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Geneva, April 2nd, 1929.

LEAGUE OF NATIONS

**COMMITTEE OF JURISTS ON THE STATUTE
OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE**

REPORTS ADOPTED BY THE COMMITTEE

At its Session held at Geneva from March 11th to 19th, 1929

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NOTE BY THE SECRETARY-GENERAL.

The Secretary-General has the honour to submit herewith to the Council the letter addressed to him on March 20th, 1929, by the Vice-Chairman of the Committee of Jurists on the Statute of the Permanent Court of International Justice, regarding the reports and conclusions adopted by the Committee at its session held at Geneva from March 11th to 19th, 1929, together with the reports adopted by the Committee and their Annexes and the memorandum referred to in the last paragraph of the Vice-Chairman's letter.

The letter and memorandum referred to in the penultimate paragraph of the letter of the Vice-Chairman will be communicated separately to the Council.

LETTER TO THE SECRETARY-GENERAL FROM THE VICE-CHAIRMAN OF THE COMMITTEE.

Geneva, March 20th, 1929.

[*Translation.*]

By resolutions of December 13th and 14th, 1928, the Council of the League of Nations appointed a Committee of Jurists to study the question of revision of the Statute of the Permanent Court of International Justice. By a subsequent resolution of March 9th, 1929, the Council, with reference to a letter of the Secretary of State of the United States of America dated February 19th, 1929, further requested the Committee to consider the present situation as regards accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice, and to make any suggestions which it might feel able to offer with a view to facilitating such accession on conditions satisfactory to all the interests concerned.

As you are aware, the Committee met from the 11th to the 19th of this month at the Secretariat. It was presided over by M. Scialoja and, after he was obliged to leave, by myself in my capacity of Vice-Chairman.

I have the honour to forward to you herewith for transmission to the Council the two reports made by the Committee of Jurists to the Council. The one report relates to the question of the amendments which might eventually be introduced in the Statute of the Court. The other, which carries out the second part of the Committee's terms of reference, relates to the accession of the United States of America to the Statute and, as you will see, is accompanied by a draft Protocol. The Committee has felt that it should draw the Council's attention to the desirability of annexing the resolution adopted by the Senate of the United States on January 27th, 1926 (which contains the text of the American reservations), to the letter by which the draft Protocol would be communicated to the States signatories of the Protocol of December 16th, 1920, if the Council should adopt the proposal to that effect contained in the Committee's report.¹

In the same connection, I beg you to be so good as to transmit also to the Council of the League of Nations, together with the memorandum (C.R.S.C. 2) presented to the Committee of Jurists by the International Labour Office, the letter of which a copy is annexed, by which the Committee has informed that Office of its point of view.²

Finally, the Committee has thought it desirable that the considerations set out by one of its members, M. Rundstein, in the memorandum reproduced in document C.R.S.C. 11 should also be brought to the attention of the Council.

(Signed) VAN EYSINGA,
Vice-Chairman of the Committee.

REPORT ADOPTED BY THE COMMITTEE OF JURISTS ON THE QUESTION OF AMENDMENT OF THE STATUTE OF THE COURT.³

[C.R.S.C.18(1).]

On September 20th, 1928, the Assembly of the League of Nations adopted the following resolution :

“ The Assembly,

“ Considering the ever-increasing number of matters referred to the Permanent Court of International Justice ;

“ Deeming it advisable that, before the renewal of the term 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 ;

“ Draws the Council's attention to the advisability of proceeding, before the renewal of the term 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. ”

In pursuance of this resolution, the Council decided on December 13th and 14th, 1928, to set up a Committee consisting of Jonkheer VAN EYSINGA, M. FROMAGEOT, M. GAUS, Sir Cecil HURST, M. ITO, M. POLITIS, M. RAESTAD, M. RUNDSTEIN, M. SCIALOJA, M. URRUTIA and a jurist of the United States of America, to be appointed by the President of the Council and the Rapporteur, who selected M. Elihu ROOT. The Council further invited the President and the Vice-President of the Court, M. ANZILOTTI and M. HUBER, and the Chairman of the Supervisory Commission, M. OSUSKY, to participate in the work of the Committee. M. PILOTTI was added to the Committee on March 9th, 1929.

The Council Rapporteur had pointed out that, having regard to the terms of the Assembly's decision, the Committee should have wide terms of reference, namely, “ to report what amendments appear desirable in the various provisions of the Court's Statute ”. He further stated “ that the Committee would, of course, be competent to examine such suggestions as may reach it, during its work, from authoritative sources ” and “ that it would fall to the Committee to ascertain the opinion of the Permanent Court of International Justice in respect of the working of the Court ”.

As may be seen from the discussion in the Assembly, the latter did not contemplate recasting completely the Statute of the Court ; it had merely in view the possibility of supplementing or improving the Statute in the light of the experience already acquired.

It is in this spirit that the Committee, which met at Geneva on March 11th, 1929, under the chairmanship of M. SCIALOJA, has pursued its work, which was completed on March 19th under the chairmanship of Jonkheer VAN EYSINGA, the Vice-Chairman.

In the proposals which the Committee has the honour to submit to the Council, it has been in general actuated by the desire to give the States full assurance that the Permanent Court of International Justice established by the League of Nations is a real *judicial* body which is constantly at their disposal for the purpose of hearing and determining their disputes and which possesses alike the necessary juristic competence and experience of international affairs.

¹ The text of this resolution is reproduced below on page 18.

² The memorandum and letter here referred to have been communicated separately to the Council : document C.146.1929.V.

³ Rapporteurs : M. FROMAGEOT and M. POLITIS.

It would appear that effect can be given to some of the Committee's proposals by means of *vœux* or recommendations; other proposals would appear to call for an amendment of the existing text of the Statute.

In the first place, the Committee examined the qualifications which members of the Court should possess in order to satisfy the expectations of Governments in regard to the Permanent Court of International Justice. These conditions will be found in Article 2 of the Statute. The Committee has thought that it would be desirable to mention, in addition to recognised competence in international law which is mentioned in Article 2 of the Statute, the requirement of practical experience in this sphere.

Similarly, the national groups, when nominating their candidates in accordance with Article 5, should attach to each nomination a statement of the career of the person nominated, showing that he possesses the required qualifications.

Further, as the official languages of the Court are French and English, it appears essential that the judges should be at least able to read these languages and to speak one of them. Though this may be self-evident, the Committee has thought that it would be desirable to draw the special attention of the national groups to the point.

The Committee is of opinion that, despite their importance, none of these three questions necessitates a modification of the existing texts, and that it would be sufficient to proceed by way of a recommendation, as follows:

"The Committee decides to advise the Assembly to adopt the following recommendation:

"The Secretary-General, in issuing the invitations provided for in Article 5 of the Statute, will request the national groups to satisfy themselves that the candidates nominated by them possess recognised practical experience in international law and that they are at least able to read both the official languages of the Court and to speak one of them; he will recommend the groups to attach to each nomination a statement of the career of the person nominated showing that he possesses the required qualifications."

On the other hand, it appeared necessary to deal with the following questions by means of amendments:

I. COMPOSITION OF THE COURT.

Experience has shown that deputy-judges have been called upon almost constantly to sit on the Court, the reason being that the majority of them are resident in Europe and were consequently more readily available than judges belonging to other continents; this has tended to give the Europeans a privileged position. On the other hand, as the deputy-judges have in fact been placed on a footing of equality with the ordinary judges in regard to the work performed, without being subject to the same disabilities, the difference in treatment in this latter respect has not been without its disadvantages. Finally, a further difference between the two classes of judges—that relating to their emoluments—has actually disappeared, since the allowances granted to deputy-judges have placed them in a situation almost equal to that of the ordinary judges.

Practical experience thus points to assimilation of the two classes of judges and accordingly suggests the desirability of abolishing the deputy-judges and replacing them by an equal number of ordinary judges.

The Committee proposes, therefore, to increase the number of ordinary judges from eleven to fifteen and to omit all mention of deputy-judges in Article 3. The disappearance of the deputy-judges naturally involves consequential amendment of various articles in the Statute in which they are mentioned. These changes will be indicated below in connection with Articles 8, 15, 16, 17, 25, 31 and 32. To avoid the risk of an exaggeration which might cause misconception, it also appeared desirable to omit in the new text of Article 3 the reference to a possible increase of the members of the Court above the number of fifteen.

As a result, the new text of Article 3 would be as follows:

"The Court shall consist of fifteen members."

2. ELECTION OF JUDGES.

As already stated, the text of Article 8 will, as a result of the disappearance of the deputy-judges, read as follows:

"The Assembly and the Council shall proceed independently of one another to elect the members of the Court."

3. RESIGNATION OF A JUDGE.

The resignation of a judge is not provided for in the present existing text of the Statute. The question has, however, arisen in practice, and doubts have been felt as to the procedure to be adopted in such cases. The Committee considered that it would be desirable to supply the omission and to take the view that, once a resignation has been transmitted to the League of Nations, it must be regarded as final; but that, nevertheless, the resignation should be transmitted to the League by the President of the Court in order that he may, if desirable, be able to satisfy himself that the decision of the judge concerned is irrevocable.

Consequently, the Committee proposes to add two paragraphs to Article 13, which would read as follows :

" The members of the Court shall be elected for nine years.

" They may be re-elected.

" They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

" In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations.

" This notification makes the place vacant."

4. FILLING OF OCCASIONAL VACANCIES.

Article 14 of the Statute merely provides that vacancies which may occur shall be filled by the same method as that laid down for the renewal of the entire Court. Experience has shown that there is a serious disadvantage in waiting for the annual meeting of the Assembly before filling a vacancy, as this may cause a delay of as much as fifteen months. During this period, the Court might be deprived of its essential characteristic—that of a body representative of the various juridical systems—while at the same time the uninterrupted and regular working of this high tribunal might be rendered more difficult.

To remedy this defect, the Committee has thought it desirable to establish a somewhat elastic system which, especially in cases deemed by the Council of the League of Nations to be urgent, would allow of the filling even of a single vacancy within the shortest possible space of time. Under this system, the Secretary-General of the League of Nations would address the prescribed request, within one month after the occurrence of any vacancy, to the national groups, in accordance with Article 5, and the Council would be in a position at its next session to decide whether the election was of a sufficiently urgent character to necessitate the convening of the Assembly in extraordinary session before its ordinary September session.

The system would be embodied in the following new draft of Article 14 :

" Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of the League of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Council at its next session."

5. NEW ARTICLE 15.

As Article 15 of the Statute disappears with the disappearance of the deputy-judges, the Committee proposes to make a new Article 15 out of the unaltered part of Article 14, reading as follows :

" A member of the Court elected to replace a member whose period of appointment has not expired will hold the appointment for the remainder of his predecessor's term."

6. FUNCTIONS AND OCCUPATIONS INCOMPATIBLE WITH MEMBERSHIP OF THE COURT.

In accordance with the guiding idea of the Committee's work, namely, that the Court, by its composition and its operation, should inspire in the States the highest possible degree of confidence, the Committee has thought that it would be necessary to amplify the rules of Article 16 as to what functions and occupations are incompatible with membership of the Court, and for this purpose to indicate clearly that the members of the Court must not only refrain from exercising any political or administrative function, but also may not engage in any other occupation of a professional nature. Naturally, it would be permissible for members of the Court to be included on the list of members of the Permanent Court of Arbitration and to exercise, if their duties on the Court allowed them the necessary leisure, the functions of arbitrators or conciliators, provided always that the instrument under which they were appointed did not provide for a reference to the Court following upon the arbitration or upon the failure of the conciliation proceedings.

With the disappearance of the deputy-judges, the second sentence of paragraph 1 of Article 16 naturally disappears as well.

Article 16 would thus read as follows :

" The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

" Any doubt on this point is settled by the decision of the Court."

7. ARTICLE 17.

The second sentence of the first paragraph of Article 17 referring to deputy-judges becomes meaningless and is to be omitted.

At this point, the Committee feels it should observe that, while it is stated that no member of the Court can act as agent, counsel or advocate in any case of an international nature, it will not henceforth, in view of the new Article 16, be possible to infer *a contrario* that he is free to exercise the said functions in a case which is national in character. It has not seemed necessary to redraft the text of the second paragraph.

The same consideration applies to the end of the second paragraph, which states that no member of the Court may participate personally in any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity. Obviously, the same would hold good as to their participation in a commission of conciliation; this appeared to be indicated clearly enough in the expression " or in any other capacity ".

Article 17 would therefore read as follows :

" No member of the Court may act as agent, counsel or advocate in any case of an international nature.

" No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

" Any doubt on this point is settled by the decision of the Court."

8. PERMANENT FUNCTIONING OF THE COURT.

Under the system at present laid down, the Court holds one session annually, beginning on June 15th, and it is convened, in exceptional cases, in extraordinary session when circumstances so require.

In practice, the Court has often been obliged, on account of the increase in the cases referred to it, to hold several extraordinary sessions annually. In so doing, it has occasionally encountered serious practical difficulties. The repeated holding of extraordinary sessions has, in this way, tended, in fact, to bring the Court nearer to that permanent character which its title denotes, and which its promoters had contemplated in order to advance the progress of international justice.

The Committee accordingly considers that it is desirable to bring the written rules into harmony with the facts and to indicate, in a new draft of Article 23, a more regular working of the Court by providing, in imitation of national courts, for a real international judicial year. It therefore proposes to state that the Court shall, in principle, remain constantly in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

On the other hand, in order to enable members of the Court whose ordinary residence is in a country at a considerable distance from its seat to return occasionally to their homes during their term of office, it is suggested that they should be granted the right to six months' leave every three years in addition to the ordinary vacations.

