand (Canada) recalled that he had proposed a resolution inviting States to adhere to the optional clause — if necessary, with appropriate reservations. That resolution had affirmed that :

> " The effort now in progress to diminish the uncertainties of international law and to fill the gaps by means of its progressive codification would greatly facilitate the acceptance of Article 36 of the Statute."

He desired to insert, at the end of that resolution, the following recommendation :

> " Requests the said States . . . to indicate the questions of international law the elucidation of which would facilitate their accession to Article 36 of the Statute of the Permanent Court of International Justice."

The codification of international law was a very lengthy business. It would, however, be of interest to the Committee of Experts to know the point of view of the various States.

This proposal was adopted.

The text of the resolution as adopted read as follows :

> " The Assembly :
>
> " Referring to the resolution of October 2nd, 1924, in which the Assembly, considering that the terms of Article 36, paragraph 2, of the Statute of the Permanent Court of International Justice are sufficiently wide to permit States to adhere to the special Protocol opened for signature in virtue of that article, with the reservations which they regard as indispensable, and convinced that it is in the interest of the progress of international justice that the greatest possible number of States should, to the widest possible extent, accept as compulsory the jurisdiction of the Court, recommends States to accede to the said Protocol at the earliest possible date ;
>
> " Noting that this recommendation has not so far produced all the effect that is to be desired ;
>
> " Being of opinion that, in order to facilitate effectively the acceptance of the clause in question, it is expedient to diminish the obstacles which prevent States from committing themselves ;
>
> " Being convinced that the efforts now being made through progressive codification to diminish the uncertainties and supply the deficiencies of international law will greatly facilitate the acceptance of the optional clause of Article 36 of the Statute of the Court,

and that, meanwhile, attention should once more be drawn to the possibility offered by the terms of that clause to States which do not see their way to accede to it without qualification to do so subject to appropriate reservations limiting the extent of their commitments, both as regards duration and as regards scope;

" Noting, in this latter connection, that the reservations conceivable may relate, either generally to certain aspects of any kind of dispute, or specifically to certain classes or lists of disputes, and that these different kinds of reservation can be legitimately combined :

" Recommends that States which have not yet acceded to the optional clause of Article 36 of the Statute of the Permanent Court of International Justice should, failing accession pure and simple, consider, with due regard to their interests, whether they can accede on the conditions above indicated;

" Requests the Council to communicate the text of this resolution to those States as soon as possible, desiring them to notify it of their intentions in the matter, indicating at the same time the questions of international law the elucidation of which would in their opinion facilitate their accession to the optional clause of Article 36 of the Statute of the Court; and

" Asks the Council to inform the Assembly at its next session of the replies it has by then received."

General TANCZOS (Hungary) wished to make it clear, in order to dispel possible misunderstandings, that the declaration Count Apponyi had just made on the subject of Hungary's abstention had reference to his own declaration, reported as follows in the Minutes of the meeting on the previous Thursday :

" General Tanczos was therefore compelled to reserve his decision with regard to the whole of the model treaties until such time as he had before him the results of the discussion in the First Committee."

He had made the same reservation in regard to the draft resolution.

2. **Révision of the Systematic Study of Arbitration Conventions and Treaties of Mutual Assistance prepared by the Secretariat: Proposal submitted by M. Cassin (France)** (Annex 8).

The Committee, on the proposal of the Sub-Committee, *adopted the following draft resolution*

" The Assembly :

" Recognising the importance of the documentation which the Secretariat of the League of Nations has begun to collect concerning treaties of judicial settlement, arbitration and conciliation, and of the maps and graphs which it contemplates establishing :

" Requests the Secretary-General to be so good as to invite the Governments of States Members or non-Members of the League of Nations to communicate to the Secretariat the text :

" (1) Of those treaties for the pacific settlement of disputes which are now in force and which were concluded prior to the establishment of the League of Nations and which have not been registered;

" (2) Of such arbitral awards affecting them as may be rendered in the future, with the exception of judgments of the Permanent Court of International Justice and of the Permanent Court of Arbitration and of special tribunals such as the Mixed Arbitral Tribunals."

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ANNEX 1.

A.I.(2)1928.

WORK OF THE PREPARATORY COMMITTEE FOR THE FIRST CODIFICATION CONFERENCE.

EXTRACT FROM THE REPORT TO THE NINTH ORDINARY SESSION OF THE ASSEMBLY OF THE LEAGUE ON THE WORK OF THE COUNCIL, ON THE WORK OF THE SECRETARIAT AND ON THE MEASURES TAKEN TO EXECUTE THE DECISIONS OF THE ASSEMBLY.

By its resolution of September 27th, 1927[1], the Assembly, after considering the reports presented by the Committee of Experts for the Progressive Codification of International Law[2], decided to submit for examination by a first Codification Conference — to be held, if possible, in the year 1929 — the following questions :

(*a*) Nationality;
(*b*) Territorial Waters;
(*c*) Responsibility of States for Damage done in their Territory to the Person or Property of Foreigners.

The preparatory work for the Conference was entrusted by the Assembly to a Committee of five experts to be appointed by the Council. By a resolution of September 28th, 1927, the Council appointed as members of the Preparatory Committee; Professor BASDEVANT; Councillor Carlos CASTRO-RUIZ; Professor FRANÇOIS; Sir Cecil HURST; and M. Massimo PILOTTI.

The method of work to be followed by the Preparatory Committee is set out in the report submitted to the Assembly by the First Committee.

The first task of the Committee is to draw up for each of the questions on the agenda of the Conference a schedule indicating the various points considered suitable for examination. The schedules are to be submitted to the Governments, through the Secretariat, with the request that information may be furnished from the three following points of view :

(*a*) The state of their positive law, internal and international, with, as far as possible, circumstantial details as to the bibliography and jurisprudence;
(*b*) Information derived from their own practice at home and abroad;
(*c*) Their wishes as regards possible additions to the rules in force and the manner of making good present deficiencies in international law.

At the next stage of its work, the Preparatory Committee is to examine the information and the expressions of opinion received from the Governments. It may, if necessary, address further enquiries to the Governments. When the necessary enquiries have been completed, the Committee is to establish the points on which agreement or divergency of view exists and to embody its conclusions in a report intended to serve as a detailed basis for the discussions of the Conference.

It will then be for the Council of the League to decide as to the date of meeting of the Conference and the form of the invitations to be issued to the Governments. In issuing the invitations, the Council is to consider the advisability of formulating special rules for the conduct of the Conference, more particularly with reference to certain questions specified in the Assembly's resolution of September 27th, 1927.

The Assembly contemplated that the Council would convene the Conference at The Hague by agreement with the Netherlands Government.

The first stage of the above programme of work was accomplished by the Preparatory Committee at a session held at Geneva from February 6th to 15th, 1928. A report (document C.44.M.21.1928.V) was drawn up setting out the three schedules of points on which the Governments are invited to furnish information. This report was transmitted to the Governments by the Secretary-General under cover of Circular Letter No. 36, dated March 1st, 1928.

In agreement with the Preparatory Committee, the Secretary-General has requested the Governments to transmit their replies to the Secretariat not later than October 31st, 1928, and has informed them that the Preparatory Committee considers it essential to have the replies by that date in order that it may be able to undertake the second part of its task at a

[1] The Minutes of the discussions on the subject of codification during the course of the eighth ordinary session of the Assembly are printed separately in document C.548.M.196.1927.V.

[2] See, in particular, document C.196.M.70.1927.V.

session beginning on January 28th, 1929. The following passage from the Secretary-General's letter explains the views of the Preparatory Committee with regard to the subsequent progress of its work :

" In view of the Assembly's decision that the forthcoming Conference shall, if possible, be held in the year 1929, and of the considerable time which will evidently be required by the Committee for the purpose of examining the information furnished by the Governments and drawing up the contemplated bases of discussion for the Conference, the Committee has requested me to state that it attaches the greatest importance to receiving answers from all the Governments by a date not later than October 31st next. It has decided to hold a session to consider these answers not later than January 28th, 1929. These periods have been fixed with the view, on the one hand, of allowing to the Governments at least the period of six months contemplated by the report of the First Committee for the purpose of preparing their replies and, on the other hand, with the view of permitting sufficient time for the preparation of the resulting material for consideration by the Committee when it meets. Their observance appears to be essential if the Conference is to be held within the period fixed by the Assembly. "

The Preparatory Committee has been invited to avail itself of any assistance which can be obtained from the various learned associations established for the study and development of international law. Accordingly, its report has been transmitted to these associations, and any communications which may be received from them will be considered by the Committee at the same time as the information supplied by the Governments.

As recommended by the First Committee of the Assembly, the Committee is also devoting special attention to the work of codification which has been undertaken by the Pan-American Union.

A.16.1928.V.
[C.P.D.I.116(2)]

ANNEX 2.

PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW.

Proposal by the Delegation of Paraguay for the Preparation of a General and Comprehensive Plan of Codification of International Law.

Report to the Council adopted by the Committee of Experts on June 27th, 1928.[1]

The Committee of Experts was asked by the Council to consider, at its present session, the report which the First Committee presented to the Assembly, on September 23rd, 1927, on the proposal of the delegate of Paraguay (document A.111.1927.V), contemplating the preparation of a general and comprehensive plan of codification of international law, together with the resolution on the subject adopted by the Assembly on September 27th, 1927, and to make a report to the Council on the question under what conditions the work contemplated in the proposal could be undertaken.

In execution of these terms of reference, the Committee had adopted the following report :

* * *

In recommending the principle of universality as the essential foundation for international legislation, the proposal of the delegation of Paraguay looks forward to the ideal of general codification in the future.

To consider that, under actual conditions, so great and comprehensive a task cannot be undertaken by the League of Nations is not to deny the great value of the ideal.

Founding itself upon the experience gained during its work the Committee of Experts is of opinion that codification should be carried out progressively, taking account of the realities of the legal situation and the numerous obstacles of a political nature, which make it quite impossible to deal with the various subjects in an order corresponding to considerations of system and which imperatively require that the method of procedure shall be cautious and modest. Considering that practical ideas and objects are of predominant and fundamental importance, the Committee of Experts takes account, first and foremost, of the actual possibilities of codification. It is for this reason that it feels that the method of partial and progressive codification is to be preferred even if, from the point of view of theory and doctrine, this system of proceeding piecemeal presents certain disadvantages. The system

[1] This report is submitted direct to the Assembly in virtue of a resolution adopted by the Council on June 4th, 1928.

makes it possible to choose freely for codification subjects which are capable of being so treated, whether they be of primary or merely secondary importance.

While expressing itself, in agreement with the decision taken by the Assembly at its fifth ordinary session, on September 22nd, 1924, as in favour of the maintenance of the method which it has followed in its work, the Committee of Experts nevertheless considers that the proposal of the delegation of Paraguay deserves attention.

If the Council and the Assembly feel that the course suggested by the delegation of Paraguay should be followed, it would be possible to draw up — with reference, more particularly, to the remarkable achievements which have been or are being realised by American enthusiasm — a systematic outline of a more complete codification, on the understanding always that what was contemplated was not immediate and simultaneous realisation of a plan thus formed or determination of the order in which the various matters ought to be the subject of efforts at international legislation. Advantage might be seen in such a work of co-ordination. The work, which would be strictly technical in character, might, by ensuring the continuity of codification, render very important services in regard to co-ordination of the tasks to be ultimately undertaken by the organisations of the League of Nations or by particular States of which the initiative in this field has been and is so fruitful. Co-ordination thus conceived would no doubt facilitate the avoidance of overlapping and prevention of contradictions and possible gaps.

It is not for the Committee of Experts to express a definitive opinion as to the practical methods by which the above suggestion could be realised.

Geneva, June 27th, 1928.

(Signed) Hj. L. HAMMARSKJÖLD,
Chairman of the Committee of Experts.

A,14.1928.V.
[C.P.D.120 (1)]

ANNEX 3.

WORK OF THE COMMITTEE OF EXPERTS FOR THE PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW.

LETTER DATED JUNE 28TH, 1928, FROM THE CHAIRMAN OF THE COMMITTEE TO THE SECRETARY-GENERAL, REPORTING ON THE WORK OF THE FOURTH SESSION OF THE COMMITTEE, HELD IN JUNE 1928, AND COMMUNICATING TO THE SECRETARY-GENERAL A QUESTIONNAIRE AND VARIOUS REPORTS.

Note by the Secretary-General :

The Secretary-General has the honour to communicate to the Council and to the delegates to the Assembly, as well as to the Governments of the Members of the League and other Governments, the letter reproduced below from the Chairman of the Committee of Experts for the Progressive Codification of International Law, which gives an account of the work of the Committee at its fourth session and transmits to the Secretary-General a questionnaire and various reports adopted by the Committee.

In accordance with the procedure laid down for the work of the Committee, the questionnaire has been communicated to the Governments for their consideration (document C.343.M.101.1928.V).

The Committee's report on the recommendations of the Mixed Committee for the Repression of Counterfeiting Currency has been submitted to the Council (document C.344.1928.V).

The other documents mentioned in the Chairman's letter, namely, the report to the Council on the questions which appear ripe for international regulation[1] and the report on the proposal made at the eighth session of the Assembly by the delegation of Paraguay[2], will be submitted for the consideration of the Assembly at its session of the present year in accordance with a decision of the Council which, on June 4th, 1928, authorised the Secretary-General to place these reports directly before the Assembly.

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[1] See document A.15.1928.V.
[2] This report is reproduced as Annex 2.

LETTER DATED JUNE 28TH, 1928, FROM THE CHAIRMAN OF THE COMMITTEE OF EXPERTS TO THE SECRETARY-GENERAL.

The Committee, by its terms of reference, was required :

(1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment;

(2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received ; and

(3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Committee, at its fourth session, held at Geneva from June 22nd to June 28th, 1928, has decided to make a report to the Council on certain subjects which appear to have become " sufficiently ripe " and on " the procedure which might be followed with a view to preparing eventually for conferences for their solution ". It further instructs me to communicate to you the annexed questionnaire drawn up at the session by the Committee. This questionnaire is entitled " No. 12—Domicil ".[1]

This is the third communication of the kind made under the Committee's terms of reference.

In accordance with these terms of reference, the Committee will be obliged if you will be so good as to request the various Governments to send to you, within the period indicated in the questionnaire, their opinion upon the question whether and to what extent the regulation, by international agreement, of the subject treated in the questionnaire is desirable and realisable in the near future.