Apart from exceptional cases, such as that of illness or other good reason for absence, the judges must be permanently at the disposal of the Court.

It is to be understood that this principle applies even during the judicial vacations, in the sense that it will be for the Court, when fixing the length of the vacation, to provide for the possibility of convening at The Hague, in an urgent case, such a number of judges as would be necessary to allow it to discharge its duties.

It would also be for the Court to provide in its Rules for the organisation of a vacations procedure for the cases in which a full meeting of the Court would not be necessary.

Article 23 would accordingly be redrafted as follows :

" The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court at the end of each year for the following year.

" Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years.

" Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court."

9. MANNER OF FORMING THE COURT.

As a result of the disappearance of the deputy-judges, the present paragraph 2 of Article 25 must be deleted.

The Committee proposes to replace it by a provision which would enable judges, when there is a heavy cause-list, to sit in turn in order to ensure the prompt despatch of business and would at the same time make it possible to remove the disadvantages that might arise from the co-operation in one and the same case of fifteen members of the Court.

Under this provision, the Court would have the power to provide in its Rules that, according to circumstances and in rotation, a judge or judges might be dispensed from sitting.

The intention of the Committee has of course been that the right just mentioned should in no case be so exercised as to give grounds for any suspicion that the Court has in a given case been specially composed for the purpose of affecting the decision of the case.

The deletion of paragraph 2 of Article 25 necessarily involves the redrafting of paragraph 3. There is no longer any point in providing that a certain number of judges must be available since, as previously stated, all the judges are in principle constantly at the disposal of the Court. It is therefore sufficient to retain the essential sentence in the third paragraph relating to the quorum.

The new Article 25 would be worded as follows :

" The full Court shall sit except when it is expressly provided otherwise.

" Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

" Provided always that a quorum of nine judges shall suffice to constitute the Court."

10. SPECIAL CHAMBER FOR LABOUR CASES.

The redrafting of Article 25 involves a change in paragraph 2 of Article 26, which states that the Court will sit with the number of judges provided for in Article 25. It should now be said that the full Court will sit.

In the next sentence of the same paragraph, the Committee is of opinion that, for the sake of clearness, it is necessary to read "In both cases," that is to say, the cases which are referred to, instead of "on all occasions", because, as is suggested later on, the summary procedure without the assistance of the technical assessors becomes possible in labour cases.

Paragraph 3 of Article 26 should be deleted in consequence of the modification proposed later in Article 31 in regard to national judges.

The Committee would suggest replacing this paragraph by inserting, as the last paragraph but one of Article 26, a stipulation allowing the parties, should they so desire, to resort to the summary procedure provided for in Article 29.

It is the Committee's intention that, whenever resort is had to this right, the Court constituted as a Chamber for summary procedure should consist of five judges only, as will be stated later in connection with Article 29, without the presence of technical assessors.

Article 26 would accordingly be drafted as follows :

"Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

"The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases, the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

"The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labour Cases", composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers and, as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding articles of the other Treaties of Peace.

"Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

"In Labour cases, the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings."

11. SPECIAL CHAMBER FOR TRANSIT AND COMMUNICATIONS CASES.

The Committee considered whether it might not be well to delete Article 27, seeing that no application has yet been received and that in the opinion of certain persons it is unlikely that any will ever be received. Nevertheless, the Committee thought it preferable to retain the Article, modifying it, however, in the same way as Article 26 : *i.e.*, by substituting in paragraph 2 the words "the full Court will sit" for the present text "the Court will sit with the number of judges provided for under Article 25"; by omitting paragraph 3; and, finally, by inserting as the last paragraph of Article 27 the same new provision as is contained in the previous article with regard to summary procedure.

The new draft of Article 27 would therefore be as follows :

"Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace shall be heard and determined by the Court under the following conditions:

"The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

"The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications Cases", composed of two persons nominated by each Member of the League of Nations.

"Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request."

12. CHAMBER FOR SUMMARY PROCEDURE.

As indicated below in connection with Article 31, the Committee considered that, as the system of national judges exists, it should apply to the Chamber for Summary Procedure as well

as to any other form of the Court. It will therefore be necessary to bring Article 29 into harmony with the new draft of Article 31 and for this purpose to make the Chamber for Summary Procedure consist of five judges instead of three. Provision must also be made, as in the case of the other special Chambers (Articles 26 and 27), for the selection of two judges to replace a judge who finds it impossible to sit.

Article 29 would therefore read as follows :

"With a view to the speedy dispatch of business, the Court shall form annually a Chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit."

13. NATIONAL JUDGES.

The Committee considered that it was no part of its duty to deal with the institution of national judges, which is regarded by certain States as one of the essential principles of the organisation of the Court.

It also considered that, in view of the importance which certain States attach to this system, its application should not be limited, as is at present done in Article 31, to the single case in which the full Court sits, but that, on the contrary, it should be extended to the Court in all its forms.

With this object, the Committee proposes to insert as a fourth paragraph in Article 31 a provision making the system of national judges apply to the Special Chambers for Labour, for Communications and Transit and for Summary Procedure (Articles 26, 27 and 29).

Moreover, the disappearance of the deputy-judges necessitates redrafting paragraph 2 of Article 31. There must be a slight change in paragraph 2 and changes of minor importance in paragraphs 3 and 5 of Article 31.

The new Article 31 would read as follows :

"Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

"If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

"If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to select a judge as provided in the preceding paragraph.

"The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

"Should there be several parties in the same interest, they shall for the purpose of the preceding provisions be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

"Judges selected as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of this Statute. They shall take part in the decision on terms of complete equality with their colleagues."

14. SALARIES OF JUDGES.

The permanent character of the Court having been more firmly established, and the requirements as to the selection of judges and the rules regarding the other occupations which they may not follow concurrently having been more clearly stated, it has been thought expedient to abandon the mixed system at present in force, which consists in an annual indemnity and allowances for each day of service. Payment for the services and subsistence expenses of members of the Court at The Hague will now take the form of a fixed inclusive annual salary which, in fact, will correspond approximately to the maximum obtainable by the judges under the present system.

This will be a simplification of a system which at present is particularly complicated.

Accordingly, the Committee proposes to redraft Article 32 completely and to submit to the Assembly a draft resolution to be substituted for the resolution of December 18th, 1920, concerning the salaries of members of the Court.

It has not, however, been thought expedient to include in the annual salary the travelling expenses of members attending the Court or their travelling expenses while on duty.

In the Committee's view, it is for the Assembly to lay down special regulations on this point. The Committee considers, however, that the members of the Court and the Registrar should, apart from journeys made on duty, be reimbursed for only one journey every year from the seat of the Court to their homes and back again.

The final paragraph of the present Article 32 deals with retiring pensions for the personnel of the Court. It refers to a special regulation which was made by the Assembly in 1924. This regulation will require revision; the Supervisory Commission will lay the matter before the Assembly, but on account of certain proposed amendments to the Statute of the Court, of which a brief summary was given at the head of this section, the Committee is of opinion that the Assembly's attention should be specially drawn to the desirability of redrafting paragraph 5 of Article 1 of the 1924 regulation in the terms indicated in the attached draft resolution as to pensions.

The new text of Article 32 and the accompanying draft resolutions, referred to above, would be as follows :

- " *The members of the Court shall receive an annual salary.*
- " *The President shall receive a special annual allowance.*
- " *The Vice-President shall receive a special allowance for every day on which he acts as President.*
- " *The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.*
- " *These salaries, allowances and indemnities shall be fixed by the Assembly of the League of Nations on the proposal of the Council. They may not be decreased during the term of office.*
- " *The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court.*
- " *Regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.*
- " *The above salaries, indemnities and allowances shall be free of all taxation."*

Draft Resolution concerning Salaries.

" *In accordance with the provisions of Article 32 of the Statute, the Assembly of the League of Nations fixes the salaries, allowances and indemnities of the members and judges of the Permanent Court of International Justice as follows :*

" <i>President :</i>	Dutch florins
Annual salary	45,000
Special indemnity.	15,000
" <i>Vice-President :</i>	
Annual salary	45,000
Allowance for each day on duty (100 × 100)	10,000 (maximum)
" <i>Members :</i>	
Annual salary	45,000
" <i>Judges referred to in Article 31 of the Statute :</i>	
Indemnity for each day on duty.	100
Allowance for each day of attendance	50 "

Draft Resolution amending Paragraph 5 of Article 1 of the Regulation regarding Pensions.

" *The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. Should, however, the person entitled to a pension, before attaining that age, reach the end of his term of office without being re-elected, his pension may, by a decision of the Court, be made payable to him, in whole or part, as from the date on which his functions cease."*

15. CONTRIBUTIONS OF STATES NOT MEMBERS OF THE LEAGUE OF NATIONS.

The Committee does not propose any amendment to Article 35, but thinks that an observation is called for on paragraph 3 of that Article.

In view of the third reservation attached by the United States to their accession to the Protocol of Signature, paragraph 3 of Article 35 should not apply to the special case of the United States if they accede to the Court Statute.

16. AMENDMENT TO NO. 4 OF ARTICLE 38.

The Committee has only a very slight and purely formal amendment to propose to No. 4 of Article 38. It consists in restoring in the French text a few words which appear in the English text. In the said No. 4 of Article 38, after the words " *la doctrine des publicistes les plus qualifiés* ", the words " *des différentes nations* " should be added.

Article 38, No. 4, would then read in the French text as follows :

" *Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit.* "

17. PROCEDURE.

In the final paragraph of Article 39, where reference is made to the power of the Court to authorise, at the request of the parties, the use of a language other than French or English, the Committee thinks it should be more clearly stated that such authorisation may be granted without agreement between the parties, provided one of them so requests. Experience has shown that it might be desirable to make this clearer.

Article 39, paragraph 3, would then read as follows :

" *The Court may, at the request of any party, authorise a language other than French or English to be used.* "

• 18. COMMUNICATION OF APPLICATIONS.

In paragraph 3 of Article 40, the Committee thinks it would be desirable to bring the text of the Statute into line with Article 73 of the present Rules of Court, which latter provision, as will be seen, the Committee proposes to embody in the new draft of the Statute. Article 40, paragraph 3, would then read as follows :

" He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court."

19. DIRECTION OF THE HEARING.

The English text of Article 45 does not quite correspond to the French text, which here is better.

In order to bring the two texts into concordance, the Committee proposes to replace the words " in his absence " by the words " if he is unable to preside ", and the words " if both are absent " by the words " if neither is able to preside ".

The English text of this Article would then read as follows :

" The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge shall preside."

20. ADVISORY OPINIONS.

The present Statute contains no explicit reference to advisory opinions. The Court has been compelled by circumstances to remedy this omission to a certain extent in Articles 71, 72, 73 and 74 of the Rules of Court.

The Committee considers that the essential parts of these provisions should be transferred to the Statute of the Court in order to give them a permanent character, which seems particularly desirable to-day in view of the special circumstances attending the possible accession of the United States to the Protocol of Signature of the Statute of the Court.

The Committee therefore proposes to add at the end of the present Statute a new chapter numbered IV and headed " Advisory Opinions ", the first three Articles of which, numbered 65, 66 and 67, would reproduce the substance of Articles 72, 73 and 74 of the present Rules of Court:

It also proposes that a final Article numbered 68 should be added to this chapter in order to take account of the fact that the Court may be called upon to give advisory opinions both in contentious and in non-contentious matters. The effect would be that, in the former case, the Court would apply the provisions relating to contentious procedure referred to in the previous chapters of the Statute, whereas those provisions would not always be applicable when the Court gave an opinion on a non-contentious matter. Thus, for example, Articles 57 and 58 should apply in all cases, but Article 31 would only apply when an advisory opinion was asked on a question relating to a dispute which had already arisen.

The new Articles 65, 66, 67 and 68 would be worded as follows :

" CHAPTER IV. — ADVISORY OPINIONS.

" Article 65.

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

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

" Article 66.

" The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

" The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

" Should any State or Member referred to in the first paragraph have failed to receive the communication specified above, such State or Member may express a desire to submit a written statement, or to be heard; and the Court will decide.

" States or Members having presented written or oral statements or both shall be admitted to comment on the statements made by other States or Members in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States or Members having submitted similar statements.

" Article 67.

" The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States and Members of the League immediately concerned.

" Article 68.

" In the exercise of its advisory functions, the Court shall apply Articles 65, 66 and 67. It shall further be guided by the provisions of the preceding chapters of this Statute to the extent to which it recognises them to be applicable to the case."

* * *

Such are the proposals which the Committee has the honour to submit for the Council's consideration.

The Committee has to observe that, in the course of its work, it has found somewhat inappropriate expressions used in the French and in the English texts of several articles of the Statute; it has, however, felt it unnecessary to propose corrections, as it does not wish to encumber the present report with suggestions which are not clearly of practical value.

Finally, the Committee has considered what would be the appropriate procedure for bringing into force the amendments proposed in the present report.

On this subject, the Committee ventures to make the following suggestions:

If the Council approves the conclusions of the report, it will no doubt find it convenient to communicate them to the Members of the League of Nations and the States mentioned in the Annex to the Covenant and to transmit them to the Assembly; it would be desirable that, if the amendments secure general approval, the Protocol accepting them which must be concluded between the parties which have ratified the 1920 Statute should be made in the course of next Assembly.