If circumstances permit the Committee to meet at a sufficiently early date, you are requested to transmit the replies to it for examination, with a view to the preparation of a report to the Council under the Committee's terms of reference. Should this not be possible, the Committee requests you to transmit the replies direct to the Council in order that the latter may take such measures as may appear to it to be appropriate.

In a letter of April 2nd, 1927,[2] I had the honour to inform you that the Committee, at its third session, felt that it should abstain from submitting new subjects for examination by sub-committees. Accordingly the Committee has, on the present occasion, had before it only the three reports of Sub-Committees, examination of which had, for various reasons, been adjourned. One of these reports forms the basis of the questionnaire above mentioned. The two others, which deal with the question of the application in international law of the notion of prescription and the question of the legal position of private non-profit-making international associations and private international foundations, have been examined by the Committee which, however, for various reasons, has found that it was not desirable to send questionnaires to the Governments on the matters treated in the reports.

The reasons which, at its third session, induced the Committee to abstain from undertaking the study of new questions, still exist.

Under these conditions, the Committee feels that, before resuming its activities with a view to pursuing the task entrusted to it, it should await new circumstances or instructions.

I have the honour to request you, in the name of the Committee, to transmit the above observations to the proper quarters.

The Committee begs to attach to the present letter two reports adopted by it, under special terms of reference, on the subject of the proposal made at the eighth session of the Assembly by the delegation of Paraguay and on the subject of Recommendations VII and VIII which were formulated by the Mixed Committee for the Repression of the Counterfeiting of Currency.

Geneva, June 28th, 1928.

(Signed) Hj. L. HAMMARSKJÖLD,

Chairman of the Committee of Experts.

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[1] See document C.343.M.101.1928.V.

[2] Document C.200.M.74.1927.V.

ANNEX 4.

PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES.

Extracts from the Report of the Third Session of the Committee on Arbitration and Security (document A.20.1928.IX). Texts submitted by the Third Committee for Examination by the First Committee.

(a) INTRODUCTORY NOTE TO THE CONVENTIONS ON CONCILIATION, ARBITRATION AND JUDICIAL SETTLEMENT.

I. Principles followed by the Committee on Arbitration and Security.

The Committee has the honour to submit three model general conventions (A, B, C) and three model bilateral conventions (a, b, c) drawn up on the same plan. The texts of the general and bilateral conventions are similar in principle excepting that certain necessary adjustments have been made in the texts of the bilateral conventions in view of their special character. During the second reading the Committee advisedly decided to use only the word " model " to denote the different Conventions, since this term appeared to be the more appropriate in view of the conditions under which these texts will be submitted to the Assembly.

The first two conventions (Conventions A and B) provide for arbitration and conciliation; the third (Convention C) provides exclusively for conciliation procedure.

In drafting these conventions, the Committee has been guided by a certain number of main principles :

1. It is necessary to take into account the particular situations of the different States and the objections which some of them would feel to the conclusion of extensive arbitration undertakings.

In these circumstances, it would be useless to attempt to bring forward a single and rigid type of arbitration and conciliation convention which would fall short of what some States are prepared to accept and go beyond what others might be able to accept. The three Conventions A, B and C provide sufficient variety to meet the desires and conditions of the different Governments.

The operation of the reservations authorised by these various conventions increases their elasticity — a feature which has been regarded as essential.

It should be noted that the general conventions contemplated do not affect the general or special obligations with regard to arbitration or judicial settlement which States have assumed or may assume between themselves. The general conventions will only be applied subsidiarily, and will only govern disputes not already covered by other conventions.

2. While the freedom of States must be fully respected, and no pressure, even if it is only moral pressure, be exerted on Governments to induce them to contract undertakings which they do not consider themselves able to perform, it is nevertheless essential that the undertakings entered into, however restricted they may be, should be of concrete value.

To that end, provisions already adopted in numerous separate conventions and ensuring the observance of undertakings assumed have been inserted in the Conventions. Hence the absence of an agreement with regard to the submission to arbitration or to the constitution of the tribunal or Conciliation Commission will not prevent the procedure of peaceful settlement from taking its course. Thus all reservations of a vague and indefinite character have been avoided.

3. The Committee has endeavoured to make as few innovations as possible. It has been guided by past experience, taking as a basis the numerous separate arbitration and conciliation conventions already concluded between large and small States in all parts of the world.

Thus, the draft distinction between disputes of a legal and of a non-legal nature constitutes the fundamental principle of Conventions A and B.

4. At the second reading, the Committee made the necessary improvements and additions to the text previously drawn up, and at the same time endeavoured to give all possible consideration to the observations submitted to it by various Governments.

5. The Committee, faithful to the principles by which it has so far been guided, did not feel that it could establish any order of preference as between Conventions A, B and C. Certain members of the Committee thought that it would have been desirable to do so, but, since opinion was divided, the Committee refrained from adopting any definite attitude in this respect. It therefore placed all the conventions on the same footing, leaving States free to accede to one or more of them as they see fit. The difficulties arising from the order of application of the various conventions by States which have acceded to more than one of them will in practice be capable of easy settlement by the parties themselves. Failing this, the application of the final clauses of the conventions providing for an appeal to the Permanent Court of International Justice would furnish a solution.

II. The Character of the Three Models.

Convention A. — The structure of Convention A is as follows :

1. Disputes of a legal nature are submitted compulsorily to a judical or arbitral settlement, and optionally to a preliminary procedure of conciliation.

If the parties do not decide to resort to a special tribunal or, having decided to resort thereto, fail to agree on the terms of the special agreement *(compromis)*, the dispute is brought, by means of an application, before the Permanent Court of International Justice.

2. Disputes of a non-legal nature are submitted compulsorily to a procedure of conciliation.

The composition of the Conciliation Commission and the selection of its members, its mode of operation and the part it plays, are the same in all three conventions ; they will be dealt with in the commentary on Convention C.

In the event of the failure of conciliation, the dispute must be brought before an arbitration tribunal composed of five members.

3. If the parties fail to agree regarding the selection of members of the tribunal to be appointed jointly or if they fail to choose the members whom they must appoint severally, the draft adopted at the first reading provided that the Acting President of the Council should make the necessary appointments.

The Committee, considering it advisable to separate as far as possible the legal and political considerations and desiring to adopt a method more likely to meet the wishes of States non-members of the League, provided at the second reading for another method of appointment. This procedure is based on the provisions of the Hague Convention of October 18th, 1907, concerning the Peaceful Settlement of International Disputes.

Convention B. — Convention B is conceived on the same lines as the Arbitration and Conciliation Conventions concluded at Locarno.

1. Disputes of a legal nature are brought before the Permanent Court of International Justice unless the parties agree to have recourse to an arbitral tribunal. The rules are the same as in Convention A.

2. Disputes of a non-legal nature are submitted simply to a procedure of conciliation. If this fails, they may be brought before the Council of the League of Nations, under Article 15 or Article 17 of the Covenant.

Convention C. — The Committee has considered that there are very few States which, finding it impossible to accept the general or restricted obligations to submit to arbitration and judicial settlement contained in Conventions A and B, would refuse to accept Convention C, which simply provides for conciliation procedure.

The composition, mode of operation and duties of the Conciliation Commission laid down by the Convention are, in general, reproduced from the provisions in the Locarno Treaties of Arbitration and Conciliation. The only change is that greater latitude has been granted to the parties ; in particular, it is stipulated that the Conciliation Commission may be permanent or specially constituted.

The procedure adopted for the appointment of members of Conciliation Commissions in the case of disagreement between the parties is the same as that laid down in Convention A for the appointment of members of the Arbitral Tribunal. It is also based upon the Hague Conventions.

As regards the mode of operation of the Conciliation Commission, it seemed desirable on a second reading to introduce two new clauses, one providing for the presence of all the members whenever the Commission is called upon to pronounce on questions of substance, the other providing that no mention shall be made in the Minutes as to whether the Commission's decisions were taken by a majority or not.

III. General Provisions common to the Three Models.

The general provisions which, except for the adaptations required by the three model conventions, are common to all, call for the following explanations :

1. It is stipulated that the parties shall, during the procedure, abstain from any measures which may aggravate the dispute. The Permanent Court of International Justice and the arbitral tribunal may prescribe provisional measures. The Conciliation Commission has only the power to " recommend " such measures.

2. The case of third Powers, parties or not to the Convention, which have an interest in the dispute is specially provided for and settled. After careful study, the Committee, on the second reading, amended the text originally adopted. It provides that a third Power, party to the Convention, shall be invited to take part in the judicial or arbitral procedure, but shall be free to decline the invitation. In certain circumstances, it shall have the right to intervene and, whenever it does so, shall be bound by the decision given.

3. In spite of the importance of the largest possible number of accessions being given without reservations of any kind, the Committee, which has sought to achieve something practical and to take account of the difficulties peculiar to each State, has made a wide allowance for reservations.

Nevertheless, it has tried to regulate and classify them in order to avoid uncertainty and abuse. Four kinds of reservations have been laid down. The last, which is the widest, refers to "disputes concerning particular clearly defined subject-matters, such as territory status" (see Convention A, Article 36, No. 2 *(d)*). Thus, any State, when acceding to the Convention, may exclude any question whatever. All that it need do is to make special mention of this question. In this way it has been found possible to get rid of the dangerous and vague reservation of vital interests; if a State considers that certain questions affect its vital interests, it will exclude them by a reservation mentioning these questions.

On the second reading, the Committee desired to indicate by a textual amendment that the reservations enumerated in the provisions of these model conventions were limitative in their character.

Furthermore, the reservations stipulated by the acceding States only apply to arbitration unless it is expressly stated that they shall also apply to conciliation. The Committee is strongly of opinion that reservations, which are in all cases undesirable, should be of a wholly exceptional nature in the case of conciliation.

Finally, the operation of possible reservations has not been left to the discretion of the parties : it is subject to control by the Permanent Court of International Justice.

4. The Drafting Committee, during the second reading, contemplated the insertion of the following paragraphs in Article 36 of Convention A and in Article 29 of Convention B relating to reservations :

> " When acceding to the present Convention, a State may make its acceptance conditional upon the disputes referred to in Article 4 being submitted to an Arbitral Tribunal, unless the parties agree to have recourse to the Permanent Court of International Justice. In this case, the Arbitral Tribunal shall be established in conformity with the provisions of Articles 26 *et seq.* of the present Convention.
>
> " On the other hand, a State may, when acceding to the present Convention, lay down as a condition that, as regards the disputes referred to in Article 4, no change shall be made in the order of the jurisdictions therein mentioned. "

These provisions are based on the idea that the system of conventions for the peaceful settlement of disputes worked out by the Committee on Arbitration and Security should be as elastic as possible, so as to give the fullest consideration to the preferences of the different Governments.

Now, it is laid down in Conventions A and B that disputes of a legal nature shall be brought either before the Permanent Court of International Justice or before an arbitral tribunal, but, if the parties disagree, the jurisdiction of the Permanent Court of International Justice is obligatory. Certain States, although desirous of having recourse to arbitration whenever possible, may prefer an arbitral tribunal consisting of judges of their own choice. It would be regrettable should the stipulations on this point in Conventions A and B prevent certain States from acceding. In order to give Governments a wider choice, the two paragraphs mentioned above were accordingly proposed.

According to the first paragraph, a State may specify, when acceding to the Convention, that it is willing to have recourse only to an arbitral tribunal, whereas, according to the second paragraph, another State may indicate that it desires, in the absence of agreement to the contrary, to have recourse only to the Permanent Court of International Justice.

Objections were made to these provisions.

It was pointed out that, as between acceding States which made use of the right contained in the first paragraph and those which exercised the right laid down in the second paragraph, there would no longer be any obligation to have recourse to arbitration.

The Committee considered another procedure. This consisted in framing a new model convention, which would have been a reproduction of Convention B, except that the jurisdiction provided for the judgment of disputes of a legal nature was, in the absence of a contrary agreement between the parties, an arbitral tribunal. It was objected that this procedure would encumber the system of model conventions with a further convention. As the Committee could not arrive at a final opinion, the question was left open.

5. Disputes relating to the interpretation or application of the Convention will be submitted to the Permanent Court of International Justice. The object of this provision is to prevent conflicts of interpretation constituting a reason or pretext for any of the parties to bring about the failure of the forms of procedure laid down.

6. In anticipation of accession to the different Conventions by States not members of the League of Nations, the Committee, during the second reading, supplemented the text previously adopted by adding a mention of Article 17 of the League Covenant to every mention made of Article 15.

7. During its third session, the Committee considered that there was no advantage in presenting the model collective Conventions A, B and C as the results of negotiations between Government plenipotentiaries. For this reason, the Committee decided to omit the clauses containing the list of Heads of States parties to the Conventions, as well as the names of plenipotentiaries, and therefore omitted also the provisions establishing a distinction

between the procedure of signature and that of accession. The Convention will be submitted to States for their accession only.

8. *Duration.* — It is stipulated that the Conventions shall have a fixed uniform duration of five years. On the expiration of that period, they shall be renewed for the same period in the case of Powers which have not denounced them in due time.

IV. Facilities Provided for the Conclusion of Conventions on Arbitration and Judicial Settlement.

In order better to give effect to the last Assembly's wish for an increased use of forms of pacific procedure and for a larger number of conventions on arbitration and judicial settlement, the Committee has thought fit to frame a draft resolution defining the conditions on which the Council will be able to lend its good offices to States desiring to conclude such treaties.

V. Method of facilitating Accessions to the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice.

The Committee, realising the obstacles which prevent States from committing themselves, has thought that the only method of reducing them at present possible is to draw attention to the possibilities offered by the terms of the Clause in Article 36 to States which do not see their way to accede to it without qualification to do so, subject to appropriate reservations limiting the extent of their commitments, both as regards duration and as regards scope. Accordingly, the Committee has framed a draft resolution enabling the Council to request those States which have not yet acceded to the clause of Article 36 to consider with due regard to their own interests whether they can do so on the conditions above indicated.

(b) MODEL CONVENTIONS.

GENERAL CONVENTION FOR THE PACIFIC SETTLEMENT OF ALL INTERNATIONAL DISPUTES.

(Convention A.)

The Heads of States and competent authorities of the States parties to the present Convention :

Being seriously desirous of developing mutual confidence and of consolidating international peace by assuring, through resort to pacific procedure, the settlement of disputes arising between their respective countries;

Noting that respect for rights established by treaty or resulting from international law is obligatory upon international tribunals;

Recognising that the rights of the several States cannot be modified except with their own consent;

Considering that the faithful observance, under the auspices of the League of Nations, of forms of peaceful procedure allows of the settlement of all international disputes; and

Highly appreciating the recommendation of the Assembly of the League of Nations contained in its resolution of..... that all States should conclude a general Convention for the Pacific Settlement of all International Disputes;

Have decided to achieve their common aim by agreeing on the following provisions :

Chapter I. — Pacific Settlement in General.

Article 1.

Disputes of every kind which may arise between two or more of the High Contracting Parties and which it has not been possible to settle by diplomacy shall be submitted, under the conditions laid down in the present Convention, to settlement by judicial means or arbitration, preceded, according to circumstances, as a compulsory or optional measure, by recourse to the procedure of conciliation.

Article 2.

1. Disputes for the settlement of which a special procedure is laid down in other conventions in force between the parties to the dispute shall be settled in conformity with the provisions of those conventions.

2. The present Convention shall not affect any agreement in force by which conciliation procedure is established between the High Contracting Parties or they are bound by obligations to resort to arbitration or judicial settlement which ensure the settlement of the dispute. If, however, these agreements provide only for a procedure of conciliation, after such procedure has been followed without result, the provisions of the present Convention concerning settlement by judicial means or arbitration shall be applied.

Article 3.

1. In the case of a dispute the occasion of which, according to the municipal law of one of the parties, falls within the competence of its judicial or administrative authorities, the party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present Convention until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

2. In such a case, the party which desires to resort to the procedure laid down in the present Convention must notify the other party of its intention within a period of one year from the date of the aforesaid decision.

Chapter II. — Judicial Settlement.

Article 4.

All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under Article 36, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.

Article 5.

If the parties agree to submit the disputes mentioned in the preceding article to an arbitral tribunal, they shall draw up a special agreement in which they shall specify the subject of the dispute, the arbitrators selected, the procedure to be followed, and, if necessary, the rules in regard to the substance of the dispute to be applied by the arbitrators. In the absence of sufficient particulars in the special agreement, the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes, shall apply automatically.

Article 6.

If the parties fail to agree concerning the special agreement referred to in the preceding article, or fail to appoint arbitrators, either party shall be at liberty, after giving three months' notice, to bring the dispute by an application direct before the Permanent Court of International Justice.

Article 7.

If, in a judicial sentence or arbitral award, it is stated that a judgment, or a measure enjoined by a court of law or any other authority of one of the parties to the dispute, is wholly or in part contrary to international law, and if the constitutional law of that party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the parties agree that the judicial or arbitral award shall grant the injured party equitable satisfaction.

Article 8.

1. In the case of the disputes mentioned in Article 4, before any procedure before the Permanent Court of International Justice or any arbitral procedure, the parties may agree to have recourse to the conciliation procedure provided for in the present Convention.

2. In the case of the attempt at conciliation failing and, after the expiration of the period of one month from the termination of the proceedings of the Conciliation Commission, the dispute shall be submitted to the Permanent Court of International Justice, or to the arbitral tribunal mentioned in Article 5, as the case may be.

Chapter III. — Conciliation.

Article 9.

All disputes between the parties other than the disputes mentioned in Article 4 shall be submitted obligatorily to a procedure of conciliation before they can form the subject of a settlement by arbitration.

Article 10.

The disputes referred to in the preceding article shall be submitted to a permanent or special Conciliation Commission constituted by the parties.

Article 11.

On a request to that effect being sent by one of the contracting parties to another party, a permanent Conciliation Commission shall be constituted within a period of six months.

Article 12.

Unless the parties concerned agree otherwise, the Conciliation Commission shall be constituted as follows :

(1) The Commission shall be composed of five members. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties concerned. The parties shall appoint the President of the Commission from among them.

(2) The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace the commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

(3) Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 13.

If, when a dispute arises, no permanent Conciliation Commission appointed by the parties to the dispute is in existence, a special commission, appointed in the manner laid down in the preceding article, shall, unless the parties decide otherwise, be constituted for the examination of the dispute.

Article 14.

1. If the appointment of the commissioners to be designated jointly is not made within the period of six months provided for in Article 11, or within a period of three months from the date on which one of the parties requested the other party to constitute a special commission, or to fill the vacancies on a permanent Conciliation Commission, a third Power, chosen by agreement between the parties, shall be requested to make the necessary appointment.

2. If no agreement is reached on this point, each party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, these two Powers have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 15.

1. Disputes shall be brought before the Conciliation Commission by means of an application addressed to the President by the two parties acting in agreement or, in the absence of such agreement, by one or other of the parties.

2. The application, after having given a summary account of the subject of the dispute, shall contain the invitation to the Commission to take any necessary measures with a view to arriving at an amicable settlement.

3. If the application emanates from only one of the parties, notification thereof shall be made by such party without delay to the other party.

Article 16.

1. Within fifteen days from the date on which a dispute has been brought by one of the parties before a permanent Conciliation Commission, either party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. The party making use of this right shall immediately inform the other party; the latter shall in that case be entitled to take similar action within fifteen days from the date on which the notification reaches it.

Article 17.

1. In the absence of agreement to the contrary between the parties, the Conciliation Commission shall meet at the seat of the League of Nations, or at some other place selected by its President.

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Article 18.

The work of the Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the parties.

Article 19.

1. Failing any provision to the contrary, the Conciliation Commission shall lay down its own procedure, which in any case must provide for both parties being heard. In regard to enquiries, the Commission, unless it decides unanimously to the contrary, shall act in accordance with the provisions of Chapter III of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

2. The parties shall be represented before the Conciliation Commission by agents, whose duty shall be to act as intermediaries between them and the Commission; they may, moreover, be assisted by counsel and experts appointed by them for that purpose and may request that all persons whose evidence appears to them desirable should be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of the two parties as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 20.

Unless otherwise agreed by the parties, the decisions of the Conciliation Commission shall be taken by a majority vote and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 21.

The parties undertake to facilitate the work of the Conciliation Commission and particularly to supply it to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to allow it to proceed in their territory and in accordance with their law to the summoning and hearing of witnesses or experts and to visit the localities in question.

Article 22.

1. During the proceedings of the Commission, each of the Commissioners shall receive emoluments, the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same way.

Article 23.

1. The task of the Conciliation Commission shall be to elucidate the questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise, and to endeavour to bring the parties to an agreement. It may, after the case has been examined, inform the parties of the terms of settlement which seem suitable to it, and lay down the period within which they are to make their decision.

2. At the close of its proceedings, the Commission shall draw up a procès-verbal stating, as the case may be, either that the parties have come to an agreement and, if need arises, the terms of the agreement, or that it has been impossible to effect a settlement. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken by a majority vote.

3. The proceedings of the Commission must, unless the parties otherwise agree, be terminated within six months from the date on which the Commission shall have been notified of the dispute.

Article 24.

The Commission's procès-verbal shall be communicated without delay to the parties. The parties shall decide whether it shall be published.

Chapter IV. — Settlement by Arbitration.

Article 25.

If the parties have not reached an agreement within a month from the termination of the proceedings of the Conciliation Commission mentioned in the previous articles, the question shall be brought before an Arbitral Tribunal which, unless the parties agree otherwise, shall be constituted in the manner indicated below.

Article 26.

The Arbitral Tribunal shall consist of five members. The parties shall each nominate one member, who may be chosen from among their respective nationals. The two other arbitrators and the Chairman shall be chosen by common agreement from among the nationals of third Powers. They must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties concerned.

Article 27.

If the appointment of the members of the Arbitral Tribunal is not made within a period of three months from the date on which one of the parties requested the other party to constitute an arbitral tribunal, the necessary appointments shall be made by the method described in Article 14.

Article 28.

Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 29.

The parties shall draw up a special agreement determining the subject of the dispute, and, if necessary, the details of procedure and the rules in regard to the substance of the dispute to be applied by the arbitrators.

Article 30.

Failing stipulations to the contrary in the special agreement, the procedure followed by the Arbitral Tribunal shall be that laid down in Part IV, Chapter III, of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

Article 31.

Failing the conclusion of a special agreement within a period of three months from the date on which the Tribunal was constituted, the dispute shall be brought before the Tribunal by an application by one or other party.

Article 32.

If nothing is laid down in the special agreement, the Tribunal shall apply the rules in regard to the substance of the dispute indicated in Article 38 of the Statute of the Permanent Court of International Justice. In so far as the dispute cannot be settled by the application of the rules of law alone, the Tribunal may exercise the functions of a friendly mediator.

Chapter V. — General Provisions.

Article 33.

1. In all cases, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal, shall lay down within the shortest possible time the provisional measures to be adopted. It shall in like manner be for the Council of the League of Nations, if the question is brought before it, to ensure that suitable provisional measures are taken. The parties to the dispute shall be bound to accept such measures.

2. If the dispute is brought before a Conciliation Commission, the latter may recommend to the parties the adoption of such provisional measures as it considers suitable.

3. The parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission or the Council of the League of Nations and, in general, to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

Article 34.

Should a dispute arise between more than two States parties to the present Convention, the following rules shall be observed for the application of the forms of procedure laid down in the foregoing provisions :

(a) In the case of conciliation procedure, a special commission shall invariably be constituted. The composition of such commission shall differ according as the parties all have separate interests or as two or more of their number act together.

In the former case, the parties shall each appoint one commissioner and shall jointly appoint commissioners nationals of third Powers, whose numbers shall always exceed by one the number of commissioners appointed separately by the parties.

In the second case, the parties who act together shall appoint their commissioner jointly by agreement between themselves and shall combine with the other party or parties in appointing third commissioners.

In either event, the parties shall, unless they agree otherwise, be guided by Article 13 and the following articles of the present Convention.

(b) In the case of judicial procedure, the Statute of the Permanent Court of International Justice shall apply.

(c) In the case of arbitral procedure, if agreement is not secured as to the composition of the Tribunal in the case of the disputes mentioned in Article 4, each party shall have the right, by means of an application, to submit the dispute to the Permanent Court of International Justice; in the case of the disputes mentioned in Article 9, Article 26 above shall apply, and each third party having separate interests shall appoint one additional arbitrator.

Article 35.

1. The present Convention shall be applicable as between the High Contracting Parties, even though a third Power, whether a party to the Convention or not, has an interest in the dispute.

2. In conciliation procedure, the parties may agree to invite such third Power to intervene.

3. In judicial or arbitral procedure, any third Power having an interest on legal grounds in the dispute shall be requested to take part in the procedure. The request shall be made to it by either party, or by both parties jointly. Such third Power, even if not invited, shall be entitled to intervene either if it is a party to the present Convention or if the question concerns the interpretation of a treaty in which it has participated with the parties to the dispute.

4. The judgment or award pronounced shall have binding force on the third Power which has intervened, and the latter shall also be bound by the interpretation of the treaty in which it has participated with the parties to the dispute.

Article 36.

1. In acceding to the present Convention, any State may make its acceptance conditional upon the reservations exhaustively enumerated in the following paragraph. These reservations must be indicated at the time of accession.

2. These reservations may be such as to exclude from the obligations laid down in the present Convention :

(a) Disputes arising out of facts prior to the accession;

(b) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States;

(c) Disputes concerning questions which affect the principles of the constitution of the State;

(d) Disputes concerning particular clearly specified subject-matters, such as territorial status.

3. If one of the parties to the dispute has made a reservation, the other parties may enforce the same reservation in regard to that party.

4. Disputes which, as a result of these reservations, are excluded from judicial settlement without being formally excluded from the conciliation procedure shall remain subject to that procedure.

Article 37.

Whenever, as a result of these reservations, none of the procedures established by the present Convention can be put into effect, or if, after the failure of the conciliation procedure, a resort to arbitration is impossible, the dispute remains subject to be dealt with in accordance with the provisions of Article 15 or Article 17 of the Covenant of the League of Nations as the case may be.

Article 38.

Disputes relating to the interpretation or application of the present Convention, including those concerning the classification of disputes and the scope of reservations, shall be submitted to the Permanent Court of International Justice.

Article 39.

The present Convention, which is in conformity with the Covenant of the League of Nations, shall not be interpreted as restricting the duty of the League to take, at any time and

notwithstanding any conciliation or arbitration procedure, whatever action may be deemed wise and effectual to safeguard the peace of the world.

Article 40.

The present Convention, of which the French and English texts shall both be authentic, shall bear to-day's date[1].

Article 41.

Any Member of the League of Nations and any non-member States to which the Council of the League of Nations shall communicate a copy of the present Convention for this purpose may accede to the said Convention.

The instruments of accession shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League and to the non-member States mentioned in the preceding paragraph.

Article 42.

1. The present Convention shall come into force on the ninetieth day following the receipt by the Secretary-General of the League of Nations of the accession of not less than two contracting parties.

2. Accessions received after the entry into force of the Convention, in accordance with the previous paragraph, shall become effective as from the ninetieth day following the date of receipt by the Secretary-General of the League of Nations.

Article 43.

1. The present Convention shall be concluded for a period of five years, dating from its entry into force.

2. It shall remain in force for further successive periods of five years in the case of High Contracting Parties which do not denounce it at least six months before the expiration of the current period.

3. Denunciation shall be effected by a written notification addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States mentioned in Article 41.

4. Notwithstanding denunciation by one of the High Contracting Parties concerned in a dispute, all forms of procedure pending at the term of the expiration of the period of the Convention shall be duly completed.

Article 44.

The present Convention shall be registered by the Secretary-General of the League of Nations on the date of its entry into force.

DONE at ..... in a single copy, which shall be kept in the archives of the Secretariat of the League of Nations, and certified true copies of which shall be delivered to all the Members of the League and to the non-member States referred to in Article 41.

GENERAL CONVENTION FOR JUDICIAL SETTLEMENT, ARBITRATION AND CONCILIATION.

(Convention B.)

The Heads of States and competent authorities of the States parties to the present Convention :

Being seriously desirous of developing mutual confidence and of consolidating international peace by assuring, through resort to pacific procedure, the settlement of disputes arising between their respective countries ;

Noting that respect for rights established by treaty or resulting from international law is obligatory upon international tribunals ;

Recognising that the rights of the several States cannot be modified except with their own consent ;

Considering that the faithful observance, under the auspices of the League of Nations, of forms of peaceful procedure allows of the settlement of all international disputes ; and

[1] Date of adoption by the Assembly.