On this point, the Committee must call the attention of the Council to the necessity for taking appropriate measures to secure the entry into force of the amendments a sufficient time before the election of the members of the Court in September 1930, on account, more particularly, of the changes which are made in regard to the number of the members of the Court and the rules as to the occupations which are incompatible with membership.

Annex

TEXTS PROPOSED BY THE COMMITTEE.

A. PROVISIONS OF THE STATUTE OF THE COURT.

New Article 3.

The Court shall consist of fifteen members.

New Article 8.

The Assembly and the Council shall proceed independently of one another to elect the members of the Court.

New Article 13.

The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations. This notification makes the place vacant.

New Article 14.

Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of the League of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Council at its next session.

New Article 15.

A member of the Court elected to replace a member whose period of appointment has not expired, will hold the appointment for the remainder of his predecessor's term.

New Article 16.

The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

Any doubt on this point is settled by the decision of the Court.

New Article 17.

No member of the Court may act as agent, counsel or advocate in any case of an international nature.

No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.

New Article 23.

The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court at the end of each year for the following year.

Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years.

Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court.

New Article 25.

The full Court shall sit except when it is expressly provided otherwise.

Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

Provided always that a quorum of nine judges shall suffice to constitute the Court.

New Article 26.

Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases, the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labour Cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers, and, as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

In Labour cases, the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

New Article 27.

Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications Cases" composed of two persons nominated by each Member of the League of Nations.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

New Article 29.

With a view to the speedy despatch of business, the Court shall form annually a Chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit.

New Article 31.

Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to select a judge as provided in the preceding paragraph.

The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of this Statute. They shall take part in the decision on terms of complete equality with their colleagues.

New Article 32.

The members of the Court shall receive an annual salary.

The President shall receive a special annual allowance.

The Vice-President shall receive a special allowance for every day on which he acts as President.

The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

These salaries, allowances and indemnities shall be fixed by the Assembly of the League of Nations on the proposal of the Council. They may not be decreased during the term of office.

The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court.

Regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.

The above salaries, indemnities and allowances shall be free of all taxation.

New Article 38, No. 4.

The amendment only affects the French text which is altered to read as follows :

4. *Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit.*

New Article 39.

The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of any party, authorise a language other than French or English to be used.

New Article 40.

Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court.

New Article 45.

The amendment only affects the English text which is altered to read as follows :

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge shall preside.

CHAPTER IV. — ADVISORY OPINIONS, 1

New Article 65.

Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the Assembly or the President

¹ This subdivision (Chapter IV) is entirely new.

of the Council of the League of Nations, or by the Secretary-General of the League under instructions from the Assembly or the Council.

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

New Article 66.

The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

Should any State or Member referred to in the first paragraph have failed to receive the communication specified above, such State or Member may express a desire to submit a written statement, or to be heard; and the Court will decide.

States or Members having presented written or oral statements or both shall be admitted to comment on the statements made by other States or Members in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States or Members having submitted similar statements.

New Article 67.

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States and Members of the League immediately concerned.

New Article 68.

In the exercise of its advisory functions, the Court shall apply Articles 65, 66 and 67. It shall further be guided by the provisions of the preceding chapters of this Statute to the extent to which it recognises them to be applicable to the case.

B. RECOMMENDATIONS AND DRAFT RESOLUTIONS.

I. The Committee decided to suggest that the Assembly should adopt the following recommendation :

The Secretary-General, in issuing the invitations provided for in Article 5 of the Statute, will request the national groups to satisfy themselves that the candidates nominated by them possess recognised practical experience in international law and that they are at least able to read both the official languages of the Court and to speak one of them; he will recommend the groups to attach to each nomination a statement of the career of the person nominated showing that he possesses the required qualifications.

2. In connection with the new text of Article 32 of the Statute, the Committee drew up the following draft resolutions :

Draft Resolution concerning Salaries.

In accordance with the provisions of Article 32 of the Statute, the Assembly of the League of Nations fixes the salaries, allowances and indemnities of the members and judges of the Permanent Court of International Justice as follows :

<i>President:</i>	Dutch florins
Annual salary	45,000
Special indemnity.	15,000
<i>Vice-President:</i>	
Annual salary	45,000
Allowance for each day on duty (100 × 100)	10,000 (maximum)
<i>Members:</i>	
Annual salary	45,000
<i>Judges referred to in Article 31 of the Statute:</i>	
Indemnity for each day on duty.	100
Allowance for each day of attendance	50

Draft Resolution amending Paragraph 5 of Article I of the Regulation regarding Pensions.

The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. Should, however, the person entitled to a pension, before attaining that age, reach the end of his term of office without being re-elected, his pension may, by a decision of the Court, be made payable to him, in whole or part, as from the date on which his functions cease.

MEMORANDUM SUBMITTED TO THE COMMITTEE OF JURISTS BY M. RUNDSTEIN,
MEMBER OF THE COMMITTEE (Document C.R.S.C. 11).

[Translation.]

Practical experience of arbitration shows that States very frequently entrust the solution of their disputes to special arbitral tribunals; the disputes consequently do not come within the jurisdiction of the Permanent Court of International Justice.

In practice, special arbitrations may result, and have already resulted, in conflicts which may sometimes be very unfortunate, particularly in the case in which the question arises of the tribunal having exceeded its competence.

To escape from the disadvantages of situations which cause litigation on points of law to produce political conflicts, it might perhaps be convenient to contemplate an extension of the jurisdiction of the Permanent Court.

Such an extension would in no way require any modification of the Statute of the Court.

States preferring to have recourse to a special jurisdiction for certain disputes would be free, by making declarations on their respective accounts, to recognise the Permanent Court of International Justice as having obligatory jurisdiction as an appeal tribunal from awards given by special arbitral tribunals.

By signing such declarations, the States would accept the Permanent Court as exercising obligatory appellate jurisdiction in all the cases in which they might submit any disputes which might arise to a special arbitral or judicial procedure. Such recourse to the Court could only be excluded by an express provision inserted in the particular convention. It would follow that acceptance of an appellate jurisdiction of the Permanent Court would not be unconditionally binding upon the States; a State accepting the above principle and signing a special arbitration convention with a State which did not recognise the admissibility of the appeal, would find itself in a very difficult situation if it were not free to exclude the possible consequences of the general declaration.

The basic provisions of such a declaration might be formulated as follows :

1.

Where a dispute arising between signatory States is submitted to a procedure of arbitration or judicial settlement outside the jurisdiction of the Permanent Court of International Justice, recourse may be had by each signatory party to the Permanent Court as a jurisdiction of appeal.

2.

The appellate jurisdiction of the Permanent Court of International Justice may be excluded by a provision inserted in the treaties or conventions providing for arbitration or judicial settlement.

3.

The appeal will lie as regards :

- (a) Violation of a rule of international law ;
- (b) Exceeding of its competence by the tribunal.

4.

The appeal must be made to the Permanent Court of International Justice within the two months following the notification of the award by way of an application addressed to the Registrar.

5.

Eventual revision of an award belongs to the competence of the international arbitral or judicial tribunal which has been established by the signatory parties, except where they confer on the Permanent Court of International Justice jurisdiction as a tribunal for revision.

An application for revision may only be made in accordance with the provisions of Article 61 of the Statute of the Court.

6.

Where an international arbitral or judicial tribunal is open to private persons, any appeal or application for revision must be made by the State of which the person concerned is a national.

7.

The Court shall determine by Rules of Court the manner in which it will exercise its functions in cases of appeal or revision.

8.

The signatory parties may extend the application of the preceding provisions to treaties and conventions for arbitration or judicial settlement which were concluded before the entry into force of their respective declarations.

REPORT ADOPTED BY THE COMMITTEE OF JURISTS ON THE QUESTION OF THE
ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL
OF SIGNATURE OF THE STATUTE OF THE COURT.¹

[C.R.S.C. 19 (1).]

On February 19th, 1929, the Secretary of State of the United States of America addressed to each of the Governments which had signed the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16th, 1920, and also to the Secretary-General of the League of Nations a note suggesting that an exchange of views might lead to an agreement with regard to the acceptance of the stipulation set forth in the resolution adopted by the Senate of the United States on January 27th, 1926, as the conditions upon which the United States would adhere to the said Protocol. This note was considered by the Council of the League of Nations at its meeting on March 9th, 1929, and cordial satisfaction was expressed at the prospect which the note held out that a solution might be found for the difficulties which had prevented the adherence of the United States in 1926. On the same date, a resolution was adopted by the Council, requesting the Committee of Jurists, which had been appointed by the Council at its meeting on December 14th, 1928, to consider the revision of the Statute of the Permanent Court of International Justice, to deal with this question as well as those with which it was already charged and to make any suggestions which it felt able to offer with a view to facilitating the accession of the United States on conditions satisfactory to all the interests concerned.

It has been of the greatest assistance to the Committee in the accomplishment of this additional task that among its members was to be found the Honourable Elihu Root, formerly Secretary of State of the United States, and one of the members of the Committee which in 1920 framed the original draft of the Statute of the Court. His presence in the Committee has enabled it to re-examine with good results the work accomplished by the Special Conference which was convoked by the Council in 1926 after the receipt of the letter of March 2nd of that year from the then Secretary of State of the United States informing the Secretary-General of the League that the United States was disposed to adhere to the Protocol of December 16th, 1920, on certain conditions enumerated in that letter. The United States did not see its way to participate, as it was invited to do, in the Special Conference of 1926, and, unfortunately, the proposals which emanated from that Conference were found not to be acceptable to the United States. Nevertheless, as is shown by the note of February 19th, 1929, from Mr. Kellogg, the margin of difference between the requirements of the United States and the recommendations made by the Special Conference to the Powers which had signed the Protocol of December 16th, 1920, is not great. For this reason, the Committee adopted as the basis of its discussions the Preliminary Draft of a Protocol annexed to the Final Act of that Conference and has introduced into the text the changes which it believes to be necessary to overcome the objections encountered by the draft of 1926 and to render it acceptable to all parties. This revised text is now submitted to the Council of the League.

The discussions in the Committee have shown that the conditions with which the Government of the United States thought it necessary to accompany the expression of its willingness to adhere to the Protocol establishing the Court owed their origin to apprehension that the Council or the Assembly of the League might request from the Court advisory opinions without reference to interests of the United States which might in certain cases be involved. Those discussions have also shown that the hesitation felt by the delegates to the Conference of 1926 as to recommending the acceptance of those conditions was due to apprehension that the rights claimed in the reservations formulated by the United States might be exercised in a way which would interfere with the work of the Council or the Assembly and embarrass their procedure. The task of the Committee has been to discover some method of ensuring that neither on the one side nor on the other should these apprehensions prove to be well founded.

No difficulty has at any time been felt with regard to the acceptance of the conditions laid down by the United States except in so far as they relate to advisory opinions, and the task of the Committee would have been simplified if its members had felt able to recommend that the system of asking the Court for an advisory opinion upon any particular question should be abandoned altogether. The Committee, however, is of opinion that it cannot recommend any such drastic solution. The system of asking the Court for an advisory opinion has proved to be of substantial utility in securing a solution of questions which could not conveniently be submitted to the Court in any other form. It has also on occasions enabled parties to a dispute to ask for the submission of their difference to the Court in the form of a request for an advisory opinion when they were for various reasons unwilling to submit it in the form of international litigation.

The Committee has also felt obliged to reject another method by which satisfaction might without difficulty be given to the conditions laid down by the United States. It is that of recommending the adoption of a rule that in all cases a decision on the part of the Council or of the Assembly to ask for an advisory opinion from the Court must be unanimous. As is pointed out in the Final Act of the Special Conference of 1926, it was not then possible to say with certainty whether a decision by a majority was not sufficient. It is equally impossible to-day. All that is possible is to guarantee to the United States a position of equality in this matter with the States which are represented in the Council or the Assembly of the League.

¹ Rapporteur : Sir Cecil HURST.

Furthermore, mature reflection convinced the Committee that it was useless to attempt to allay the apprehensions on either side, which have been referred to above, by the elaboration of any system of paper guarantees or abstract formulæ. The more hopeful system is to deal with the problem in a concrete form, to provide some method by which questions as they arise may be examined and views exchanged, and a conclusion thereby reached after each side has made itself acquainted with the difficulties and responsibilities which beset the other. It is this method which the Committee recommends should be adopted, and to provide for which it now submits a text of a Protocol to be concluded between the States which signed the Protocol of 1920 and the United States of America (see Annex, page 17).

The note of February 19th, 1929, from the Secretary of State of the United States makes it clear that the Government of the United States has no desire to interfere with or to embarrass the work of the Council or the Assembly of the League, and that that Government realises the difficulties and responsibilities of the tasks with which the League is from time to time confronted. It shows that there is no intention on the part of the United States Government of hampering, upon unreal or unsubstantial grounds, the machinery by which advisory opinions are from time to time requested. The Committee is thereby enabled to recommend that the States which signed the Protocol of 1920 should accept the reservations formulated by the United States upon the terms and conditions set out in the articles of the draft Protocol. This is the effect of Article 1 of the draft now submitted.

The next three Articles reproduce without substantial change the corresponding articles of the draft of 1926.

The fifth Article provides machinery by which the United States will be made aware of any proposal before the Council or the Assembly for obtaining an advisory opinion and will have an opportunity of indicating whether the interests of the United States are affected, so that the Council or the Assembly, as the case may be, may decide its course of action with full knowledge of the position. One may hope with confidence that the exchange of views so provided for will be sufficient to ensure that an understanding will be reached and no conflict of views will remain.