Highly appreciating the recommendation of the Assembly of the League of Nations contained in its resolution of..... that all States should conclude a general Convention for Judicial Settlement, Arbitration and Conciliation;

Have decided to achieve their common aim by agreeing on the following provisions :

Chapter I. — Pacific Settlement in General.

Article 1.

Disputes of every kind which may arise between two or more of the High Contracting Parties and which it has not been possible to settle by diplomacy shall be submitted to a procedure of judicial settlement, arbitration or conciliation under the conditions laid down in the present Convention.

Article 2.

1. Disputes for the settlement of which a special procedure is laid down in other conventions in force between the parties to the dispute shall be settled in conformity with the provisions of those conventions.

2. The present Convention shall not affect any agreements in force by which conciliation procedure is established between the High Contracting Parties or they are bound by obligations to resort to arbitration or judicial settlement which ensure the settlement of the dispute. If, however, these agreements provide only for a procedure of conciliation, after such procedure has been followed without result, the provisions of the present Convention concerning settlement by judicial means or arbitration shall be applied.

Article 3.

1. In the case of a dispute the occasion of which, according to the municipal law of one of the parties, falls within the competence of its judicial or administrative authorities, the party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present Convention until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

2. In such a case, the party which desires to resort to the procedure laid down in the present Convention must notify the other party of its intention within a period of one year from the date of the aforesaid decision.

Chapter II. — Judicial Settlement.

Article 4.

All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under Article 29, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.

Article 5.

If the parties agree to submit the disputes mentioned in the preceding article to an arbitral tribunal, they shall draw up a special agreement in which they shall specify the subject of the dispute, the arbitrators selected, the procedure to be followed, and, if necessary, the rules in regard to the substance of the dispute to be applied by the arbitrators. In the absence of sufficient particulars in the special agreement, the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes, shall apply automatically.

Article 6.

If the parties fail to agree concerning the special agreement referred to in the preceding article, or fail to appoint arbitrators, either party shall be at liberty, after giving three months' notice, to bring the dispute by an application direct before the Permanent Court of International Justice.

Article 7.

If, in a judicial sentence or arbitral award, it is stated that a judgment, or a measure enjoined by a court of law or any other authority of one of the parties to the dispute, is wholly or in part contrary to international law, and if the constitutional law of that party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the parties agree that the judicial or arbitral award shall grant the injured party equitable satisfaction.

Article 8.

1. In the case of the disputes mentioned in Article 4, before any procedure before the Permanent Court of International Justice or any arbitral procedure, the parties may agree to have recourse to the conciliation procedure provided for in the present Convention.

2. In the case of the attempt at conciliation failing, and after the expiration of the period of one month from the termination of the proceedings of the Conciliation Commission, the dispute shall be submitted to the Permanent Court of International Justice, or to the arbitral tribunal mentioned in Article 5, as the case may be.

Chapter III. — Conciliation.

Article 9.

All disputes between the parties other than the disputes mentioned in Article 4 shall be submitted obligatorily to a procedure of conciliation.

Article 10.

The disputes referred to in the preceding article shall be submitted to a permanent or special Conciliation Commission constituted by the parties.

Article 11.

On a request to that effect being sent by one of the contracting parties to another party, a permanent Conciliation Commission shall be constituted within a period of six months.

Article 12.

Unless the parties concerned agree otherwise, the Conciliation Commission shall be constituted as follows :

(1) The Commission shall be composed of five members. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties concerned. The parties shall appoint the President of the Commission from among them.

(2) The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace the commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

(3) Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 13.

If, when a dispute arises, no permanent Conciliation Commission appointed by the parties to the dispute is in existence, a special commission, appointed in the manner laid down in the preceding article, shall, unless the parties decide otherwise, be constituted for the examination of the dispute.

Article 14.

1. If the appointment of the commissioners to be designated jointly is not made within the period of six months provided for in Article 11, or within a period of three months from the date on which one of the parties requested the other party to constitute a special commission, or to fill the vacancies of a permanent Conciliation Commission, a third Power, chosen by agreement between the parties, shall be requested to make the necessary appointment.

2. If no agreement is reached on this point, each party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, these two Powers have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 15.

1. Disputes shall be brought before the Conciliation Commission by means of an application addressed to the President by the two parties acting in agreement or, in the absence of such agreement, by one or other of the parties.

2. The application, after having given a summary account of the subject of the dispute, shall contain the invitation to the Commission to take any necessary measures with a view to arriving at an amicable settlement.

3. If the application emanates from only one of the parties, notification thereof shall be made by such party without delay to the other party.

Article 16.

1. Within fifteen days from the date on which a dispute has been brought by one of the parties before a permanent Conciliation Commission, either party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. The party making use of this right shall immediately inform the other party; the latter shall in that case be entitled to take similar action within fifteen days from the date on which the notification reaches it.

Article 17.

1. In the absence of agreement to the contrary between the parties, the Conciliation Commission shall meet at the seat of the League of Nations, or at some other place selected by its President.

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Article 18.

The work of the Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the parties.

Article 19.

1. Failing any provision to the contrary, the Conciliation Commission shall lay down its own procedure, which in any case must provide for both parties being heard. In regard to enquiries, the Commission, unless it decides unanimously to the contrary, shall act in accordance with the provisions of Chapter III of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

2. The parties shall be represented before the Conciliation Commission by agents, whose duty shall be to act as intermediaries between them and the Commission ; they may, moreover, be assisted by counsel and experts appointed by them for that purpose and may request that all persons whose evidence appears to them desirable should be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of the two parties as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 20.

Unless otherwise agreed by the parties, the decisions of the Conciliation Commission shall be taken by a majority vote and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 21.

The parties undertake to facilitate the work of the Conciliation Commission and particularly to supply it to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to allow it to proceed in their territory and, in accordance with their law, to the summoning and hearing of witnesses or experts and to visit the localitites in question.

Article 22.

1. During the proceedings of the Commission, each of the commissioners shall receive emoluments, the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same way.

Article 23.

1. The task of the Conciliation Commission shall be to elucidate the questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise, and to endeavour to bring the parties to an agreement. It may, after the case has been examined, inform the parties of the terms of settlement which seem suitable to it, and lay down the period within which they are to make their decision.

2. At the close of its proceedings, the Commission shall draw up a procès-verbal stating, as the case may be, either that the parties have come to an agreement and, if need arises, the terms of the agreement, or that it has been impossible to effect a settlement. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken by a majority vote.

3. The proceedings of the Commission must, unless the parties otherwise agree, be terminated within six months from the day on which the Commission shall have been notified of the dispute.

Article 24.

The Commission's procès-verbal shall be communicated without delay to the parties. The parties shall decide whether it shall be published.

Article 25.

If the parties have not reached an agreement within a month from the termination of the proceedings of the Conciliation Commission, the dispute remains subject to be dealt with in accordance with Articles 15 or 17 of the Covenant of the League of Nations, as the case may be. This provision shall not apply in the case provided for in Article 8.

Chapter IV. — General Provisions.

Article 26.

1. In all cases, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal, shall lay down within the shortest possible time the provisional measures to be adopted. It shall in like manner be for the Council of the League of Nations, if the question is brought before it, to ensure that suitable provisional measures are taken. The parties to the dispute shall be bound to accept such measures.

2. If the dispute is brought before a Conciliation Commission, the latter may recommend to the parties the adoption of such provisional measures as it considers suitable.

3. The parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission or the Council of the League of Nations and, in general, to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

Article 27.

Should a dispute arise between more than two States parties to the present Convention, the following rules shall be observed for the application of the forms of procedure laid down in the foregoing provisions :

(*a*) In the case of conciliation procedure, a special commission shall invariably be constituted. The composition of such commission shall differ according as the parties all have separate interests or as two or more of their number act together.

In the former case, the parties shall each appoint one commissioner and shall jointly appoint commissioners nationals of third Powers, whose number shall always exceed by one the number of commissioners appointed separately by the parties.

In the second case, the parties who act together shall appoint their commissioner jointly by agreement between themselves and shall combine with the other party or parties in appointing third commissioners.

In either event, the parties shall, unless they agree otherwise, be guided by Article 13 and the following articles of the present Convention.

(*b*) In the case of judicial procedure, the Statute of the Permanent Court of International Justice shall apply.

(*c*) In the case of arbitral procedure, if agreement is not secured as to the composition of the Tribunal, each party shall have the right, by means of an application, to submit the dispute to the Permanent Court of International Justice.

Article 28.

1. The present Convention shall be applicable as between the High Contracting Parties, even though a third Power, whether a party to the Convention or not, has an interest in the dispute.

2. In conciliation procedure, the parties may agree to invite such third Power to intervene.

3. In judicial or arbitral procedure, any third Power having an interest on legal grounds in the dispute shall be requested to take part in the procedure. The request shall be made to it by either party, or by both parties jointly. Such third Power, even if not invited, shall be entitled to intervene either if it is as party to the present Convention or if the question concerns the interpretation of a treaty in which it has participated with the parties to the dispute.

4. The judgment or award pronounced shall have binding force on the third Power which has intervened, and the latter shall also be bound by the interpretation of the treaty in which it has participated with the parties to the dispute.

Article 29.

1. In acceding to the present Convention, any State may make its acceptance conditional upon the reservations exhaustively enumerated in the following paragraph. These reservations must be indicated at the time of accession.

2. These reservations may be such as to exclude from the obligations laid down in the present Convention :

(*a*) Disputes arising out of facts prior to the accession ;

(*b*) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States ;

(*c*) Disputes concerning questions which affect the principles of the constitution of the State ;

(*d*) Disputes concerning particular clearly specified subject-matters, such as territorial status.

3. If one of the parties to the dispute has made a reservation, the other parties may enforce the same reservation in regard to that party.

4. Disputes which, as a result of these reservations, are excluded from judicial settlement without being formally excluded from the conciliation procedure shall remain subject to that procedure.

Article 30.

Whenever, as a result of these reservations, none of the procedures established by the present Convention can be put into effect, the dispute remains subject to be dealt with in accordance with the provisions of Article 15 or Article 17 of the Covenant of the League of Nations, as the case may be.

Article 31.

Disputes relating to the interpretation or application of the present Convention, including those concerning the classification of disputes and the scope of reservations, shall be submitted to the Permanent Court of International Justice.

Article 32.

The present Convention, which is in conformity with the Covenant of the League of Nations, shall not be interpreted as restricting the duty of the League to take, at any time and notwithstanding any conciliation or arbitration procedure, whatever action may be deemed wise and effectual to safeguard the peace of the world.

Article 33.

The present Convention, of which the French and English texts shall both be authentic, shall bear to-day's date[1].

Article 34.

Any Member of the League of Nations and any non-member State to which the Council of the League of Nations shall communicate a copy of the present Convention for this purpose may accede to the said Convention.

The instruments of accession shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League and to the non-member States mentioned in the preceding paragraph.

Article 35.

1. The present Convention shall come into force on the ninetieth day following the receipt by the Secretary-General of the League of Nations of the accession of not less than two contracting parties.

2. Accessions received after the entry into force of the Convention, in accordance with the previous paragraph, shall become effective as from the ninetieth day following the date of receipt by the Secretary-General of the League of Nations.

Article 36.

1. The present Convention shall be concluded for a period of five years, dating from its entry into force.

2. It shall remain in force for further successive periods of five years in the case of High Contracting Parties which do not denounce it at least six months before the expiration of the current period.

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[1] Date of adoption by the Assembly.

3. Denunciation shall be effected by a written notification addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States mentioned in Article 34.

4. Notwithstanding denunciation by one of the High Contracting Parties concerned in a dispute, all forms of procedure pending at the term of the expiration of the period of the Convention shall be duly completed.

Article 37.

The present Convention shall be registered by the Secretary-General of the League of Nations on the date of its entry into force.

DONE at ..... in a single copy, which shall be kept in the archives of the Secretariat of the League of Nations, and certified true copies of which shall be delivered to all the Members of the League and to the non-member States referred to in Article 34.

GENERAL CONCILIATION CONVENTION.

(Convention C.)

The Heads of States and competent authorities of the States parties to the present Convention :

Being sincerely desirous of developing mutual confidence and consolidating international peace by endeavouring to bring about, by the pacific procedure of conciliation, the settlement of all disputes which may arise between their respective countries and which may be capable of being the object of an amicable arrangement;

Highly appreciating the recommendation of the Assembly of the League of Nations contained in its resolution of . . . that all States should conclude a general Conciliation Convention;

Have decided to achieve their common aim by agreeing on the following provisions :

Article 1.

Disputes of every kind which may arise between two or more of the High Contracting Parties and which it has not been possible to settle by diplomacy shall be submitted, under the conditions laid down in the present Convention, to settlement by recourse to the procedure of conciliation.

Article 2.

The disputes referred to in the preceding article shall be submitted to a permanent or special conciliation commission constituted by the parties to the dispute.

Article 3.

Disputes for the settlement of which a procedure by judicial settlement, arbitration or conciliation is laid down in other conventions in force between the parties to the dispute shall be settled in conformity with the provisions of such conventions.

Article 4.

If a dispute which one of the parties has laid before the Commission is brought by the other party, in conformity with the conventions in force between the parties, before the Permanent Court of International Justice or an arbitral tribunal, the Commission shall defer consideration of the dispute until the Court or the arbitral tribunal has pronounced upon its competence.

Article 5.

1. In the case of a dispute the occasion of which, according to the municipal law of one of the parties, falls within the competence of its judicial or administrative authorities, the party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present Convention until a decision with final effect has been pronounced within a reasonable time, by the competent authority.

2. In such a case, the party which desires to resort to the procedure laid down in the present Convention must notify the other party of its intention within a period of one year from the date of the aforesaid decision.

Article 6.

On a request to that effect being sent by one of the contracting parties to another contracting party, a permanent Conciliation Commission shall be constituted within a period of six months.

Article 7.

Unless the parties concerned agree otherwise, the Conciliation Commission shall be constituted as follows :

(1) The Commission shall be composed of five members. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties concerned. The parties shall appoint the President of the Commission from among them.

(2) The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace a commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

(3) Vacancies which may occur as a result of death, resignation or any other cause shall be fillled within the shortest possible time in the manner fixed for the nominations.

Article 8.

If, when a dispute arises, no permanent Conciliation Commission appointed by the parties to the dispute is in existence, a special commission, appointed in the manner laid down in the preceding article, shall, unless the parties decide otherwise, be constituted for the examination of the dispute.

Article 9.

1. If the appointment of the commissioners to be designated jointly is not made within the period of six months provided for in Article 11, or within a period of three months from the date on which one of the parties requested the other party to constitute a special commission, or to fill the vacancies of a permanent Conciliation Commission, a third Power, chosen by agreement between the parties, shall be requested to make the necessary appointment.

2. If no agreement is reached on this point, each party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, these two Powers have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 10.

1. Disputes shall be brought before the Conciliation Commission by means of an application addressed to the President by the two parties acting in agreement, or in default thereof by one or other of the parties.

2. The application, after giving a summary account of the subject in dispute, shall contain the invitation to the Commission to take all necessary measures with a view to arriving at an amicable solution.

3. If the application emanates from only one of the parties, the other party shall without delay be notified by it of the fact.

Article 11.

1. Within fifteen days from the date on which a dispute has been brought by one of the parties before a permanent Conciliation Commission, either party may replace its own Commissioner for the examination of the particular dispute, by a person possessing special competence in the matter.

2. The party making use of this right shall immediately notify the other party of the fact; the latter shall in such case be entitled to take similar action within fifteen days from the date on which it received the notification.

Article 12.

1. In the absence of any agreement to the contrary between the parties, the Conciliation Commission shall meet at the seat of the League of Nations, or at some other place selected by its President.

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Article 13.

The work of the permanent Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the parties.

Article 14.

1. Failing any provision to the contrary, the Conciliation Commission shall lay down its own procedure, which in any case must provide for both parties being heard. In regard to enquiries, the Commission, unless it decides unanimously to the contrary, shall act in accordance with the provisions of Chapter III of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

2. The parties shall be represented before the Conciliation Commission by agents, whose duty shall be to act as intermediaries between them and the Commission ; they may, moreover, be assisted by counsel and experts appointed by them for that purpose and may request that all persons whose evidence appears to them desirable should be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of both parties as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 15.

Unless otherwise agreed by the parties, the decisions of the Conciliation Commission shall be taken by a majority vote and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 16.

The parties undertake to facilitate the work of the Conciliation Commission and particularly to supply it to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to allow it to proceed in their territory, and in accordance with their law, to the summoning and hearing of witnesses or experts and to visit the localities in question.

Article 17.

1. During the proceedings of the Commission, each of the Commissioners shall receive emoluments, the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same way.

Article 18.

1. The task of the Conciliation Commission shall be to elucidate the questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise, and to endeavour to bring the parties to an agreement. It may, after the case has been examined, inform the parties of the terms of settlement which seem suitable to it, and lay down the period within which they are to make their decision.

2. At the close of its proceedings, the Commission shall draw up a procès-verbal stating, as the case may be, either that the parties have come to an agreement and, if need arises, the terms of the agreement, or that it has been impossible to effect a settlement. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken by a majority vote.

3. The proceedings of the Commission must, unless the parties otherwise agree, be terminated within six months from the day on which the Commission shall have been given cognisance of the dispute.

Article 19.

The Commission's procès-verbal shall be communicated without delay to the parties. The parties shall decide whether it shall be published.

Article 20.

1. In all cases, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the Conciliation Commission, when given cognisance of the dispute, may recommend to the parties the adoption of such provisional measures as it may consider desirable.

2. The parties to the dispute undertake to abstain from all measures likely to react prejudicially upon the arrangements proposed by the Conciliation Commission, and in general to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

Article 21.

Should a dispute arise between more than two States parties to the present Convention, the following rules shall be observed for the application of conciliation procedure :

A special Commission shall invariably be constituted. The composition of such Commission shall differ according as the parties have all separate interests or two or more of their number act together.

In the former case, the parties shall each appoint one commissioner and shall jointly appoint commissioners, nationals of third Powers, whose number shall always exceed by one the number of commissioners appointed separately by the parties.

In the second case, the parties who act together shall appoint their commissioner jointly by agreement between themselves and shall combine with the other party or parties in appointing third commissioners.

In either event the parties shall, unless they agree otherwise, act in accordance with Article 8 and the following articles of the present Convention.

Article 22.

1. The present Convention shall be applicable as between the High Contracting Parties, even though a third Power, whether a party to the Convention or not, has an interest in the dispute.

2. The parties may agree to invite such third Power to intervene.

Article 23.

1. In acceding to the present Convention, any State may make its acceptance conditional upon the reservations exhaustively enumerated in the following paragraph. These reservations must be indicated at the time of accession.

2. These reservations may be such as to exclude from the obligations laid down in the present Convention :

(*a*) Disputes arising out of facts prior to the accession ;

(*b*) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States ;

(*c*) Disputes concerning questions which affect the principles of the constitution of the State ;

(*d*) Disputes concerning particular clearly specified subject-matters, such as territorial status.

3. If one of the parties to the dispute has made a reservation, the other parties may enforce the same reservation in regard to that party.

Article 24.

Whenever, as a result of these reservations, the conciliation procedure is impossible, or when in spite of this procedure the parties have been unable to agree, the dispute remains subject to be dealt with in accordance with the provisions of Article 15 or Article 17 of the Covenant of the League of Nations, as the case may be.

Article 25.

Disputes relating to the interpretation or application of the present Convention, including those concerning the classification of disputes and the scope of reservations, shall be submitted to the Permanent Court of International Justice.

Article 26.

The present Convention, which is in conformity with the Covenant of the League of Nations, shall not be interpreted as restricting the duty of the League to take, at any time and notwithstanding any conciliation or arbitration procedure, whatever action may be deemed wise and effectual to safeguard the peace of the world.

Article 27.

The present Convention, of which the French and English texts shall both be authentic, shall bear to-day's date.[1]

Article 28.

Any Member of the League of Nations and any non-member State to which the Council of the League of Nations shall communicate a copy of the present Convention for this purpose may accede to the said Convention.

The instruments of accession shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League and to the non-member States mentioned in the preceding paragraph.

Article 29.

1. The present Convention shall come into force on the ninetieth day following the receipt by the Secretary-General of the League of Nations of the accession of not less than two contracting parties.

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[1] Date of adoption by the Assembly.

2. Accessions received after the entry into force of the Convention, in accordance with the previous paragraph, shall become effective as from the ninetieth day following the date of receipt by the Secretary-General of the League of Nations.

Article 30.

1. The present Convention shall be concluded for a period of five years, dating from its entry into force.
2. It shall remain in force for further successive periods of five years in the case of High Contracting Parties which do not denounce it at least six months before the expiration of the current period.
3. Denunciation shall be effected by a written notification addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States mentioned in Article 28.
4. Notwithstanding denunciation by one of the High Contracting Parties concerned in a dispute, all forms of procedure pending at the term of the expiration of the period of the Convention shall be duly completed.

Article 31.

The present Convention shall be registered by the Secretary-General of the League of Nations on the date of its entry into force.

DONE at ..... in a single copy, which shall be kept in the archives of the Secretariat of the League of Nations, and certified true copies of which shall be delivered to all the Members of the League and to the non-member States referred to in Article 28.

MODEL BILATERAL CONVENTIONS.

The report of the Committee on Arbitration and Security presented also the following model bilateral Conventions :

Bilateral Convention for the Pacific Settlement of All International Disputes (Convention *a*);
Bilateral Convention for Judicial Settlement, Arbitration and Conciliation (Convention *b*);
Bilateral Conciliation Convention (Convention *c*).

These texts were not discussed by the First Committee, but it was decided that the Rapporteur should submit them to the Assembly with the amendments necessary to bring them into conformity with the proposals embodied by the First Committee in the General Act.

Accordingly, these texts are not reproduced here, but will be found in their final form as approved by the Assembly in the *Records of the Ninth Ordinary Session of the Assemby : Plenary Meetings.*

(*c*) RESOLUTION ON THE SUBMISSION AND RECOMMENDATION OF THE MODEL CONVENTIONS ON CONCILIATION, ARBITRATION AND JUDICIAL SETTLEMENT.

The Committee on Arbitration and Security recommends that the following draft resolution be submitted for the approval of the Assembly at its next session :

The Assembly,

Having noted the model general conventions drawn up by the Committee on Arbitration and Security on the subjects of conciliation, arbitration and judicial settlement;

Appreciating the value of these model general conventions ; and

Being convinced that their adoption by the greatest possible number of States would serve to increase the guarantees of security :

Recommends all States, whether Members of the League or not, to accede thereto ;

Draws the attention of Governments which may not feel able to assume general obligations to the fact that they could accept the rules established by the aforesaid model conventions by means of special agreements or a simple exchange of notes with any States they may desire ; and

Requests the Council, with a view to this eventuality, to give the Secretariat of the League of Nations instructions to keep a list of the special obligations undertaken within the scope of the general conventions, so as to enable Members of the League of Nations and States non-members of the League to obtain information thereon as soon as possible.

(*d*) . . . . . .

(*e*) RESOLUTION CONCERNING THE OPTIONAL CLAUSE OF ARTICLE 36 OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

The Committee on Arbitration and Security recommends that the following draft resolution be submitted for the approval of the Assembly at its next session :

" The Assembly :

" Referring ot the resolution of October 2nd, 1924, in which the Assembly, considering that the terms of Article 36, paragraph 2, of the Statute of the Permanent Court of International Justice are sufficiently wide to permit States to adhere to the special Protocol opened for signature in virtue of that article, with the reservations which they regard as indispensable, and convinced that it is in the interest of the progress of international justice that the greatest possible number of States should, to the widest possible extent, accept as compulsory the jurisdiction of the Court, recommends States to accede to the said Protocol at the earliest possible date ;

" Noting that this recommendation has not so far produced all the effect that is to be desired ;

" Being of opinion that, in order to facilitate effectively the acceptance of the clause in question, it is expedient to diminish the obstacles which prevent States from committing themselves ;

" Being convinced that the efforts now being made through progressive codification to diminish the uncertainties and supply the deficiencies of international law will greatly facilitate the acceptance of the optional clause of Article 36 of the Statute of the Court, and that meanwhile attention should once more be drawn to the possibility offered by the terms of that clause to States which do not see their way to accede to it without qualification to do so subject to appropriate reservations limiting the extent of their commitments, both as regards duration and as regards scope ;

" Noting in this latter connection that the reservations conceivable may relate, either generally to certain aspects of any kind of dispute, or specifically to certain classes or lists of disputes, and that these different kinds of reservation can be legitimately combined ;

" Recommends that States which have not yet acceded to the optional clause of Article 36 of the Statute of the Permanent Court of International Justice should, failing accession pure and simple, consider, with due regard to their interests, whether they can accede on the conditions above indicated ;

" Requests the Council to communicate the text of this resolution to those States as soon as possible, desiring them to notify it of their intentions in the matter ; and

" Asks the Council to inform them at the next session of the Assembly of the replies it has by then received. "

A. 48. 1928. V.

ANNEX 5.

QUESTION OF THE REVISION OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

DRAFT RESOLUTION SUBMITTED BY THE FRENCH DELEGATION, ON BEHALF OF CERTAIN DELEGATIONS, ON FRIDAY, SEPTEMBER 7TH, 1928.

Experience seems to show that, whether by reason of the ever-growing number of matters referred to the Permanent Court of International Justice, or by reason of certain defects revealed by eight years of war, it would be an advantage, before renewing the terms of office of the members of the Court in 1930, to examine the present terms of the Statute for the purpose of introducing any amendments which may be considered advisable.

Under Article 14 of the Covenant it is for the Council to draw up the Statute of the Permanent Court of International Justice and to submit it to the Assembly for approval.

It therefore seems to be for the Council to carry out the task contemplated above.

Nevertheless, the value of the proposals made by the Council in this connection might be greatly enhanced if the Assembly took the initiative in drawing the Council's attention to this question.

Accordingly, the undersigned have the honour, on behalf of their respective delegations, to propose to the Assembly the adoption of the following resolution :

" The Assembly :

" Considering the ever-growing number of matters referred to the Permanent Court of International Justice ;

" Deeming it advisable that, before the renewal of the terms of office of the members of the Court in 1930, the present provisions of the Statute of the Court should be examined with a view to the introduction of any amendments which experience may show to be necessary ;

" In view of Article 14 of the Covenant of the League of Nations, under which the Council is responsible for preparing the Statute of the Court with a view to its submission to the Assembly for approval,

" Draws the Council's attention to the advisability of proceeding, before the renewal of the terms of office of the members of the Permanent Court of International Justice, to the examination of the Statute of the Court with a view to the introduction of such amendments as may be judged desirable, and to submitting the necessary proposals to the next ordinary session of the Assembly. "

(Signed) :

For the French delegation	Ar. BRIAND.
» » Italian »	Vittorio SCIALOJA.
» » German »	MÜLLER.
» » Greek »	N. POLITIS.
» » Japanese »	M. ADATCI.
» » Roumanian »	N. P. COMNÈNE.
» » Belgian »	P. HYMANS.
» » Netherlands »	BEELAERTS VAN BLOKLAND.
» » Swiss »	G. MOTTA.
» » Norwegian »	Joh. Ludwig MOWINCKEL.
» » Finnish »	Rafael ERICH.
» » Czechoslovak »	Dr. E. BENEŠ.
» » Spanish »	QUIÑONES DE LEÓN.
» » Chilian »	E. VILLEGAS.
» » Colombian »	Francisco José URRUTIA.
» » Serb-Croat-Slovene delegation	RAKITCH.
» » Polish delegation	Auguste ZALESKI.
» » Paraguayan delegation	R. V. CABALLERO.
» » Canadian »	R. DANDURAND.
» » Salvador »	Gustavo GUERRERO.

A. I. 7. 1929.

ANNEX 6.

PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES.

DRAFT RESOLUTION OF THE ASSEMBLY AND GENERAL ACT SUBMITTED BY THE SUB-COMMITTEE. (Rapporteur : M. POLITIS.)

DRAFT RESOLUTION OF THE ASSEMBLY.