The provisions of this Article have been worded with due regard to the exigencies of business in the Council of the League. The desirability of obtaining an advisory opinion may only become apparent as the session of the Council is drawing to a close and when it may not be possible to complete the exchange of views before the members if that body separate. In that case, it will be for the Council to give such directions as the circumstances may require, in order to ensure that the intentions of the Article are carried out. The request addressed to the Court may, for instance, be held up temporarily, or it may be despatched with a request that the Court will nevertheless suspend action on the request until the exchange of views with the United States has been completed. The provisions of the Article have purposely been framed so as to afford a measure of elasticity in its application. Similarly, if the Court has commenced the preliminary proceedings consequent upon the receipt of the request for an advisory opinion and has given notice of the request to the United States in the same way as to the other Governments, the proceedings may, if necessary, be interrupted in order that the necessary exchange of views may take place. What is said in this paragraph with regard to requests for advisory opinions made by the Council would also apply to requests by the Assembly in the event of the Assembly making any such request.

The provisions of this Article should in practice afford protection to all parties in all cases, but if they do not, it must be recognised that the solution embodied in the present proposal will not have achieved the success that was hoped, and that the United States would be fully justified in withdrawing from the arrangement. It is for this eventuality that provision is made in the last paragraph of the Article. It may be hoped that, should any such withdrawal by the United States materialise, it would in fact be followed or accompanied by the conclusion of some new and more satisfactory arrangement.

In order to ensure so far as possible that the parties to the Protocol of 1920 shall be identical with the parties to the new Protocol, Article 6 provides that any State which in future signs the Protocol of 1920 shall be deemed to accept the new Protocol.

The remaining provisions of the draft Protocol do not call for detailed comment, because they are in substance similar to the corresponding provisions of the draft Protocol of 1926.

It is necessary to consider what steps will be required to bring the Protocol of which the text is now submitted into force in the event of the recommendations of the Committee being accepted.

If the terms of the Protocol are approved by the Council, it will be advisable that the Secretary-General should be directed, when answering Mr. Kellogg's note of February 19th, 1929, to communicate the draft to the Government of the United States. Since the Protocol, if approved, covers the entire ground of Mr. Kellogg's note, its transmission with a statement of the Council's approval would seem to constitute an adequate reply to that note. It should at the same time be communicated to all the States which signed the Protocol of December 16th, 1920, together with a copy of the resolution of the Senate of the United States, dated January 27th, 1926, containing the reservations of the United States.

It should also be communicated to the Assembly, in which the proposal for the appointment of this Committee originated, in order that, if its terms are acceptable to that body, a resolution approving it may be passed by the Assembly in the course of its ensuing session. Any action

taken by the Assembly should be communicated to the signatory States which are called upon to determine whether or not to sign the new Protocol now proposed.

If the replies from the various Governments indicate a desire for a further exchange of views with regard to the nature of the proposed arrangement with the United States or to the terms of the draft Protocol, it will be for the Council to decide whether such exchange of views should proceed through the diplomatic channel or whether it is necessary to convoke a further special conference for the purpose, at which States not Members of the League might be represented. In any event, such exchange of views should, if possible, be completed before the conclusion of the Assembly, in order that the approval by the Assembly may be obtained in 1929. A copy of the Protocol in the terms approved will then be prepared for signature and every effort should be made to secure that delegates to the meeting of the Assembly or of the special conference, if there should be one, should be authorised to sign the instrument and should actually sign it before they leave Geneva. The signature of representatives of States not Members of the League should be obtained at the same time.

As provided in Article 7 of the draft, the Protocol will come into force as soon as it has been ratified by the States which have ratified the Protocol of December 16th, 1920, and by the United States, and, as soon as it has come into force, it will be possible for the United States to take the necessary steps to become a party to the Protocol of December 16th, 1920, and to any further protocol which may have been concluded for introducing amendments into the Statute of the Court.

When that happy result has been achieved, it will be possible to feel that further progress has been made in establishing the reign of law among the nations of the world and in diminishing the risk that there may be a resort to force for the solution of their conflicts.

Annex.

DRAFT PROTOCOL.

[C.R.S.C. 17 (1).]

The States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16th, 1920, and the United States of America, through the undersigned duly authorised representatives, have mutually agreed upon the following provisions regarding the adherence of the United States of America to the said Protocol, subject to the five reservations formulated by the United States in the resolution adopted by the Senate on January 27th, 1926.

Article 1.

The States signatories of the said Protocol accept the special conditions attached by the United States in the five reservations mentioned above to its adherence to the said Protocol upon the terms and conditions set out in the following Articles.

Article 2.

The United States shall be admitted to participate, through representatives designated for the purpose and upon an equality with the signatory States Members of the League of Nations represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, provided for in the Statute of the Court. The vote of the United States shall be counted in determining the absolute majority of votes required by the Statute.

Article 3.

No amendment of the Statute of the Court may be made without the consent of all the Contracting States.

Article 4.

The Court shall render advisory opinions in public session after notice and opportunity for hearing substantially as provided in the now existing Articles 73 and 74 of the Rules of Court.

Article 5.

With a view to ensuring that the Court shall not, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest, the Secretary-General of the League of Nations shall, through any channel designated for that purpose by the United States, inform the United States of any proposal before the Council or the Assembly of the League for obtaining an advisory opinion from the Court, and thereupon, if desired, an exchange of views as to whether an interest of the United States is affected shall proceed with all convenient speed between the Council or Assembly of the League and the United States.

Whenever a request for an advisory opinion comes to the Court, the Registrar shall notify the United States thereof, among other States mentioned in the now existing Article 73 of the Rules of Court, stating a reasonable time-limit fixed by the President within which a written statement by the United States concerning the request will be received. If for any reason no sufficient opportunity for an exchange of views upon such request should have been afforded and the United States advises the Court that the question upon which the opinion

of the Court is asked is one that affects the interests of the United States, proceedings shall be stayed for a period sufficient to enable such an exchange of views between the Council or the Assembly and the United States to take place.

With regard to requesting an advisory opinion of the Court in any case covered by the preceding paragraphs, there shall be attributed to an objection of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations in the Council or in the Assembly.

If, after the exchange of views provided for in paragraph 1 and 2 of this Article, it shall appear that no agreement can be reached and the United States is not prepared to forgo its objection, the exercise of the powers of withdrawal provided for in Article 8 hereof will follow naturally without any imputation of unfriendliness or unwillingness to co-operate generally for peace and goodwill.

Article 6.

Subject to the provisions of Article 8 below, the provisions of the present Protocol shall have the same force and effect as the provisions of the Statute of the Court and any future signature of the Protocol of December 16th, 1920, shall be deemed to be an acceptance of the provisions of the present Protocol.

Article 7.

The present Protocol shall be ratified. Each State shall forward the instrument of ratification to the Secretary-General of the League of Nations, who shall inform all the other signatory States. The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall come into force as soon as all States which have ratified the Protocol of December 16th, 1920, and also the United States, have deposited their ratifications.

Article 8.

The United States may at any time notify the Secretary-General of the League of Nations that it withdraws its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately communicate this notification to all the other States signatories of the Protocol.

In such case, the present Protocol shall cease to be in force as from the receipt by the Secretary-General of the notification by the United States.

On their part, each of the other Contracting States may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately give communication of this notification to each of the States signatories of the present Protocol. The present Protocol shall be considered as ceasing to be in force if and when, within one year from the date of receipt of the said notification, not less than two-thirds of the Contracting States other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance.

DONE at....., the..... day of....., 19....., in a single copy, of which the French and English texts shall both be authoritative.

RESOLUTION ADOPTED BY THE SENATE OF THE UNITED STATES OF AMERICA
ON JANUARY 27TH, 1926.

Whereas the President, under date of February 24th, 1923, transmitted a message to the Senate, accompanied by a letter from the Secretary of State, dated February 17th, 1923, asking the favourable advice and consent of the Senate to the adherence on the part of the United States to the Protocol of December 16th, 1920, of Signature of the Statute for the Permanent Court of International Justice, set out in the said message of the President (without accepting or agreeing to the Optional Clause for Compulsory Jurisdiction contained therein), upon the conditions and understandings hereafter stated, to be made a part of the instrument of adherence :

Therefore be it

Resolved (two-thirds of the Senators present concurring), That the Senate advise and consent to the adherence on the part of the United States to the said Protocol of December 16th, 1920, and the adjoined Statute for the Permanent Court of International Justice (without accepting or agreeing to the Optional Clause for Compulsory Jurisdiction contained in said Statute), and that the signature of the United States be affixed to the said Protocol, subject to the following reservations and understandings, which are hereby made a part and condition of this resolution, namely :

1. That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Treaty of Versailles.
2. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other States, Members respectively of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice or for the filling of vacancies.

3. That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

4. That the United States may at any time withdraw its adherence to the said Protocol and that the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

5. That the Court shall not render any advisory opinion except publicly after due notice to all States adhering to the Court and to all interested States and after public hearing or opportunity for hearing given to any State concerned ; nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest.

The signature of the United States to the said Protocol shall not be affixed until the Powers signatory to such Protocol shall have indicated, through an exchange of notes, their acceptance of the foregoing reservations and understandings as a part and a condition of adherence by the United States to the said Protocol.

Resolved further, As a part of this act of ratification, that the United States approve the Protocol and Statute hereinabove mentioned, with the understanding that recourse to the Permanent Court of International Justice for the settlement of differences between the United States and any other State or States can be had only by agreement thereto through general or special treaties concluded between the parties in dispute ; and

Resolved further, That adherence to the said Protocol and Statute hereby approved shall not be so construed as to require the United States to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign State ; nor shall adherence to the said Protocol and Statute be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions.

Agreed to, January 16th (Calendar day, January 27th), 1926.

[Distributed to the Council
and the Members of the League.]

Official No. : C. 166. M. 66. 1929. V.

Geneva, May 1st, 1929.

LEAGUE OF NATIONS

**COMMITTEE OF JURISTS ON THE STATUTE OF
THE PERMANENT COURT OF INTERNATIONAL
JUSTICE**

MINUTES

OF THE

Session held at Geneva, March 11th-19th, 1929.

Series of League of Nations Publications

✓ V. JURIDICAL QUESTIONS

1929. V. 5. ✓

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COMPOSITION OF THE COMMITTEE OF JURISTS
ON THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

Chairman :

M. SCIALOJA.

Vice-Chairman :

Jonkheer VAN EYSINGA.

Members :

M. FROMAGEOT,

M. GAUS,

Sir Cecil J. B. HURST,

M. ITO,

M. PILOTTI,

M. POLITIS,

M. RAESTAD,

Mr. ROOT,

M. RUNDSTEIN,

M. URRUTIA.

Invited to participate in the work of the Committee :

M. ANZILOTTI, President of the Permanent Court of International Justice,

M. HUBER, Vice-President of the Permanent Court of International Justice,

M. OSUSKÝ, Chairman of the Supervisory Commission.

Secretary of the Committee :

M. Joseph NISOT, Member of the Legal Section of the Secretariat of the League of Nations.

FIRST MEETING.

Held on Monday, March 11th, 1929, at 11 a. m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

1. Opening of the Session by the Secretary-General of the League and Appointment of the Chairman and Vice-Chairman of the Committee.

The SECRETARY-GENERAL welcomed the members of the Committee and reminded them that their terms of reference included a revision, if necessary, of the Statute of the Permanent Court and, secondly, in conformity with the resolution adopted by the Council on Saturday, March 9th, 1929, the consideration of the present situation and of any suggestions which might be put forward as regarded the accession of the United States of America to the Protocol of Signature of the Statute of the Court (Annex 1).

The Secretary-General suggested that the Committee should elect its officers.

On the proposal of M. POLITIS and M. FROMAGEOT, supported by M. URRUTIA, M. SCIALOJA was elected Chairman by acclamation.

On the proposal of the CHAIRMAN, JONKHEER VAN EYSINGA was elected Vice-Chairman.

(The Secretary-General withdrew.)

2. Participation of the President and Vice-President of the Permanent Court of International Justice in the Work of the Committee : Declaration by M. Anzilotti.

M. ANZILOTTI asked permission, before the Committee opened the discussion, to read the following declaration in his own name and in that of M. Max Huber :

“ Mr. Chairman, Gentlemen : — Before we take up the work that has been entrusted to this Committee, I think I ought to explain in a few words the conditions under which my colleague, M. Huber, and myself will take part in your work.

“ On December 14th, 1928, the Council of the League adopted a resolution under which it invited us to take part, *inter alia*, in the work of the Committee set up to report ‘ what amendments appeared desirable in the various provisions of the Court’s Statute ’. These terms of reference were amplified the other day to include the consideration ‘ of the present situation as regards the accession of the United States of America to the Protocol of Signature of the Statute ’.

“ We are glad to be able to accept this invitation, since our presence will enable the Committee, in its proceedings, to take into account such experience as we have acquired, as successive Presidents of the Court, of the practical value of the Statute which was adopted in 1920 after careful and exhaustive preparation.

“ Our attendance, however, should not be regarded as implying that we are of the opinion that a revision of the Statute is necessary. It is true that in many respects a system other than that which was set up by the Statute might obviously be considered, but, in view of the actual terms of the report relative to the resolution adopted by the Assembly of the League on September 20th, 1928, it is not a reform of this kind that is at present under consideration. All that is to be done is to re-examine the Statute with the object of correcting certain imperfections which may have come to light as a result of experience. It would appear to us to be certain that the majority of these imperfections might be overcome within the limits of the Statute as it was drafted in 1920, either by means of concurrent decisions by the Council and the Assembly or by the exercise by the Court itself of its regular powers. In this connection, I should like incidentally to take note of the declaration made to the Assembly by the Rapporteur according to which ‘ the Committee agreed unanimously, in the first place, that it could not interfere in any way in the question of the Rules of the Court. That is a matter for the Court itself and... the Rules cannot be affected by any examination of the Statute ’.

“ Nevertheless, the work of the examination of the Statute with a view to its revision having been started, we think it our duty, not only to give information on points of fact and to state our opinion on any proposals that may be made from other sources, but also, if necessary, to propose ourselves certain amendments.

“ Our proposals, however, should not be regarded as emanating from the Court itself. On the contrary, I must, in concluding, state that the members of the Court have not failed to attach great importance to the sentence which was inserted in the report adopted by the Council on December 13th last, and under which ‘ it would fall to the Committee to ascertain the opinion of the Permanent Court of International Justice in respect of the working of the Court ’.”

The CHAIRMAN was sure that the Committee would unanimously thank M. Anzilotti and M. Max Huber for having been good enough to attend the meetings of the Committee.

3. Publicity of the Meetings.

On the proposal of Sir Cecil HURST, supported by M. POLITIS, M. ANZILOTTI and M. FROMAGEOT, the Committee decided that its meetings would be held in private, with the exception possibly of the last meeting.

4. Question of the Accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice : Letter from the United States Government and Proposals by Mr. Root.

The CHAIRMAN, after reading the letter addressed on February 19th, 1929, to the Secretary-General by Mr. Frank B. Kellogg (Annex 2), referred to a semi-official note which had been received by the Secretary-General from Mr. Root.

M. POLITIS thought that, although the note was only semi-official, it might form the subject of an exchange of views.

Mr. ROOT said that he gladly accepted this procedure. He proposed that the text of his note, which was, however, of an entirely unofficial character, should be distributed as soon as possible. Meanwhile, he would make the following comments on it.

The note contained suggestions, which he was submitting in his own name, as to the way in which it might perhaps be possible to bring the provisions of the Final Act of the Conference of September 1926 — which Conference had been presided over so skilfully by M. van Eysinga — and adopted by the majority of States signatories of the Protocol of the Court, into line with the reservations made by the United States Senate (Annex 3) in regard to the accession of the United States to the Protocol of the Court. He thought that his suggestions, without injuring any of the parties, might be calculated to satisfy both the desires of the United States Senate, as expressed in the reservations that were known to all the members of the Committee, and at the same time the desires expressed by the 1926 Conference in its Final Act.

The note which he had handed to the Secretary-General contained purely personal suggestions; he thought that they might form the subject of an exchange of views among the parties concerned, and might perhaps further the achievement of the purpose that all members had in mind.

Mr. ROOT's note for a "Suggested Redraft of Article 4 of the Protocol of 1926"¹ was then read. The text of the note ran as follows:

"The Court shall not, without the consent of the United States, render an advisory opinion touching any dispute to which the United States is a party.

Final Act, under Res. V, para. B, 2.

"The Court shall not, without the consent of the United States, render an advisory opinion touching any dispute to which the United States is not a party but in which it claims an interest or touching any questions other than a dispute in which the United States claims an interest.

Final Act, under Res. V, para. B, 3, 4.

"The manner in which shall be made known whether the United States claims an interest and gives or withholds its consent shall be as follows:

Art. 4, para. 1, of the Protocol and Final Act. Final Act, under Res. IV, para. A, 3.

"Whenever, in contemplation of a request for an advisory opinion, it seems to them desirable, the Council or Assembly may invite an exchange of views with the United States and such exchange of views shall proceed with all convenient speed.

"Whenever a request for an advisory opinion comes to the Court, the Registrar shall notify the United States thereof, among other States mentioned in the now existing Article 73 of the Rules of Court, stating a reasonable time-limit fixed by the President within which a written statement by the United States concerning the request will be received.

Art. 73 of the Rules and Final Act, under Res. V, para. A.

"In case the United States shall, within the time fixed, advise the Court in writing that the request touches a dispute or question in which the United States has an interest and that the United States has not consented to the submission of the question, thereupon all proceedings upon the question shall be stayed to admit of an exchange of views between the United States and the proponents of the request, and such exchange of views shall proceed with all convenient speed.

Final Act, under Res. IV, para. A, 3.

"If after such an exchange of views, either while a question is in contemplation or after a question has gone to the Court, it shall appear: (1) that no agreement can be reached as to whether the question does touch an interest of the United States within the true meaning of the second paragraph of this article; and (2) that the submission of the question is still insisted upon after attributing to the objections of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations either in the Assembly or in the Council; and if it also appears that the United States has not been able to find the submission of the question so important for the general good as to call upon the United States to forgo its objection in that particular instance, leaving the request to be acted upon by the Court without in any way binding the United States; then it shall be deemed that, owing to a material difference of view regarding the proper scope of the practice of requesting advisory opinions, the arrangement now agreed upon is not yielding satisfactory results and that the exercise of the powers of withdrawal provided in Article 7 hereof will follow naturally without any imputation of unfriendliness or of unwillingness to co-operate generally for peace and goodwill."

Art. 4, para. 3, of the Protocol and Final Act.

Final Act, under Res. IV, para. A, 2.

¹ The text of the Final Act of the Conference of 1926, together with the annexed draft Protocol, is reproduced in Annex 4.

The CHAIRMAN, speaking in his capacity as President of the Council, said that the Council would be glad if the Committee could discover the means of satisfying the desiderata of the United States Government as expressed in Mr. Kellogg's letter, whilst safeguarding the dignity of the League.

Jonkheer VAN EYSINGA, without wishing to examine in detail Mr. Root's note, which he had not yet been able to study, desired to express the deep gratification which Mr. Kellogg's letter had caused him. He had observed, too, with keen pleasure the satisfaction felt by the Council at the presence on the Committee of Jurists of that eminent statesman and lawyer, Mr. Elihu Root.

When the question had come up before the last session of the Assembly, it had been thought that it would be desirable merely to consider whether there might not be certain modifications or *retouches* to be made in the Statute of the Court. Now, M. van Eysinga was under the impression that Mr. Kellogg's letter greatly extended the scope of the work assigned to the Committee. At the 1926 Conference, only the second part of the fifth reservation made by the United States had caused any difficulties. It seemed that the time spent in waiting had not been lost, and Mr. Root's note appeared to indicate a possible way out of the present difficulties. Personally, M. van Eysinga expressed the sincere hope that the United States would accede to the Statute of the Permanent Court.

M. POLITIS too thought that Mr. Root's note contained certain very valuable suggestions which would make it possible perhaps to reach a satisfactory solution, but he could not at the moment give more than his simple impression, since he had not yet had time to study the document.

Sir Cecil HURST having suggested that the meeting should be adjourned in order to enable the jurists to examine the personal suggestions made by Mr. Root, the CHAIRMAN said that, in his opinion, the Committee was in a position at once to examine various questions which were bound up with Mr. Kellogg's letter. That letter emphasised two difficulties, which it would, he thought, be easy to surmount. In the first place, there was the possibility of a modification to be made later in the Covenant. In the second place, was it possible to give an assurance to the United States that, in other cases, the Permanent Court would not follow any practice other than that which it had followed in the Eastern Karelian affair? If these two difficulties could not be overcome, it did not appear likely that any conclusion acceptable to the United States would be reached. The Chairman, however, thought that this was not the case.

M. PILOTTI, after referring to the two difficulties pointed out by the Chairman, thought that the second might be overcome if the Committee decided to suggest to the signatory States certain amendments in the Statute of the Permanent Court. From the award given in the Eastern Karelian case it would be possible to infer a principle which might be introduced into the Statute. In this way the United States would receive satisfaction, since the practice of the Permanent Court could not be modified further once the future Conference of signatory States had accepted that proposal.

The first difficulty was more serious, since it was obvious that the Covenant could be amended by the Members of the League. The United States, however, was not a Member. The point would have to be considered whether, in concluding an arrangement with the United States with a view to its accession to the Permanent Court, it would not be possible to make such an arrangement contingent upon the condition that the article of the Covenant relating to advisory opinions would not be amended. The result would be, in practice, that, if a proposal for amendment were made to the Assembly at some future date, the arrangement would lapse; but no such proposal would probably ever be made to the Assembly, which had frequently manifested its wish that the United States should become and remain an adherent to the Statute of the Court.

There was another difficulty, one that was implicit in Mr. Kellogg's observations. If Mr. Kellogg's letter were to be interpreted in the sense that the United States was only asking that the Covenant should not be amended, its wishes could be met by making the arrangement with that country contingent on the condition that the Covenant should remain intact; but if the letter meant that the United States held unanimity to be necessary in regard to advisory opinions, a question which was still open, it would not be easy to find a way out of the difficulty.

M. Pilotti contemplated the adoption of the following system:

"The third paragraph of Article 4 of the draft Protocol approved by the 1926 Conference to be replaced by the two following paragraphs:

"3. *The Court will not give advisory opinions concerning a dispute to which the United States is a party unless the United States has consented to such a course.*

"4. Should the United States offer objection to an advisory opinion being given by the Court at the request of the Council or the Assembly concerning a dispute to which the United States is not a party or concerning a question other than a dispute between States,

(First Alternative)

".... the Court will attribute to such objection the same force and effect as, according to the provisions of the Covenant of the League of Nations,

(Second Alternative)

".... the Court shall take a decision regarding this objection. If the Court agrees that the United States has an interest in the dispute or question, it

these provisions are operative on the date of the signature of the present Protocol by the United States, attaches to a vote by a Member of the League of Nations either in the Assembly or in the Council against asking for an opinion. ” will declare that the advisory opinion should not be given without the consent of the United States. ”

Sir Cecil Hurst thought that it would not be very difficult to find means of giving satisfaction to the United States on the three points. If his memory was correct, these difficulties had already been considered at the 1926 Conference, but it was possible that they were not very clearly stated in the records of the Conference. In Article 2 of the preliminary draft of the Protocol, it was stated that “ no amendment of the Statute annexed to the Protocol of December 16th, 1920, may be made without the consent of all the Contracting States ”.

Secondly, in regard to the objection derived from a possible change in the practice of the Court, some people had thought that it would be well to insert in the Statute a provision based on the rule which had been adopted in the Eastern Karelian case. Other members of the Conference had considered that it would be inadvisable to bind the Permanent Court by introducing into the Statute itself the procedure which it had followed in a particular case. Sir Cecil Hurst thought he was right in stating also that, in the view of the Conference, the provisions appearing in Article 7 of the preliminary draft of the Protocol, under which the United States might at any time notify the Secretary-General that it withdrew its adherence to the Protocol of December 16th, 1920, might be considered as satisfactory. There would thus be conferred on the United States a right not possessed by the Members of the League.

Sir Cecil Hurst thought that the three objections which emerged from Mr. Kellogg's letter might be met satisfactorily by the introduction into the Protocol of an amendment according to the United States in very clear terms the right to withdraw, on the basis of the provisions of Article 7, if any change were made either in the Covenant, or in the Rules or practice of the Court, and he proposed to insert an additional provision in the preliminary draft of the Protocol on the following lines :

“ In the event of any modification being made in the Covenant of the League of Nations or in the Rules of the Court or in the practice of the Court which is calculated to prejudice the protection of the United States of America against demands for advisory opinions in cases in which the United States is interested, the Parties recognise the right of the United States to withdraw under Article 7 of the present Protocol. ”

Jonkheer VAN EYSINGA believed that Mr. Root's suggestions were intended precisely to overcome the difficulties in question, but he thought it better not to continue the discussion on this subject until all the members of the Committee had had an opportunity of examining Mr. Root's note more closely.

The CHAIRMAN said that, before suspending the discussion, it would be well to ascertain whether there were not other difficulties to be foreseen, so that the Committee might hold its later discussions with a full knowledge of all the facts.

Mr. Root explained that his suggestions covered the most serious difficulty, namely, the second part of the fifth reservation of the United States. He had attempted to solve this difficulty in the spirit of the Final Act of 1926, and on the basis of Article 4 of the preliminary draft of the Protocol. His suggestion should be read with the actual text of the Final Act in mind. According to the general opinion of the members of the 1926 Conference, the chief difficulty resulting from the second part of the fifth reservation of the United States was due to the way in which that reservation had been drafted. Its terms were so general that they seemed to afford powers of general interference in the business of the Council and of the Assembly in regard to advisory opinions. What was required in order to reach the agreement proposed in the first paragraph of Article 4 of the preliminary draft of the Protocol ? The scope of this possible interference must be determined. The theoretical question raised by the second part of the fifth reservation could be discussed for ever and without any positive result. In his note, Mr. Root had tried to solve the difficulty in a practical way and to determine the scope of the United States' reservation.

Mr. Root added that his note bore only on the second part of the fifth reservation of the United States, and left entirely open the question dealt with in Sir Cecil Hurst's proposal or any other proposal that might be put forward.

5. Procedure for obtaining Advisory Opinions from the Permanent Court of International Justice.

M. POLITIS thought that the discussion would very largely bear on the procedure under which requests for advisory opinions were made. On this subject there were no rules, but it appeared that a certain practice had been established. The question had been discussed repeatedly and once again last September, but it was still open.