The Assembly :

(1) Considering that the faithful observance, under the auspices of the League of Nations, of methods of pacific settlement renders possible the settlement of all disputes ;

(2) Noting that respect for rights established by treaty or resulting from international law is obligatory upon international tribunals ;

(3) Recognising that the rights of the several States cannot be modified except with their consent;

(4) Taking note of the fact that a great number of particular international conventions provide for conciliation, arbitration or obligatory judicial settlement;

(5) Being desirous of facilitating to the greatest possible degree the development of undertakings in regard to the said methods of procedure;

(6) Declaring that such undertakings are not to be interpreted as restricting the duty of the League of Nations to take, at any time and regardless of any other procedure, whatever action may be deemed wise and effectual to safeguard the peace of the world or as impeding its intervention in virtue of Articles 15 and 17 of the Covenant where a dispute cannot be submitted to arbitral or judicial procedure or where the conciliation proceedings have failed :

(7) Approves the General Act annexed hereto, based upon the work of the Committee on Arbitration and Security;

(8) Resolves to communicate it to the Heads of States or other competent authorities of the Members of the League of Nations and such States, not Members of the League of Nations, as may be indicated by the Council of the League;

(9) Recommends their accession to the Act, such accession being capable of being given in the forms and with the reservations provided for in the said General Act;

(10) Draws the attention of Governments which may not feel able to assume general obligations to the fact that they may accept the rules established by the said General Act by means of special agreements or a simple exchange of notes with such States as they may choose;

(11) Requests the Council, with a view to this eventuality, to give the Secretariat of the League of Nations instructions to keep a list of the special obligations thus undertaken within the scope of the General Act, so as to enable Members of the League and non-Member States to obtain information thereof as soon as possible.

(12) A copy of the General Act, signed by the President of the Assembly and by the Secretary-General of the League of Nations, shall be deposited in the archives of the Secretariat; a certified true copy shall be delivered by the Secretary-General to all the Members of the League of Nations and to the non-Member States indicated by the Council of the League of Nations.

General Act.[1]

Chapter I. — Conciliation.

Article 1.

Disputes of every kind which may arise between two or more Parties to the present General Act, and which it has not been possible to settle by diplomacy, shall be submitted, under the conditions laid down in the present chapter, to the procedure of conciliation. C. 1.

Article 2.

The disputes referred to in the preceding article shall be submitted to a permanent or special Conciliation Commission constituted by the Parties to the dispute. C. 2. A. B. 10.

Article 3.

On a request to that effect being made by one of the Contracting Parties to another Party, a permanent Conciliation Commission shall be constituted within a period of six months. C. 6. A. B. 11.

Article 4.

Unless the Parties concerned agree otherwise, the Conciliation Commission shall be constituted as follows : C. 7. A. B. 12.

1. The Commission shall be composed of five members. The Parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the Parties. The Parties shall appoint the President of the Commission from among them.

2. The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate

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[1] The references in the margin are to the articles of the original Conventions A, B and C (see Annex 4).

by agreement between the Parties. Either Party may, however, at any time replace a commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

3. Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 5.

C. 8.
A. B. 13.

If, when a dispute arises, no permanent Conciliation Commission appointed by the Parties is in existence, a Special Commission, appointed in the manner laid down in the preceding article, shall, unless the Parties decide otherwise, be constituted for the examination of the dispute.

Article 6.

C. 9.
A. B. 14

1. If the appointment of the commissioners to be designated jointly is not made within the period of six months provided for in Article 3 or within a period of three months from the date on which one of the Parties requested the other Party to constitute a Special Commission, or to fill the vacancies in a permanent Conciliation Commission, a third Power, chosen by agreement between the Parties, shall be requested to make the necessary appointments.

2. If no agreement is reached on this point, each Party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, the two Powers have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 7.

C. 10.
A. B. 15.

1. Disputes shall be brought before the Conciliation Commission by means of an application addressed to the President by the two Parties acting in agreement, or in default thereof by one or other of the Parties.

2. The application, after giving a summary account of the subject of the dispute, shall contain the invitation to the Commission to take all necessary measures with a view to arriving at an amicable solution.

3. If the application emanates from only one of the Parties, the other Party shall without delay be notified by it.

Article 8.

C. 11.
A. B. 16.

1. Within fifteen days from the date on which a dispute has been brought by one of the Parties before a permanent Conciliation Commission, either Party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. The Party making use of this right shall immediately notify the other Party; the latter shall, in such case, be entitled to take similar action within fifteen days from the date on which it received the notification.

Article 9.

C. 12.
A. B. 17.

1. In the absence of any agreement to the contrary between the Parties, the Conciliation Commission shall meet at the seat of the League of Nations, or at some other place selected by its President.

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Article 10.

C. 13.
A. B. 18.

The work of the Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the Parties.

Article 11.

C. 14.
A. B. 19.

1. Failing any provision to the contrary, the Conciliation Commission shall lay down its own procedure, which in any case must provide for both Parties being heard. In regard to enquiries, the Commission, unless it decides unanimously to the contrary, shall act in accordance with the provisions of Part III of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

2. The Parties shall be represented before the Conciliation Commission by agents, whose duty shall be to act as intermediaries between them and the Commission; they may, moreover, be assisted by counsel and experts appointed by them for that purpose and may request that all persons whose evidence appears to them desirable shall be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of both Parties, as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 12.

Unless otherwise agreed by the Parties, the decisions of the Conciliation Commission shall be taken by a majority vote, and the Commission may only take decisions on the substance of the dispute if all its members are present. C. 15. A. B. 20.

Article 13.

The Parties undertake to facilitate the work of the Conciliation Commission, and particularly to supply it to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to allow it to proceed in their territory, and in accordance with their law, to the summoning and hearing of witnesses or experts and to visit the localities in question. C. 16. A. B. 21.

Article 14.

1. During the proceedings of the Commission, each of the commissioners shall receive emoluments the amount of which shall be fixed by agreement between the Parties, each of which shall contribute an equal share. C. 17. A. B. 22.

2. The general expenses arising out of the working of the Commission shall be divided in the same way.

Article 15.

1. The task of the Conciliation Commission shall be to elucidate the questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise, and to endeavour to bring the Parties to an agreement. It may, after the case has been examined, inform the Parties of the terms of settlement which seem suitable to it, and lay down the period within which they are to make their decision. C. 18. A. B. 23.

2. At the close of its proceedings, the Commission shall draw up a *procès-verbal* stating, as the case may be, either that the Parties have come to an agreement and, if need arises, the terms of the agreement, or that it has been impossible to effect a settlement. No mention shall be made in the *procès-verbal* of whether the Commission's decisions were taken by a majority vote.

3. The proceedings of the Commission must, unless the Parties otherwise agree, be terminated within six months from the day on which the Commission shall have been given cognisance of the dispute.

Article 16.

The Commission's *procès-verbal* shall be communicated without delay to the Parties. The Parties shall decide whether it shall be published. C. 19. A. B. 24.

CHAPTER II. — JUDICIAL SETTLEMENT.

Article 17.

All disputes with regard to which the Parties are in conflict as to their respective rights shall, subject to any reservations which may be made under Article 37, be submitted for decision to the Permanent Court of International Justice, unless the Parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal. It is understood that the disputes referred to above include in particular those mentioned in Article 36 of the Statute of the Permanent Court of International Justice. A. B. 4.

Article 18.

If the Parties agree to submit the disputes mentioned in the preceding article to an arbitral tribunal, they shall draw up a special agreement in which they shall specify the subject of the dispute, the arbitrators selected, the procedure to be followed and, if necessary, the rules in regard to the substance of the dispute to be applied by the arbitrators. In the absence of sufficient particulars in the special agreement, the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes shall apply automatically. A. B. 5.

Article 19.

If the parties fail to agree concerning the special agreement referred to in the preceding article, or fail to appoint arbitrators, either Party shall be at liberty, after giving three months' notice, to bring the dispute by an application direct before the Permanent Court of International Justice. A. B. 6.

Article 20.

1. Notwithstanding the provisions of Article 1, disputes of the kind referred to in Article 17 arising between Parties which have acceded to the obligations contained in the present chapter shall only be subject to the procedure of conciliation if the Parties so agree. A. B. 8.

The obligation to resort to the procedure of conciliation remains applicable to disputes which are excluded from judicial settlement by the operation of reservations under the provisions of Article 37.

2. In the event of recourse to and failure of conciliation, it shall be competent for either party, after the expiration of one month from the termination of the proceedings of the Conciliation Commission, to bring the dispute before the Permanent Court of International Justice or to call for the constitution of the arbitral tribunal referred to in Article 18.

Chapter III. — Arbitration.

Article 21.

A. 25. Any dispute not of the kind referred to in Article 17 which does not, within the month following the termination of the work of the Conciliation Commission, provided for in Chapter I, form the object of an agreement between the Parties shall be brought before an arbitral tribunal which, unless the Parties otherwise agree, shall be constituted in the manner set out below.

Article 22.

A. 26. The Arbitral Tribunal shall consist of five members. The Parties shall each nominate one member, who may be chosen from among their respective nationals. The two other arbitrators and the umpire shall be chosen by common agreement from among the nationals of third Powers. They must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties concerned.

Article 23.

A. 27. If the appointment of the members of the Arbitral Tribunal is not made within a period of three months from the date on which one of the Parties requested the other Party to constitute an arbitral tribunal, the necessary appointments shall, in the absence of agreement to the contrary, be made by the method described in Article 6.

Article 24.

A. 28. Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 25.

A. 29. The Parties shall draw up a special agreement determining the subject of the dispute and, if necessary, the details of procedure and the rules in regard to the substance of the dispute to be applied by the arbitrators.

Article 26.

A. 30. Failing stipulations to the contrary in the special agreement, the procedure followed by the Arbitral Tribunal shall be that laid down in Part IV, Chapter III, of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

Article 27.

A. 31. Failing the conclusion of a special agreement within a period of three months from the date on which the Tribunal was constituted, the dispute may be brought before the Tribunal by an application by one or other Party.

Article 28.

A. 32. If nothing is laid down in the special agreement, the Tribunal shall apply the rules in regard to the substance of the dispute indicated in Article 38 of the Statute of the Permanent Court of International Justice. In so far as there exists no such rule applicable to the dispute, the Tribunal may decide *ex æquo et bono.*

Chapter IV. — General Provisions.

Article 29.

A. B. 2.
C. 3. 1. Disputes for the settlement of which a special procedure is laid down in other conventions in force between the Parties to the dispute shall be settled in conformity with the provisions of those conventions.

2. The present General Act shall not affect any agreements in force by which conciliation procedure is established between the Parties or they are bound by obligations to resort to

arbitration or judicial settlement which ensures the settlement of the dispute. If, however, these agreements provide only for a procedure of conciliation, after such procedure has been followed without result, the provisions of the present Act concerning judicial settlement or arbitration shall be applied.

Article 30.

If a Party brings before a Conciliation Commission a dispute which the other Party, in accordance with the conventions in force between the Parties, has submitted to the Permanent Court of International Justice or an Arbitral Tribunal, the Commission shall defer consideration of the dispute until the Court or the Arbitral Tribunal has pronounced upon its competence. C. 4.

Article 31.

1. In the case of a dispute the occasion of which, according to the municipal law of one of the Parties, falls within the competence of its judicial or administrative authorities, the Party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present General Act until a decision with final effect has been pronounced, within a reasonable time, by the competent authority. C. 5. A. B. 3.

2. In such a case, the Party which desires to resort to the procedures laid down in the present General Act must notify the other Party of its intention within a period of one year from the date of the aforesaid decision.

Article 32.

If, in a judicial sentence or arbitral award, it is declared that a judgment or a measure enjoined by a court of law or any other authority of one of the Parties to the dispute is wholly or in part contrary to international law, and if the constitutional law of that Party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the Parties agree that the judicial or arbitral award shall grant the injured party equitable satisfaction. A. B. 7.

Article 33.

1. Where a dispute forms the object of arbitration or judicial proceedings, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal shall in all cases, and particularly if the question on which the Parties differ arises out of acts already committed or on the point of being committed, lay down within the shortest possible time the provisional measures to be adopted. It shall in like manner be for the Council of the League of Nations, if the question is brought before it, to ensure that suitable provisional measures are taken. The Parties to the dispute shall be bound to accept such measures. A. 33. B. 26. C. 20.

2. If the dispute is brought before a Conciliation Commission, the latter may recommend to the Parties the adoption of such provisional measures as it considers suitable.

3. The Parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission or the Council of the League of Nations and, in general, to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

Article 34.

Should a dispute arise between more than two Parties to the present General Act, the following rules shall be observed for the application of the forms of procedure laid down in the foreign provisions : A. 34. B. 26. C. 21.

(a) In the case of conciliation procedure, a Special Commission shall invariably be constituted. The composition of such Commission shall differ according as the Parties all have separate interests or as two or more of their number act together.

In the former case, the Parties shall each appoint one commissioner and shall jointly appoint commissioners nationals of third Powers, whose numbers shall always exceed by one the number of commissioners appointed separately by the Parties.

In the second case, the Parties which act together shall appoint their commissioner jointly by agreement between themselves and shall combine with the other Party or Parties in appointing third commissioners.

In either event, the Parties, unless they agree otherwise, shall apply Article 5 and the following articles of the present Act, so far as they are compatible with the provisions of the present article.

(b) In the case of judicial procedure, the Statute of the Permanent Court of International Justice shall apply.

(c) In the case of arbitral procedure, if agreement is not secured as to the composition of the Tribunal in the case of the disputes mentioned in Article 17, each Party shall have the right, by means of an application, to submit the dispute to the Permanent Court of International Justice; in the case of the disputes mentioned in Article 21, Article 22 above shall apply, and each third Party having separate interests shall appoint one additional arbitrator.

Article 35.

A. 35.
B. 27.
C. 22.

1. The present General Act shall be applicable as between the Parties thereto even though a third Power, whether a Party to the Act or not, has an interest in the dispute.

2. In conciliation procedure, the Parties may agree to invite such third Power to intervene.

3. Should a third Power consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit to the Permanent Court of International Justice or to the Arbitral Tribunal a request to intervene as a third Party.

It will be for the Court or the Tribunal to decide upon this request.

4. Whenever the construction of a convention to which States other than those concerned in the case are Parties is in question, the Registrar of the Permanent Court of International Justice or the Arbitral Tribunal shall notify all such States forthwith.

Every State so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the decision will be binding upon it.

Article 36.

Accessions to the present General Act for the Settlement of International Disputes may extend :

(1) Either to all the provisions of the Act (Chapters I, II, III and IV);

(2) Or to the provisions which relate to conciliation and judicial settlement (Chapters I and II), together with the general provisions dealing with these procedures (Chapter IV);

(3) Or to the provisions which relate to conciliation (Chapter I), together with the general provisions concerning that procedure (Chapter IV).

The Contracting Parties may benefit by the accessions of other Parties only in so far as they have themselves assumed the same obligations.

Article 37.

A. 36.
B. 28.
C. 23.

1. In addition to the power given in the preceding article, a Party, in acceding to the present General Act, may make its acceptance conditional upon the reservations exhaustively enumerated in the following paragraph. These reservations must be indicated at the time of accession.

2. These reservations may be such as to exclude from the procedures described in the present Act :

(a) Disputes arising out of facts prior to the accession;

(b) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States;

(c) Disputes concerning questions which affect the principles of the Constitution of the State;

(d) Disputes concerning particular cases or clearly specified subject-matters, such as territorial status.

3. If one of the Parties to a dispute has made a reservation, the other Parties may enforce the same reservation in regard to that Party.

4. In the case of Parties which have not limited their accession to the present General Act to the procedure of conciliation, reservations, unless otherwise expressly stated, shall be deemed not to apply to the said procedure.

Article 38.

A. 37.
B. 29.
C. 24.

A Party whose accession has been only partial, or was made subject to reservations, may at any moment, by means of a simple declaration, either extend the scope of its accession or abandon all or part of its reservations.

Article 39.

A. 38.
B. 30.
C. 25.

Disputes relating to the interpretation or application of the present General Act, including those concerning the classification of disputes and the scope of reservations, shall be submitted to the Permanent Court of International Justice.

Article 40.

A. 40.
B. 33.
C. 27.

The present General Act, of which the French and English texts shall both be authentic, shall bear to-day's date[1].

[1] Date of adoption by the Assembly.

Article 41.

1. The present General Act shall be open to accession by all the Heads of States or other competent authorities of the Members of the League of Nations and the non-member States to which the Council of the League of Nations has communicated a copy for this purpose. A. 41. B. 34. C. 28.

2. The instruments of accession and the additional declarations provided for by Article 36 shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League and to the non-member States mentioned in the preceding paragraph.

3. The Secretary-General of the League of Nations shall draw up three lists, denominated respectively by the letters A, B and C, corresponding to the three forms of accession to the present Act provided for in Article 36, in which shall be shown the accessions and additional declarations of the Contracting Parties. These lists, which shall be continually kept up to date, shall be published in the annual report presented to the Assembly of the League of Nations by the Secretary-General.

Article 42.

1. The present General Act shall come into force on the ninetieth day following the receipt by the Secretary-General of the League of Nations of the accession of not less than two Contracting Parties. A. 42. B. 35. C. 29.

2. Accessions received after the entry into force of the Act, in accordance with the previous paragraph, shall become effective as from the ninetieth day following the date of receipt by the Secretary-General of the League of Nations. The same rule shall apply to the additional declaration made by any Parties.

Article 43.

1. The present General Act shall be concluded for a period of five years dating from its entry into force. A. 43. B. 36.

2. It shall remain in force for further successive periods of five years in the case of High Contracting Parties which do not denounce it at least six months before the expiration of the current period. C. 30.

3. Denunciation shall be effected by a written notification addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States referred to in Article 41.

4. A denunciation may be partial only, or may consist in notification of reservations not previously made.

5. Notwithstanding denunciation by one of the Contracting Parties concerned in a dispute, all proceedings pending at the expiration of the current period of the General Act shall be duly completed.

Article 44.

The present General Act shall be registered by the Secretary-General of the League of Nations on the date of its entry into force. A. 44. B. 37. C. 31.

ANNEX 6*a*.

PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES.

Amended Draft Resolution proposed by Sir Cecil Hurst.

The Assembly :

(1) Firmly convinced that effective machinery for ensuring the peaceful settlement of international disputes is an essential element in the cause of security and disarmament;

(2) Considering that the faithful observance, under the auspices of the League of Nations, of methods of pacific settlement renders possible the settlement of all disputes [No. 1 of Sub-Committee draft, Annex 6];

(3) Noting that respect for rights established by treaty or resulting from international law is obligatory upon international tribunals [No. 2 of Sub-Committee draft];

(4) Recognising that the rights of the several States cannot be modified except with their consent [No. 3 of Sub-Committee draft];

(5) Taking note of the fact that a great number of particular international conventions provide for conciliation, arbitration or obligatory judicial settlement [No. 4 of Sub-Committee draft];

(6) Being desirous of facilitating to the greatest possible degree the development of undertakings in regard to the said methods of procedure [No. 5 of Sub-Committee draft] :

(7) Invites all States whether Members of the League or not, and in so far as their existing agreements do not already achieve this end, to accept obligations in pursuance of the above purpose either by becoming parties to the annexed General Act for the Pacific Settlement of International Disputes, or by concluding particular conventions with individual States in such terms as may be deemed appropriate.

(8) Draws the attention of Governments to the fact that, if they may not feel able to become parties to the General Act, they may bring the rules therein contained into force as between themselves and individual States by means of special agreements or by a simple exchange of notes;

(9) Resolves to communicate the annexed General Act to all Members of the League of Nations and to such States not Members of the League as may be indicated by the Council for accession thereto in the manner and form, and subject, if so desired, to such reservations as are laid down;

(10) Requests the Council to give the Secretariat of the League of Nations instructions to keep a list of the engagements contracted in accordance with the terms of the present resolution either by general acceptance of the provisions of the General Act or by the acceptance of these provisions as between particular States, or by the conclusion of particular conventions with the same object, so as to enable Members of the League and States non-members of the League to obtain information as soon as possible.

N. B. — (1) A provision on the lines of A.39, B.32 and C.26 should be inserted in the body of the General Act in lieu of paragraph 6 of the draft resolution. A provision of this character would not become binding on non-members of the League which accept the General Act merely by inclusion in the Assembly resolution.

(2) The provision about the deposit of the copy of the General Act appearing at the end of the draft resolution should become the penultimate article of the Act.

ANNEX 7.

PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES.

Resolution on the Submission and Recommendation of a General Act (Appendix) and of Three Bilateral Conventions in regard to Conciliation Arbitration and Judicial Settlement.

Notes :

1. The texts reproduced below are the texts in their final form as adopted by the Assembly. The footnotes show how the texts as finally adopted by the Assembly differ from the texts submitted by the Sub-Committee to the joint meeting of the First and Third Committees. The changes were all made at the joint meeting of the First and Third Committees, with the exception of those in Article 5 and Article 6, paragraph 1, which were made by the Assembly.

2. The model bilateral Conventions in regard to conciliation, arbitration and judicial settlement are not reproduced here, not having been under discussion in the First Committee. The necessary modifications in them were made by the Rapporteur and the final texts are reproduced in the *Records of the Ninth Ordinary Session of the Assembly — Plenary Meetings — Text of the Debates (Official Journal — Special Supplement No. 64).*

RESOLUTION.

The Assembly :

Having considered the work of the Committee on Arbitration and Security;

(1) Firmly convinced that effective machinery for ensuring the peaceful settlement of international disputes is an essential element in the cause of security and disarmament;

(2) Considering that the faithful observance, under the auspices of the League of Nations, of methods of pacific settlement renders possible the settlement of all disputes;

(3) Noting that respect for rights established by treaty or resulting from international law is obligatory upon international tribunals;

(4) Recognising that the rights of the several States cannot be modified except with their consent;

(5) Taking note of the fact that a great number of particular international conventions provide for obligatory conciliation, arbitration or judicial settlement;

(6) Being desirous of facilitating to the greatest possible degree the development of undertakings in regard to the said methods of procedure;

(7) Declaring that such undertakings are not to be interpreted as restricting the duty of the League of Nations to take at any time whatever action may be deemed wise and effectual to safeguard the peace of the world; or as impeding its intervention in virtue of Articles 15 and 17 of the Covenant, where a dispute cannot be submitted to arbitral or judicial procedure or cannot be settled by such procedure or where the conciliation proceedings have failed[1];

(8) Invites all States whether Members of the League or not, and in so far as their existing agreements do not already achieve this end, to accept obligations in pursuance of the above purpose either by becoming parties to the annexed General Act or by concluding particular conventions with individual States in accordance with the model bilateral conventions annexed hereto or in such terms as may be deemed appropriate;

(9) Resolves to communicate the annexed General Act and the annexed model bilateral conventions to all members of the League of Nations and to such States not Members of the League as may be indicated by the Council[2].

(10) Requests the Council to give the Secretariat of the League of Nations instructions to keep a list of the engagements contracted in accordance with the terms of the present resolution either by acceptance of the provisions of the General Act or by the conclusion of particular conventions with the same object, so as to enable Members of the League and States non-members of the League to obtain information as soon as possible.[3]

Appendix.

GENERAL ACT.

CHAPTER I. — CONCILIATION.

Article 1.

Disputes of every kind[4] between two or more Parties to the present General Act which it has not been possible to settle by diplomacy shall, subject to such reservations as may be made under Article 39, be submitted, under the conditions laid down in the present Chapter, to the procedure of conciliation.

Article 2.

The disputes referred to in the preceding article shall be submitted to a permanent or special Conciliation Commission constituted by the parties to the dispute.

Article 3.

On a request to that effect being made by one of the Contracting Parties to another Party, a permanent Conciliation Commission shall be constituted within a period of six months.

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[1] Original text:

" . . . or as impeding its intervention in virtue of Articles 15 and 17 of the Covenant, where a dispute cannot be submitted to arbitral or judicial procedure or where the conciliation proceedings have failed. "

[2] Original text:

" Resolves to communicate the annexed General Act to all Members of the League of Nations and to such States not Members of the League as may be indicated by the Council for accession thereto in the manner and form and subject, if so desired, to such reservations as are laid down. "

[3] Paragraphs 9 and 10 of the present text were numbered 10 and 11 in the original text. Paragraph 9, which has been deleted, was as follows:

" Draws the attention of Governments to the fact that, if they may not feel able to become parties to the General Act, they may bring the rules therein contained into force as between themselves and individual States by means of special agreements or by a simple exchange of notes. "

[4] The words " which may arise " were contained in the original text.

Article 4.

Unless the parties concerned agree otherwise, the Conciliation Commission shall be constituted as follows :

1. The Commission shall be composed of five members. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties. The parties shall appoint the President of the Commission from among them.

2. The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace a commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

3. Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 5.

If, when a dispute arises, no permanent Conciliation Commission appointed by the parties is in existence, a special commission shall be constituted for the examination of the dispute within a period of three months from the date at which a request to that effect is made by one of the parties to the other party. The necessary appointments shall be made in the manner laid down in the preceding article, unless the parties decide otherwise.[1]

Article 6.

1. If the appointment of the commissioners to be designated jointly is not made within the periods provided for in Articles 3 and 5, the making of the necessary appointments shall be entrusted to a third Power, chosen by agreement between the parties, or on request of the parties, to the Acting President of the Council of the League of Nations.[2]

2. If no agreement is reached on either of these procedures, each party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen.[3]

3. If, within a period of three months, the two Powers have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 7.

1. Disputes shall be brought before the Conciliation Commission by means of an application addressed to the President by the two parties acting in agreement, or in default thereof by one or other of the parties.

2. The application, after giving a summary account of the subject of the dispute, shall contain the invitation to the Commission to take all necessary measures with a view to arriving at an amicable solution.

3. If the application emanates from only one of the parties, the other party shall, without delay, be notified by it.

Article 8.

1. Within fifteen days from the date on which a dispute has been brought by one of the parties before a permanent Conciliation Commission, either party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. The party making use of this right shall immediately notify the other party; the latter shall, in such case, be entitled to take similar action within fifteen days from the date on which it received the notification.

Article 9.

1. In the absence of agreement to the contrary between the parties, the Conciliation Commission shall meet at the seat of the League of Nations, or at some other place selected by its President.

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[1] Original text :

" If, when a dispute arises, no permanent Conciliation Commission appointed by the parties is in existence, a special commission, appointed in the manner laid down in the preceding article, shall, unless the parties decide otherwise, be constituted for the examination of the dispute. "

[2] Original text :

" If the appointment of the commissioners to be designated jointly is not made within the period of six months provided for in Article 3, or within a period of three months from the date on which one of the parties requested the other party to constitute a special commission, or to fill the vacancies in a permanent Conciliation Commission, a third Power, chosen by agreement between the parties, shall be requested to make the necessary appointments. "

[3] Original text :

" If no agreement is reached on this point, each party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen. "

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Article 10.

The work of the Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the parties.

Article 11.

1. In the absence of agreement to the contrary between the parties[1] the Conciliation Commission shall lay down its own procedure, which in any case must provide for both parties being heard. In regard to enquiries, the Commission, unless it decides unanimously to the contrary, shall act in accordance with the provisions of Part III of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

2. The parties shall be represented before the Conciliation Commission by agents, whose duty shall be to act as intermediaries between them and the Commission; they may, moreover, be assisted by counsel and experts appointed by them for that purpose and may request that all persons whose evidence appears to them desirable shall be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of both parties, as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 12.

In the absence of agreement to the contrary between the parties, the decisions of the Conciliation Commission shall be taken by a majority vote, and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 13.

The parties undertake to facilitate the work of the Conciliation Commission, and particularly to supply it to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to allow it to proceed in their territory, and in accordance with their law, to the summoning and hearing of witnesses or experts and to visit the localities in question.

Article 14.

1. During the proceedings of the Commission, each of the commissioners shall receive emoluments the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same manner.

Article 15.

1. The task of the Conciliation Commission shall be to elucidate the questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise, and to endeavour to bring the parties to an agreement. It may, after the case has been examined, inform the parties of the terms of settlement which seem suitable to it, and lay down the period within which they are to make their decision.

2. At the close of its proceedings, the Commission shall draw up a procès-verbal stating, as the case may be, either that the parties have come to an agreement and, if need arises, the terms of the agreement, or that it has been impossible to effect a settlement. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken unanimously or by a majority vote.[2]

3. The proceedings of the Commission must, unless the parties otherwise agree, be terminated within six months from the date on which the Commission shall have been given cognisance of the dispute.

Article 16.

The Commission's procès-verbal shall be communicated without delay to the parties. The parties shall decide whether it shall be published.

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[1] Original text : " Failing any provision to the contrary . . . "

[2] Original text of last sentence :

" No mention shall be made in the procès-verbal of whether the Commission's decisions were taken by a majority vote. "

Chapter II. — Judicial Settlement.

Article 17.

All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under Article 39, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.