The CHAIRMAN thought he could sum up as follows the present position of the question. Was unanimity necessary or did a majority suffice for a request for an advisory opinion ? Up to the present, neither the Council nor the Assembly had been able to come to a decision, with the result that, in practice, advisory opinions were not asked for. On the last occasion on which there had been ground for asking for an advisory opinion, the request had not been made, so that it might not be necessary to solve this question.

Personally, the Chairman had always held the view that advisory opinions fell within the class of acts which, according to the Covenant, could be effected by a majority vote, but he realised that that opinion was not in conformity with practice. The Permanent Court held that its opinions were binding on the parties which had asked for them. Consequently, its opinions settled the question, and an act of that kind was one of those which, under the terms of the Covenant, should be effected by a unanimous vote.

In view of the fact that the absence of any rule had the effect that no request was made for an advisory opinion, the Chairman, while adhering to his first opinion, thought that if in this case the rule of the majority vote was calculated to prevent the recourse to advisory opinions, it would be better to establish the rule of unanimity. Instead of consulting the Permanent Court, the Council had made it a habit to consult groups of jurists, since it thus remained free not to follow their opinion if it thought fit. That procedure had on several occasions been substituted for that of asking for an advisory opinion from the Permanent Court. If the Council continued to follow that method in all cases in which it did not wish to be bound by an opinion, and if it consulted the Permanent Court only when it wished to be bound by such opinion as the Court might put forward, the question would fall to the ground and there would be no obstacle to the adoption of a system which would permit of the accession of the United States to the Court.

SECOND MEETING.

Held on Monday, March 11th, 1929, at 5 p. m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

6. Death of Lord Finlay, Member of the Permanent Court of International Justice.

M. ANZILOTTI said that, before the Committee resumed its work, he had, to his regret, to announce a sad event. He had just received official confirmation of the death of Lord Finlay, who had been a member of the Court since its creation. Lord Finlay, who was the senior judge of the Court and was beloved and respected by all its members, had taken part in all its sessions with a single exception. The Court, whose work owed so much to his influence, had lost in him an enlightened, loyal and courageous collaborator, who had devoted to its service the last moments of a life of continuous activity. Lord Finlay had died owing to his having taken the risk of a painful operation in order that he might be able to take his seat once more with the Court. He was sure that the Chairman and the other members of the Committee would fully associate themselves with the deep regret which he now desired to express on behalf of himself, M. Huber and M. Hammarskjöld and also on behalf of the Court.

The CHAIRMAN said that it was with deep regret that the Committee learnt of the death of Lord Finlay. He had always regarded Lord Finlay as one of the leading jurists of the world. He had been a great lawyer and a great judge. His death left the impression that something of great value had ceased to be.

7. Question of the Accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice : Letter from the United States Government and Proposals by Mr. Elihu Root (continuation).

M. GAUS said he was not sure that he fully understood the procedure suggested by the Chairman at the morning meeting. The Chairman had suggested that the Committee should consider the three points contained in the letter from Mr. Kellogg. The Committee, however, was also considering proposals of Mr. Root. Was it not a fact that Mr. Root's proposals covered the whole question under discussion and incidentally the three points in Mr. Kellogg's letter? Was it therefore necessary to take the three points contained in that letter separately? Mr. Root's proposals went to the heart of the problem.

The CHAIRMAN said that the Committee had before it an official document, namely, the letter from Mr. Kellogg, to which the Council was bound to reply, and the Council desired the advice of the Committee upon the answer to be made. The Committee had also before it proposals made by Mr. Root in his private capacity. Those proposals were extremely important but they were not official proposals. It was true that the Committee might report to the Council on the basis of Mr. Root's proposals, but, it would nevertheless, in his opinion, be necessary to reply to the Council separately on the three points to which he had referred.

He would point out, moreover, that, though the Committee might report to the Council on the basis of Mr. Root's proposals, the Council might not be disposed to accept them. The Council could not, however, omit to reply to the points raised by Mr. Kellogg. The Committee should therefore express its views separately on the three points, even though it considered that those points were covered by other proposals which had been presented.

M. GAUS said that he was not yet entirely convinced. The three points contained in Mr. Kellogg's letter were only of importance with reference to the fifth reservation contained in the memorandum of the United States. That memorandum was in fact a criticism of the findings of the Conference of 1926, and the Committee would have to find some way of meeting that criticism. Mr. Root's proposals went directly to the heart of the problem and, if accepted, would cover the whole ground.

The CHAIRMAN again pointed out that, though the Committee might accept the proposals of Mr. Root, the Council might not be ready to do so and would in that case be unable to reply to the letter of Mr. Kellogg upon the advice of the Committee.

Mr. Root said that he had no authority to interpret the letter from Mr. Kellogg, but he thought that he understood what that letter implied. Mr. Kellogg was unable to accept in its entirety the Protocol of 1926 and had in his letter given a number of reasons, by way of illustration, why the United States was unable to do so. One of the reasons was that the procedure followed in asking the Permanent Court for an advisory opinion might not be satisfactory to the United States. The Court had, in the Revised Rules of 1926, met the views of the United States, as expressed in the first part of the fifth reservation, by undertaking that notice should be given of any request for an advisory opinion and that the United States should be given an opportunity to be heard. Mr. Kellogg had stated, however, that this arrangement was not a sufficient protection for the interests of the United States as the Rules of the Court were liable to amendment at any time and the guarantee was not therefore permanent. The Covenant of the League itself, which regulated the powers of the Council to request an advisory opinion, might be altered, and the United States would have no opportunity of expressing its views upon any amendments which might be proposed. The guarantees laid down in the Final Act of 1926 were therefore uncertain and this made it impossible for the United States to accept them.

Mr. Kellogg had therefore proposed, in conclusion, that the interests of the United States might be safeguarded in some other way and had suggested that there might be an informal exchange of views which would lead to agreement upon some provision which, in an unobjectionable form, would protect the rights and interests of the United States as an adherent to the Court Statute. Mr. Kellogg had pointed out that such an expectation was strongly supported by the fact that there seemed to be but little difference regarding the substance of the rights and interests involved.

The uncertainty as to the permanence of the guarantees contained in the Protocol of 1926 was a problem which stood by itself and would have to be solved. It had been suggested by Sir Cecil Hurst that any modification in the Rules of Procedure of the Court or in the powers of the Council and the Assembly to the detriment of the United States should be regarded as a suitable ground for withdrawal. Such a suggestion might meet the objections expressed by Mr. Kellogg.

A further point remained, however, which was defined in the fifth reservation and dealt with in Mr. Root's own proposals. He was referring to the reservation in regard to the exercise and scope of the powers of the Council in requesting an advisory opinion. The Council might decide to request an advisory opinion without reference to the interests of the United States which might in certain cases be involved. This reservation was due to apprehensions in respect of possible infringement upon the rights and interests of the United States.

He had also in his proposals endeavoured to meet apprehensions of another kind, namely, that the reservation of the United States might be used to interfere with the Council or the Assembly in the discharge of its duties and to embarrass its procedure. There was no intention on the part of the United States to hamper the procedure of requesting advisory opinions upon unreal and unsubstantial grounds. It was difficult in an abstract formula to discriminate between the multitude of possible interests involved, and he had endeavoured in his proposals to allay apprehensions on both sides by dealing with the problem in a concrete form.

He had since been shown an alternative draft which, so far as he could see, fulfilled exactly the same purpose as his own. The essential point was that the United States should be promptly informed of the intentions of the Council in dealing with any matter in which the former might be interested, and that there should be some kind of informal conference in regard to any concrete case which might arise. Such a solution would make it possible to avoid discussing detailed questions of procedure, such as whether decisions to request an advisory opinion should be taken unanimously or by a majority vote. These proposals were inspired by a strong desire on the part of the United States to avoid interfering, in any way, with the procedure of the Council. The case might never arise for a full application of his proposal, which was intended to provide against a very rare and improbable contingency.

Jonkheer VAN EYSINGA thought that the general question raised in the letter of Mr. Kellogg had been met by the proposals of Mr. Root. Mr. Kellogg had stated that the Government of the United States desired to avoid as far as possible any proposal which would interfere with or embarrass the work of the Council of the League. Another merit of the proposals of Mr. Root was that they avoided going into the details of the internal constitutional law of the League. The problem had become a concrete one and the general and abstract question whether the Council should take its decisions unanimously or by a majority vote was avoided.

He agreed with the Chairman that it would be necessary for the Committee to consider separately the letter of Mr. Kellogg, but he thought that the best method would be to take

the proposals of Mr. Root, which might be regarded as a concrete development of that letter.

He had two observations to make on the text of Mr. Root's proposals. There was a reference in the second paragraph to the second half of the fifth reservation. Was it not desirable, in referring to the fifth reservation, to quote it *ipsis verbis*, instead of giving a paraphrase?

Secondly, would it not be possible to simplify the procedure defined in the fifth paragraph? A question might come before the Council regarding which the Council might desire to have an advisory opinion from the Court. Under the proposed procedure the Council might either discuss the question with the United States or, in urgent cases, ask the Court at once for an advisory opinion. The Court would then inform the United States, under Article 73 of the Rules of the Court, that it had been seized of the question; the United States might then reply to the Court that it had objections to raise. This reply would go to Geneva by way of The Hague and be discussed by the Council. The letters would thus pass from Geneva to The Hague, from The Hague to Washington, from Washington to The Hague and from The Hague to Geneva. Would it not be simpler to provide that the Council when asking for an opinion from the Court, should at the same time notify the United States of its action, and that the United States should immediately communicate with Geneva?

Sir Cecil HURST said that he was the author of the revised draft to which Mr. Root had referred. On studying Mr. Root's proposal, he had felt that, without in any way changing its substance, it was possible to render the scheme more acceptable by amending it in form and arrangement. He had not shown this revised draft to anyone but Mr. Root, but with Mr. Root's permission he would now have it distributed to the Committee.

Mr. Root said he would be very glad if the revised draft were circulated. He was not yet prepared to express a final opinion upon it, but was under the impression that it was an improvement upon his own. His own draft had suffered from his anxiety to avoid interfering in any way with the procedure and work of the Council. Sir Cecil Hurst, however, appeared to think that the Council might welcome such intervention, and that his own anxiety on the subject was groundless. He would also observe that the draft of Sir Cecil Hurst met the points which had been raised by M. van Eysinga.

M. RUNDSTEIN wondered whether the reference to the possible withdrawal of the United States made in the last paragraph of Mr. Root's proposal was really necessary. The right to withdraw from the Court belonged to every State, and it was perhaps superfluous to refer to it. The reference to withdrawal appeared to be all the more unnecessary as the United States would not be bound by an advisory opinion with which it had not concurred. Would it not be better simply to say that, if agreement were not reached between the United States and the Council regarding a request for an advisory opinion, that opinion could not be invoked against the United States in its relations with other countries?

M. POLITIS said he did not feel ready to pass a final opinion upon Mr. Root's proposal. He had, however, been greatly impressed by the observation of Mr. Root to the effect that it was a matter of indifference to the United States what procedure was followed by the Council in deciding to ask for an advisory opinion, and that the United States had no desire to discuss the question whether the decision to request such opinions should be taken unanimously or by a majority vote. That was a very important declaration and appeared to open the way to an easy settlement of all the difficulties.

The question of procedure, so far as a non-Member of the League was concerned, was simple. Whenever the Council decided to ask for an advisory opinion, it would have to ask the United States whether it considered that the question to be put before the Court was of interest to it. There would be an exchange of views on the subject. If the United States were not interested, the procedure would go forward in the ordinary way. If the United States, on the contrary, claimed an interest and opposed the request for an advisory opinion, it was open to it to withdraw from the Court and the opinion would not be binding upon it.

M. OSUSKÝ represented that, if the fundamental idea underlying the proposals of Mr. Root were accepted, the procedure would have to be simplified. Under the procedure proposed, an intervention might be necessary after a question had been submitted to the Court, and during the proceedings before the Court. It was extremely undesirable that there should be any interference with the proceedings of the Court after the Court had actually been requested to act. The procedure would also have to be simplified in order to avoid loss of time.

He would suggest that the best procedure would be for a representative of the United States to be invited to attend the Council whenever the question of asking the Court for an advisory opinion was to be considered.

M. URRUTIA said that, as Sir Cecil Hurst had prepared a revised version of the proposals of Mr. Root, it would be better for the Committee to postpone any further consideration of the matter until the amended version had been distributed.

He would, however, draw attention to one important consideration. As M. Politis had said, the declaration of Mr. Root to the effect that it was a matter of indifference to the United States whether the Council took its decisions unanimously or by a majority vote contributed to simplify the problem. He would point out, however, that if the proposals of Mr. Root were adopted, it would be necessary to obtain the consent of all the Members of the League to that arrangement and to ensure that it safeguarded the principle of equality of all the Members of the League. In order to secure equality as between all Members of

the League it would be necessary to adopt the rule of unanimity. Otherwise the United States would have a power of veto for which there would be no equivalent in the rights enjoyed by Members of the League.

He would add, in support of the doctrine of unanimity, that when the Council requested an advisory opinion, it in effect surrendered to the Court its own power of decision, and in his view such a step could only be taken with the unanimous consent of all its Members.

He felt sure that the Committee was on the way to an agreement, and that that agreement would lead inexorably to the adoption of the rule of unanimity in order to secure equality as between all the parties concerned.

The CHAIRMAN again reminded the Committee that it would be necessary to advise the Council as to the reply to be addressed to Mr. Kellogg. The Committee, however, might discuss the question first from the general point of view. What exactly were the guarantees claimed by the United States? The United States desired that the Court should not be asked for an advisory opinion which might be detrimental to its interests. Mr. Root's proposals provided a machinery of guarantees. It had been said that this machinery might be considered quite apart from the question whether a decision of the Council to request an advisory opinion should be taken unanimously or by a majority vote. It had, however, been pointed out that the question of unanimity was in effect involved, owing to the moral and practical results of Mr. Root's proposals.

He would himself point out that if, contrary to the wishes of the United States, the League of Nations requested the Court for an advisory opinion, the United States would thereupon exercise its right to withdraw from the Court. Such a step, however, was of so serious a character that it must be regarded as a species of sanction. It was to the interest of the Council to retain the participation of the United States in the Court, and the United States could, therefore, by the possibility of its withdrawal, exercise what would, in practice, be a kind of moral pressure on the Council. Moreover, the advantages of the system suggested by Mr. Root would almost certainly be claimed by other States which had not yet adhered to the Court. Russia, for example, would ask for similar treatment. Each time, therefore, that the Council desired to ask the Court for an advisory opinion, it would be necessary to apply a complicated procedure, and to conduct correspondence with the States which had a right to be consulted.

The practical effect of this method would be a tendency to abolish the whole system of advisory opinions. Personally, he would not greatly regret their disappearance. He would point out, however, that the object which the United States desired to secure might be attained much more simply, and without risking any of the complications to which he had referred. The aim of Mr. Root's proposals would be secured if the Council merely decided to apply the rule of unanimity whenever it proposed to request an advisory opinion. If it were laid down that all such requests must be decided by a unanimous vote, the problem at once became extremely simple. It would merely be necessary to provide at the same time that the United States, or any other State non-Member of the League, should have the same rights as the Members of the League in this particular matter. The adoption of such a system would involve no danger of withdrawal from the Court by a dissentient Power.

Unanimity might be difficult to secure but, in any case, requests for advisory opinions were becoming more and more rare. The Council, when confronted with a legal difficulty, preferred an informal consultation of jurists. The procedure of requesting an advisory opinion from the Court was complicated and had serious consequences, since the Court was unable to regard its opinions merely as simple legal opinions, and the expression of such opinions had, therefore, far-reaching effects.

The establishment of the rule of unanimity might be effected by an interpretation of Article 14. It was only necessary to interpret a decision of the Council to mean a decision of all the Members of the Council. If, however, amendment was necessary, such amendment could be effected by the introduction of the word "unanimously" after the word "Council" in Article 14.

An alternative solution would be the total abolition of the advisory opinion. That might seem a somewhat drastic solution and might shock public opinion. The advantage of solving the problem by adopting the rule of unanimity was that it enabled the whole question to be settled within the limits of the Covenant. If that solution, however, were unacceptable, the Committee might take up Mr. Root's proposals, as had been suggested, with such simplifications as might appear to be necessary.

Mr. Root said he did not wish to express any opinion as to the merits of the rule of unanimity. He would leave that question to other members of the Committee who had more experience of the working of the Council and its procedure.

His own proposal was based on the fact that no decision had been reached on the question of unanimity, and its terms were conditioned by the fact that the United States had no desire to influence the solution of that problem.

He had emphasised that his proposals were intended to cover exceptional and extremely improbable cases. The Protocol of 1926 had gone a long way towards meeting the wishes of the United States. An arrangement whereby the United States could have a vote in cases where it was proposed to request the Court for an advisory opinion might be a satisfactory solution if the character of that vote were determined.

Nearly every point at issue had been settled in 1926. Mr. Kellogg, however, had drawn attention to a few outstanding matters, and, in his opinion, the proposals drafted by Sir Cecil

Hurst provided a satisfactory basis for the settlement of these points. Possibly, however, some other way would be found.

Only the last portion of the fifth reservation of the United States remained, and the difficulties to which attention was drawn in that reservation could, in his view, be settled by the process of dealing with concrete cases by means of an informal conference between the parties. On most of the cases which would arise the United States would not have to make any observations. The whole matter would be settled by question and answer between the Council and the representatives of the United States. If, however, any question on which an advisory opinion was desired touched in any way the interests of the United States, the points at issue might be settled in a friendly and normal manner in a friendly conference. There was a process at present developing in Europe for the promotion and maintenance of peace which was somewhat novel in diplomacy. A good deal of business was being taken out of the hands of Foreign Offices and settled by means of informal and friendly conversations between Foreign Ministers. He thought that this was an admirable method of doing business. The United States had not at present adopted that method, but it seemed desirable, in some cases, to endeavour to bring about an adjustment between the two methods. His own proposals were intended in that sense. He desired to see a reasonable procedure adopted in cases where it was necessary to ascertain whether a particular question was of interest to the United States, and he was anxious to avoid impeding international business and the development of friendly relations between States by insisting on questions of form when there might in reality be no question of substance involved.

The continuation of the discussion was postponed to the next meeting.

THIRD MEETING.

Held on Tuesday, March 12th, 1929, at 10.30 a.m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

8. Question of the Accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice : Letter from the United States Government and Proposals by Mr. Root, Sir Cecil Hurst and M. Politis (continuation).

The CHAIRMAN reminded the members of the Committee that Sir Cecil Hurst had submitted the following proposals for redrafting Article 4 of the Protocol of 1926 :

“(1) With a view to ensuring that the Court shall not, without the consent of the United States render an advisory opinion touching any dispute to which the United States is a party or in which it claims an interest, or touching any question other than a dispute in which it claims an interest, the Secretary-General shall inform any representative designated for that purpose by the United States of any proposal for obtaining an advisory opinion from the Court, and thereupon, if desired, an exchange of views between the Council or the Assembly of the League of Nations and the United States shall proceed with all convenient speed.

“(2) In deciding whether or not to request an advisory opinion of the Court in any case covered by the preceding paragraph, the Council or the Assembly will attribute to an objection of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League in the Council or in the Assembly.

“(3) If, after the exchange of views provided for in paragraph 1, it shall appear that no agreement can be reached as to whether an interest of the United States is affected, and the United States is not prepared to forego its objection, the exercise of the powers of withdrawal provided for in Article 7 will follow naturally without any imputation of unfriendliness or unwillingness to co-operate generally for peace and goodwill.

“(4) Whenever a request for an advisory opinion comes to the Court, the Registrar shall notify the United States thereof among other States mentioned in the now existing Article 73 of the Rules of Court stating a reasonable time, limit fixed by the President within which a written statement by the United States concerning the request will be received. If the United States alleges that the question upon which the opinion of the Court is asked is one which affects the interests of the United States and that no information was given to it, in pursuance of paragraph 1, of the intention to seek the opinion of the Court, proceedings shall be stayed for a period sufficient to ensure an exchange of views in accordance with the provisions of paragraphs 1, 2 and 3 of this article”.

M. POLITIS informed the Committee that he would ask the Secretariat to distribute a text which he had prepared with the object of simplifying and more clearly defining the text submitted by Sir Cecil Hurst.

M. RAESTAD thought that the Committee could hail as a good omen the Anglo-American collaboration as represented by the Root-Hurst draft. A similar occurrence had taken place in 1926 in connection with the Root-Phillimore draft. If the proposal of Mr. Root were examined, the Committee would note that it showed progress on the situation which existed in 1926, in so far as the following three points were concerned :

1. The United States formally abandoned all interest in the question whether unanimity or a mere majority was required when the Council or the Assembly requested an advisory opinion.

2. The United States would explain its point of view when it claimed that a particular question was of interest to it.

3. In case of disagreement, if the Council or the Assembly maintained its request for an advisory opinion, contrary to the wishes of the United States, the United States would not insist on exercising its right of veto and would withdraw from the Permanent Court.

In opposition to what had been said on the previous day by Mr. Root, M. Raestad did not think that, on two points at any rate, one of which raised a question of principle, the proposal of Sir Cecil Hurst was an improvement on that submitted by his United States colleague. Mr. Root's proposal was divided into two parts :

1. It covered cases when the United States was a party to a dispute. In this connection, there was only one provision — the first — in accordance with which the Permanent Court would not give an advisory opinion without the consent of the United States.

2. It covered the case in which the United States claimed that it had an interest at stake, though it was not a party to a dispute. All the rest of the Root proposals dealt only with cases of this kind.

In the text proposed by Sir Cecil Hurst these two ideas had been combined in one and the same formula. In the first paragraph it was stated : " With a view to ensuring that the Court shall not without the consent of the United States render an advisory opinion touching any dispute to which the United States is a party or in which it claims an interest . . . ". The second paragraph stated : " In deciding whether or not to request an advisory opinion of the Court in any case covered by the preceding paragraph, the Council or the Assembly will attribute to an objection of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League . . . ". It was not desirable to cover both these cases by the same formula. When the United States was a party to a dispute, according to the legal practice established by the Permanent Court, the Court was not competent, and there was no question of giving to the veto imposed by the United States the same force as a contrary vote by a Member of the Council or the Assembly.

Similarly, paragraphs 3 and 4 of the proposals of Sir Cecil Hurst only covered cases in which the United States claimed an interest, though it was not a party. On this point, too, the cases should be divided, and a return made to the formula proposed by Mr. Root.

Another change in the text proposed by Mr. Root was also to be found in the proposals of Sir Cecil Hurst. In paragraph 3 of his proposals it was stated : " whether an interest of the United States is affected ", while the following phrase was added in the text proposed by Mr. Root : " within the true meaning of the second paragraph of this article " (the new draft of Article 4 of the Protocol of 1926). These words were very useful, for they introduced a distinction between interests which would normally give rise to an objection on the part of the United States and other interests. It could always be admitted that, in a special case, the United States might have a distant and general interest, but the object of the discussions contemplated by Mr. Root and Sir Cecil Hurst would be to know whether such an interest was one which should normally be taken into account.

And now, how should the debates be divided between the Permanent Court on the one hand, and the Council or the Assembly on the other hand ? According to the scheme proposed by Mr. Root it would be for the Permanent Court to decide when the parties were divided on the question whether the United States would or would not be a party. In other cases, the whole discussion would take place before the Council or the Assembly. The following supposition, however, might occur. When it had been said that the Permanent Court would not give an advisory opinion if the United States were a party to the dispute, this argument had been based on the decision given in the Eastern Karelian affair. It might, however, be supposed that the Permanent Court, when continuing its work of identifying the procedure for requesting an advisory opinion with legal conflicts, would go further and say that it was incompetent even though a State were not a party to a dispute but only had legal interests at stake. When the procedure for requesting an advisory opinion was being put into operation, a State which was legally interested had not exactly the same right to intervene as that accorded to the contesting parties under Article 62 of the Statute. The only remedy which could be imagined in the case of a request for an advisory opinion would be for the Permanent Court to declare itself incompetent. As a rule, when a case had already been brought before a court, it was always clear who were the parties to the dispute. On the other hand, at what might be called the political stage, before the discussion had taken place before the Courts it might be very difficult and delicate to discover whether a State was a party or not to any particular dispute. If the present text of Sir Cecil Hurst were retained, it might be possible to reach the following strange result : In a particular question the United States might claim to be a party, or to have a

legal interest; the Council or the Assembly might not recognise the validity of that claim and the United States would withdraw from the Permanent Court; the Court, after the withdrawal of the United States, would all the same declare itself incompetent.

Two means could be used for remedying this defect. Either a phrase could be added to the first paragraph to the effect that the Court would not give any opinion when the United States was a party to the case, or had a legal interest, or by stating somewhere else that each of the parties would be allowed to submit the question of competence to the Court itself.

Continuing his argument, M. Raestad referred to the question of the procedure to be adopted. Among the Members of the League there were about fifteen that had not ratified the Statute. When an amendment of this kind was being dealt with, it was indispensable carefully to observe the same formalities as were used when the original Statute had been voted. Provision must therefore be made for a resolution of the Assembly. M. Raestad wondered whether it would be possible to transfer to that resolution part of the proposals of Mr. Root and Sir Cecil Hurst. From a legal point of view he was somewhat shocked to think that the States which had signed the Statute should deal with the question in the name of the Council or of the Assembly, as was contemplated in the text proposed by Mr. Root and Sir Cecil Hurst. It was preferable to embody in a resolution of the Assembly the provisions allowing for action by the Council or the Assembly. This would not prevent States signatory to the Statute from undertaking individually, in so far as the United States was concerned, to accept the procedure laid down by the resolution of the Assembly.

Finally, the letter from the International Labour Office (Annex 5) led M. Raestad to think that the question of a unanimous or a majority vote should not be dealt with. There were internal questions concerning the League just as there were purely American questions. The best plan would be for the United States to declare in cases which were purely of concern to the League that its right of veto would not be exercised. When such questions were being examined, it would perhaps be preferable to lay down that a majority vote was sufficient. For these reasons, M. Raestad still thought that the question of unanimity or of a majority vote should be left on one side, as had been the case during the Conference of 1926, and as Mr. Root had done.

M. IRO said that, before giving an opinion on the draft of Sir Cecil Hurst, he would like to have an explanation in regard to a small question of procedure dealt with in paragraph 4 of that draft. The fifth paragraph of Mr. Root's text contained a similar proposal which in that document was appropriate, since, in accordance with the fourth paragraph, an exchange of views between the Council or the Assembly and the United States would be entirely optional, a fact which made a provision such as that embodied in the fifth paragraph indispensable. In the text proposed by Sir Cecil Hurst it was laid down in the first paragraph that the Secretary-General "shall inform any representative designated for that purpose by the United States of any proposal for obtaining an advisory opinion from the Court, and thereupon, if desired, an exchange of views".