It is understood that the disputes referred to above include in particular those mentioned in Article 36 of the Statute of the Permanent Court of International Justice.

Article 18.

If the parties agree to submit the disputes mentioned in the preceding article to an arbitral tribunal, they shall draw up a special agreement in which they shall specify the subject of the dispute, the arbitrators selected, and the procedure to be followed. In the absence of sufficient particulars in the special agreement, the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes, shall apply so far as is necessary. If nothing is laid down in the special agreement as to the rules regarding the substance of the dispute to be followed by the arbitrators, the tribunal shall apply the substantive rules enumerated in Article 38[1] of the Statute of the Permanent Court of International Justice.

Article 19.

If the parties fail to agree concerning the special agreement referred to in the preceding article, or fail to appoint arbitrators, either party shall be at liberty, after giving three months' notice, to bring the dispute by an application direct before the Permanent Court of International Justice.

Article 20.

1. Notwithstanding the provisions of Article 1, disputes of the kind referred to in Article 17 arising between parties who have acceded to the obligations contained in the present chapter shall only be subject to the procedure of conciliation if the parties so agree.

2. The obligation to resort to the procedure of conciliation remains applicable to disputes which are excluded from judicial settlement only by the operation of reservations under the provisions of Article 39.

3. In the event of recourse to and failure of conciliation, neither party may bring the dispute before the Permanent Court of International Justice or call for the constitution of the arbitral tribunal referred to in Article 18 before[2] the expiration of one month from the termination of the proceedings of the Conciliation Commission.

Chapter III. — Arbitration.

Article 21.

Any dispute not of the kind referred to in Article 17 which does not, within the month following the termination of the work of the Conciliation Commission provided for in Chapter I, form the object of an agreement between the parties, shall, subject to such reservations as may be made under Article 39, be brought before an arbitral tribunal which, unless the parties otherwise agree, shall be constituted in the manner set out below.

Article 22.

The Arbitral Tribunal shall consist of five members. The parties shall each nominate one member, who may be chosen from among their respective nationals. The two other arbitrators and the Chairman shall be chosen by common agreement from among the nationals of third Powers. They must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties.

Article 23.

1. If the appointment of the members of the Arbitral Tribunal is not made within a period of three months from the date on which one of the parties requested the other party to constitute an arbitral tribunal, a third Power, chosen by agreement between the parties, shall be requested to make the necessary appointments.

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[1] The word " enumerated " is substituted for the word " indicated " which appeared in the original text.

[2] The word " before " takes the place of the word " after " which appeared in the original text.

2. If no agreement is reached on this point, each party shall designate a different Power, and the appointments shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, the two Powers so chosen have been unable to reach an agreement, the necessary appointments shall be made by the President of the Permanent Court of International Justice. If the latter is prevented from acting or is a subject of one of the parties, the nomination shall be made by the Vice-President. If the latter is prevented from acting or is a subject of one of the parties, the appointments shall be made by the oldest member of the Court who is not a subject of either party.[1]

Article 24.

Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 25.

The parties shall draw up a special agreement determining the subject of the disputes and the details of procedure.[2]

Article 26.

In the absence of sufficient particulars in the special agreement regarding the matters referred to in the preceding article, the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes shall apply so far as is necessary.

Article 27.

Failing the conclusion of a special agreement within a period of three months from the date on which the Tribunal was constituted, the dispute may be brought before the Tribuna by an application by one or other party.

Article 28.

If nothing is laid down in the special agreement or no special agreement has been made the Tribunal shall apply the rules in regard to the substance of the dispute enumerated in Article 38 of the Statute of the Permanent Court of International Justice. In so far as there exists no such rule applicable to the dispute, the Tribunal shall decide[4] *ex æquo et bono.*

Chapter IV. — General Provisions.

Article 29.

1. Disputes for the settlement of which a special procedure is laid down in other conventions in force between the parties to the dispute shall be settled in conformity with the provisions of those conventions.

2. The present General Act shall not affect any agreements in force by which conciliation procedure is established between the Parties or they are bound by obligations to resort to arbitration or judicial settlement which ensure the settlement of the dispute. If, however, these agreements provide only for a procedure of conciliation, after such procedure has been followed without result, the provisions of the present General Act concerning judicial settlement or arbitration shall be applied in so far as the parties have acceded thereto.

Article 30.

If a party brings before a Conciliation Commission a dispute which the other party, relying on conventions in force between the parties, has submitted to the Permanent Court of International Justice or an Arbitral Tribunal, the Commission shall defer consideration of the dispute until the Court or the Arbitral Tribunal has pronounced upon the conflict of competence. The same rule shall apply if the Court or the Tribunal is seized of the case by one of the parties during the conciliation proceedings.

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[1] Original text :

" If, within a period of three months, the two Powers so chosen have been unable to reach an agreement, the necessary appointment shall be made by the President of the Permanent Court of International Justice or, if he is a subject of one of the two parties, by the Vice-President, or, if he is disqualified, by the oldest member of the Court who is not a subject of either party. "

[2] Original text :

" The parties shall draw up a special agreement determining the subject of the dispute, and, if necessary, the details of procedure and the rules in regard to the substance of the dispute to be applied by the arbitrators. "

[3] Original text :

" Failing stipulations to the contrary in the special agreement, the procedure followed by the Arbitral Tribunal shall be that laid down in Part IV, Chapter III, of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes. "

[4] The word " shall " is substituted for the word " may " which appeared in the original text.

Article 31.

1. In the case of a dispute the occasion of which, according to the municipal law of one of the parties, falls within the competence of its judicial or administrative authorities, the party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present General Act until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

2. In such a case, the party which desires to resort to the procedures laid down in the present General Act must notify the other party of its intention within a period of one year from the date of the afore-mentioned decision.

Article 32.

If, in a judicial sentence or arbitral award, it is declared that a judgment, or a measure enjoined by a court of law or other authority of one of the parties to the dispute, is wholly or in part contrary to international law, and if the constitutional law of that party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the parties agree that the judicial sentence or arbitral award shall grant the injured party equitable satisfaction.

Article 33.

1. In all cases where a dispute forms the object of arbitration or judicial proceedings, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal, shall lay down within the shortest possible time the provisional measures to be adopted. The parties to the dispute shall be bound to accept such measures.

2. If the dispute is brought before a Conciliation Commission, the latter may recommend to the parties the adoption of such provisional measures as it considers suitable.

3. The parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission and, in general, to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

Article 34.

Should a dispute arise between more than two Parties to the present General Act, the following rules shall be observed for the application of the forms of procedure described in the foregoing provisions :

(a) In the case of conciliation procedure, a special commission shall invariably be constituted. The composition of such commission shall differ according as the parties all have separate interests or as two or more of their number act together.

In the former case, the parties shall each appoint one commissioner and shall jointly appoint commissioners nationals of third Powers not parties to the dispute,[1] whose number shall always exceed by one the number of commissioners appointed separately by the parties.

In the second case, the parties who act together shall appoint their commissioner jointly by agreement between themselves and shall combine with the other party or parties in appointing third commissioners.

In either event, the parties, unless they agree otherwise, shall apply Article 5 and the following articles of the present Act, so far as they are compatible with the provisions of the present article.

(b) In the case of judicial procedure, the Statute of the Permanent Court of International Justice shall apply.

(c) In the case of arbitral procedure, if agreement is not secured as to the composition of the tribunal, in the case of the disputes mentioned in Article 17 each party shall have the right, by means of an application, to submit the dispute to the Permanent Court of International Justice; in the case of the disputes mentioned in Article 21, the above Article 22 and following articles shall apply, but each party having separate interests shall appoint one arbitrator and the number of arbitrators separately appointed by the parties to the dispute shall always be one less than that of the other arbitrators.[2]

Article 35.

1. The present General Act shall be applicable as between the parties thereto, even though a third Power, whether a party to the Act or not, has an interest in the dispute.

---

[1] The words " not parties to the dispute " did not appear in the original text.

[2] Original text of second part of (*c*) :

" . . . in the case of the disputes mentioned in Article 21, Article 22 above shall apply, and each third party having separate interests shall appoint one additional arbitrator. "

2. In conciliation procedure, the parties may agree to invite such third Power to intervene.

Article 36.

1. In judicial or arbitral procedure, if a third Power should consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit to the Permanent Court of International Justice or to the arbitral tribunal a request to intervene as a third Party.
2. It will be for the Court or the tribunal to decide upon this request.

Article 37.

1. Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar of the Permanent Court of International Justice or the arbitral tribunal shall notify all such States forthwith.
2. Every State so notified has the right to intervene in the proceedings; but, if it uses this right, the construction given by the decision will be binding upon it.

Article 38.

Accessions to the present General Act may extend:

A. Either to all the provisions of the Act (Chapters I, II, III and IV);
B. Or to those provisions only which relate to conciliation and judicial settlement (Chapters I and II), together with the general provisions dealing with these procedures (Chapter IV);
C. Or to those provisions only which relate to conciliation (Chapter I), together with the general provisions concerning that procedure (Chapter IV).

The Contracting Parties may benefit by the accessions of other Parties only in so far as they have themselves assumed the same obligations.

Article 39.

1. In addition to the power given in the preceding article, a Party, in acceding to the present General Act, may make its acceptance conditional upon the reservations exhaustively enumerated in the following paragraph. These reservations must be indicated at the time of accession.
2. These reservations may be such as to exclude from the procedure described in the present Act:

(a) Disputes arising out of facts prior to the accession either of the Party making the reservation or of any other Party with whom the said Party may have a dispute;[1]
(b) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States;
(c) Disputes concerning particular cases or clearly specified subject-matters, such as territorial status, or disputes falling within clearly defined categories[2].

3. If one of the parties to a dispute has made a reservation, the other parties may enforce the same reservation in regard to that party.
4. In the case of Parties who have acceded to the provisions of the present General Act relating to judicial settlement or to arbitration, such reservations as they may have made shall, unless otherwise expressly stated, be deemed not to apply to the procedure of conciliation.

Article 40.

A Party whose accession has been only partial, or was made subject to reservations, may at any moment, by means of a simple declaration, either extend the scope of his accession or abandon all or part of his reservations.

Article 41.

Disputes relating to the interpretation or application of the present General Act, including those concerning the classification of disputes and the scope of reservations, shall be submitted to the Permanent Court of International Justice.

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[1] Original text: " Disputes arising out of facts prior to the accession "; the rest of the clause was added in the course of the debate.

[2] The words " or disputes falling within clearly defined categories " did not appear in the original text.

Article 42.

The present General Act, of which the French and English texts shall both be authentic, shall bear the date of the 26th of September, 1928.

Article 43.

1. The present General Act shall be open to accession by all the Heads of States or other competent authorities of the Members of the League of Nations and the non-member States to which the Council of the League of Nations has communicated a copy for this purpose.

2. The instruments of accession and the additional declarations provided for by Article 40 shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League and to the non-member States referred to in the preceding paragraph.

3. The Secretary-General of the League of Nations shall draw up three lists, denominated respectively by the letters A, B and C, corresponding to the three forms of accession to the present Act provided for in Article 38, in which shall be shown the accessions and additional declarations of the Contracting Parties. These lists, which shall be continually kept up to date, shall be published in the annual report presented to the Assembly of the League of Nations by the Secretary-General.

Article 44.

1. The present General Act shall come into force on the ninetieth day following the receipt by the Secretary-General of the League of Nations of the accession of not less than two Contracting Parties.

2. Accessions received after the entry into force of the Act, in accordance with the previous paragraph, shall become effective as from the ninetieth day following the date of receipt by the Secretary-General of the League of Nations. The same rule shall apply to the additional declarations provided for by Article 40.

Article 45.

1. The present General Act shall be concluded for a period of five years, dating from its entry into force.

2. It shall remain in force for further successive periods of five years in the case of Contracting Parties which do not denounce it at least six months before the expiration of the current period.

3. Denunciation shall be effected by a written notification addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States referred to in Article 43.

4. A denunciation may be partial only, or may consist in notification of reservations not previously made.

5. Notwithstanding denunciation by one of the Contracting Parties concerned in a dispute, all proceedings pending at the expiration of the current period of the General Act shall be duly completed.

Article 46.

A copy of the present General Act, signed by the President of the Assembly and by the Secretary-General of the League of Nations, shall be deposited in the archives of the Secretariat; a certified true copy shall be delivered by the Secretary-General to all the Members of the League of Nations and to the non-member States indicated by the Council of the League of Nations.

Article 47.

The present General Act shall be registered by the Secretary-General of the League of Nations on the date of its entry into force.

ANNEX 8.

A.I./6.1928.

REVISION OF THE SYSTEMATIC SURVEY OF ARBITRATION CONVENTIONS AND TREATIES OF MUTUAL SECURITY PREPARED BY THE SECRETARIAT.

PROPOSAL SUBMITTED BY M. CASSIN (FRANCE).

The First Committee might make a proposal to the Third Committee, in the report to the Assembly on arbitration, that the Secretary-General should be authorised to ask the Governments to communicate to the Secretariat :

(1) Those treaties for the pacific settlement of disputes which are now in force and were concluded prior to the establishment of the League of Nations, and which have not been registered ;

(2) Such arbitral awards affecting them as may be rendered in the future (except judgments of the Court of International Justice and of special arbitral tribunals such as the Mixed Arbitral Tribunal).

The object of this procedure would be to enhance the value of the Collection of Treaties of Arbitration and Security, which, in its present form, has the defect of presenting incomplete information.

According to figures supplied by the Secretariat, the proposed additions would increase the cost of the next edition by about 3,000 francs, raising it from 27,000 to 30,000 francs.

As it is not contemplated to publish the next edition before 1930 at the earliest, the financial aspect of the matter would not have to be considered until next year. The action to be taken this year would involve no commitments for the future, but would simply consist in authorising the Secretariat to ask the Governments for such information as may be deemed necessary in order to make the next edition of the Collection as comprehensive as it should be.

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Abbreviations

Agrt. = Agreement.
Arb. and Sec. Cttee. = Committee on Arbitration and Security.
Art. = Article.
Ass. = Assembly.
Cl. = Council.
Comm. = Commission.
Conf. = Conference.
Conv. = Convention.
Cttee. = Committee.
Gen. = General.
Govt. = Government.
Int. = International.
Para. = Paragraph.
Perm. = Permanent.
Resol. = Resolution.
Sec. Gen. = Secretary General.
U. S. A. = United States of America.

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