It accordingly appeared that all proposals for obtaining an advisory opinion would give rise to a communication to the United States, so that it was not quite clear how the provision embodied in paragraph 4 of the proposal of Sir Cecil Hurst would take effect.

The CHAIRMAN, referring to the proposals of Sir Cecil Hurst and Mr. Root, said that he did not quite understand the scope of paragraph 2 of Sir Cecil Hurst's text. This paragraph dealt with cases coming under paragraph 1, in other words, cases in which the United States had declared that it had an interest. The value of a vote given by a Member of the League of Nations was as follows: If the question were one requiring unanimity, a single contrary vote constituted an absolute impediment without it being necessary for the State voting to give any reasons. In default of unanimity, the request for an advisory opinion could not go forward, and all the procedure which was intended to throw light on the motives which determined the action of the United States fell to the ground.

If, however, the question at issue was one for which a simple majority sufficed, and if the opposition to the request for an opinion were in a minority, the Council had the right to proceed with its request. It was then said that the United States would have the right to withdraw. The fact, however, of having given it the right embodied in paragraph 2 of the draft of Sir Cecil Hurst would not in any way have changed the position.

According to Mr. Root's proposals, whatever might be the nature of the dispute giving rise to a request for an advisory opinion, the United States reserved to itself the right to prevent any request being made for an opinion or to withdraw. The United States would thus have a right which was more extensive than that embodied in the draft of Sir Cecil Hurst, namely, the right to veto a request for an advisory opinion, whatever might be the size of the minority. If that interpretation were false, he would be delighted, as it would signify that the United States renounced its demand, at least in certain cases, but he did not think this was so.

M. POLITIS pointed out that the draft which he would have distributed to his colleagues met the various objections which had been made, and that a discussion of his note would probably accelerate the work of the Committee.

Sir Cecil HURST presumed that the Chairman desired to go back to the remarks which he had made on the subject of paragraph 2 of his draft. The provisions of that paragraph, according to the Chairman, were ill-founded. He had, however, based those provisions on the Covenant itself. Article 4, paragraph 5, of the Covenant laid down that "any Member of the League, not represented on the Council shall be invited to send a representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League". That was a right enjoyed by Members of the

League alone. It did not apply to non-Members. Furthermore, the Member concerned was in no way obliged to respond to the request to send a representative to the Council. Article 5, paragraph 1, of the Covenant laid down that "except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting". The unanimity rule did not, therefore, apply to the State whose representative was not present. As the United States was not a Member of the League, it had no right to appeal to paragraph 5 of Article 4.

It followed, however, from the proposals and observations of Mr. Root that for psychological and political reasons there were grounds for believing that the United States would not wish to send a representative to the Council. Account must be taken of that fact, and an appropriate method provided. For that reason it was suggested that there should be an exchange of views between the Council and the representative of the United States. If that representative did not attend a meeting of the Council and of the Assembly, the unanimity rule embodied in Article 5 of the Covenant would not apply. From the practical point of view, it was desirable to frame a provision which would enable the opposition of the representative of the United States who was not present at a meeting of the Council or the Assembly to be given the same value as the veto of a member of the Council or the Assembly present at the meeting.

There followed the case in which a decision might be taken by a majority vote. The problem was to put the representative of the United States in the same position as a Member of the League which might be in the minority.

In the third paragraph of Article 4 of the preliminary draft of the Protocol of 1926, it had been laid down that for questions in which unanimity was necessary, in the event of a veto on the part of the United States, the Permanent Court would have the right to consider that, owing to that veto, the request had not been unanimously presented. In his draft, the Council or the Assembly would give to the United States' veto the same effect as a contrary vote cast by a Member of the League.

M. POLITIS wished to present two observations in order to elucidate the discussion. Sir Cecil Hurst, in his proposal, achieved the same result, in fact, as if the United States were a Member of the Council. If unanimity were necessary, the veto of the United States would suffice to prevent the request for an opinion being made. If a majority sufficed, the negative vote of the United States would be inoperative. Such was the thesis, and it gave rise to two objections. It was not known what were the cases which required unanimity or a majority vote, and it was precisely this ambiguity which caused the United States some misgiving. This was a practical objection of great importance, which it was necessary to take into account.

Secondly, it was not true, in practice, to say that the proposed consultation between the Council and the United States would have the same effect as the presence of the United States at a meeting of the Council or the Assembly. In this connection, he would appeal to the authority of M. Raoul Fernandes, who, in a pamphlet entitled "The United States and the Permanent Court of International Justice", expressed himself as follows:

" . . . It would be useless to deny that certain Members of the League of Nations enjoy sufficient prestige to hinder, if not the Assembly, at least the Council, from taking up and dealing with a question if it should seem to them inopportune. Even if they are at the outset in a minority, there is a considerable probability that the other Members will surrender to their arguments or prefer to temporise. Events in fact occur in this way, and it would be disastrous if it were otherwise. The Council is strong only when its Members are in agreement, and its utility consists precisely in facilitating such agreement by means of the personal contact and continuous conversations which are only possible at Geneva.

" That being the case, the position in which it is proposed to place the United States in order to secure theoretical equality would be practically the following: The United States Government would from a distance impose useless vetoes upon proposals agreed upon at Geneva, whereas certain States near at hand would retain means of eliminating proposals, which seemed to them undesirable, before they took definite shape."

In the light of these practical considerations, therefore, the proposals under examination would not establish actual equality between the United States and the Members of the Council. The equality provided by Sir Cecil Hurst was theoretical. It was not a reality, and this second objection, in M. Politis' view, ruined the proposed scheme. The United States must not be regarded as a Member of the Council. A more radical solution was necessary, and he had himself proposed that solution in the document which was to be distributed to the members of the Committee.

Mr. Root said that the clause in the draft which he had proposed and the second clause in the draft of Sir Cecil Hurst was not in the nature of a suggestion but was an attempt to reproduce the decision of the Conference of 1926 communicated to the Government of the United States in the form of the Final Act of that Conference. The letter from Mr. Kellogg, the United States Secretary of State, was the reply to that communication. That letter had been referred to the Committee and explained the reasons why the proposal in the Final Act, which had been subscribed to by nearly all the signatories, could not be accepted in full by the United States of America. The letter had gone on to suggest that an informal exchange of views should take place in order to continue negotiations. The Final Act, therefore, was the basis of Mr. Kellogg's letter. Mr. Root would quote the following passage from that Final Act:

" As regards disputes to which the United States is not a party but in which it claims an interest, and as regards questions, other than disputes, in which the United States

claims an interest, the Conference understands the object of the United States to be to assure to itself a position of equality with States represented either on the Council or in the Assembly of the League of Nations. This principle should be agreed to. But the fifth reservation appears to rest upon the presumption that the adoption of a request for an advisory opinion by the Council or Assembly requires a unanimous vote. No such presumption, however, has so far been established. It is therefore impossible to say with certainty whether in some cases, or possibly in all cases, a decision by a majority is not sufficient. In any event, the United States should be guaranteed a position of equality in this respect ; that is to say, in any case where a State represented on the Council or in the Assembly would possess the right of preventing, by opposition in either of these bodies, the adoption of a proposal to request an advisory opinion from the Court, the United States shall enjoy an equivalent right."

He read also the opening statement of the preliminary draft of a Protocol annexed to that Final Act, which was as follows :

" The States signatories of the Protocol of Signature of the Permanent Court of International Justice, dated December 16th, 1920, and the United States of America, through the undersigned duly authorised representatives, have agreed upon the following provisions regarding the adherence by the United States of America to the said Protocol, subject to the five reservations formulated by the United States. "

Finally, he would draw the attention of the Committee to the final paragraph of Article 4 of that draft Protocol which was to the following effect :

" Should the United States offer objection to an advisory opinion being given by the Court, at the request of the Council or the Assembly, concerning a dispute to which the United States is not a party or concerning a question other than a dispute between States, the Court will attribute to such objection the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations either in the Assembly or in the Council. "

The draft clause which Mr. Root had proposed and the alternative wording suggested by Sir Cecil Hurst were not contrary to Article 4 of the proposed Protocol. They were not designed as amendments to that article. On the contrary, they had been drafted with a view to obtaining the assent of the United States of America to that article. The proposals would, in fact, give concrete form to the consent of the United States Government to the proposed Protocol.

If Article 4 as drafted by the Conference of 1926 were to be withdrawn, the whole basis of the proposals made by Mr. Root and Sir Cecil Hurst disappeared and the letter from Mr. Kellogg was of no further significance. To withdraw Article 4, however, would be for the Committee to return to the wilderness for an indefinite period and would mark not progress but the reverse.

The CHAIRMAN said that, according to the proposal of Sir Cecil Hurst, the United States of America would have the right to veto a request made to the Court for an advisory opinion, if unanimity were necessary for such a request. The Chairman had made a similar proposal at the previous meeting but it had been rejected by the Committee because the members had felt that the possibility should be left open for the Council or the Assembly to submit a request for an advisory opinion which had not been adopted unanimously but only by a majority. In the latter case, however, the vote of the Government of the United States of America could not prevent the Assembly or the Council from making such a request. If the representative of the United States were satisfied with this solution, the Committee itself might rest content ; but the Chairman did not think this was the case. To assimilate the position of the United States to that of a Member of the League of Nations in cases where a request for an opinion was adopted by a majority vote would not, he thought, satisfy the desires of that country, which really wished to be able in certain cases to veto recourse to the Court even when such recourse had been voted by the majority. This point, he thought, should be made clear.

Jonkheer VAN EYSINGA had listened with great interest to the observations made by the members of the Committee, especially those of the Chairman and Mr. Root. His view was that the second paragraph of Sir Cecil Hurst's proposals should be adopted and this for two reasons. In the first place, as Mr. Root had pointed out, it only reproduced an essential provision to which the United States of America had agreed and, in the second place, there were the legal reasons in favour of its adoption, as Sir Cecil Hurst had indicated.

There might be a section of public opinion in America which desired to claim the right of veto in cases where a request for an advisory opinion had not been unanimous. The Committee now learned that the United States would be content if it were allowed to withdraw in such circumstances. This being so, M. van Eysinga urged the adoption of the second paragraph of Sir Cecil Hurst's proposal.

M. Ito had enquired why the fourth paragraph was essential. M. van Eysinga understood that it covered the following cases. Very exceptional circumstances might arise in which the Council, because of the existing situation, found it necessary to ask for an immediate opinion from the Court which, in view of those exceptional circumstances, might be the only means of calming public opinion. By the fourth paragraph of Sir Cecil Hurst's proposal, the Council could take such action without consulting the Government of the United States of America, but the disadvantage of the wording of the paragraph was that it allowed it to be supposed

that the Council might incur certain penalties for doing so. M. van Eysinga, therefore, would prefer a somewhat different solution. In such circumstances, the Council, when asking the Permanent Court for an advisory opinion, would, at the same time, inform the Government of the United States of its action. If the United States did not object, the usual procedure would be followed. If, on the other hand, objections were raised, the proceedings of the Court would automatically be interrupted. The objections of the United States, however, would take from two to three weeks to reach the Council and, by that time, the political situation might not be so urgent and the exchange of views between the Council and the United States could take place. While in favour, therefore, of paragraph 4 he would like it to be redrafted.

As regards paragraph 3 of Sir Cecil Hurst's proposals, it seemed to M. van Eysinga that it might be supposed that, for other reasons than the one mentioned in this paragraph, an agreement would not be reached. In those circumstances, also, the United States must still possess the same right to withdraw. The paragraph should, he thought, therefore be reworded to read as follows :

“ If after the exchange of views provided for in paragraph 1 it shall appear that no agreement can be reached as to whether an advisory opinion should be asked for or not, the exercise of the powers of withdrawal provided for in Article 7 will follow ”, and so on.

M. POLITIS submitted his new draft of Article 4, which read as follows :

“ 1. With a view to ensuring that the Court shall not, without the consent of the United States, render an advisory opinion touching any dispute to which the United States is a party or in which it claims an interest, or touching any question other than a dispute in which it claims an interest, the following procedure shall be applied :

“ 2. The Secretary-General of the League of Nations shall inform the representative appointed for this purpose by the United States of any proposal to the effect that the Court shall give an advisory opinion.

“ If such representative declares that the United States is not interested in the matter, the ordinary League of Nations procedure shall be followed without further modification.

“ If, on the contrary, the representative declares that the United States is interested in the question, an exchange of views shall take place with all convenient speed between a Committee of three members appointed *ad hoc* according to the circumstances by the Council or the Assembly and a plenipotentiary delegate of the United States Government with a view to reaching an agreement,

- (a) as to whether the question affects the interests of the United States, and
- (b) whether it would be desirable for the Court to give an advisory opinion.

“ 3. If no agreement is reached on these lines, the Government of the United States shall be free to exercise its powers of withdrawal as provided for in Article 7 without any imputation of unfriendliness or unwillingness to co-operate generally for peace and goodwill ”.

He had thought it better both for reasons of form and of principle to make no attempt to settle the question whether unanimity must always be necessary for a request for an advisory opinion. It would never, in fact, be possible to induce the Assembly to endorse a suggestion that unanimity was always necessary. Further, account must be taken of the representations of the International Labour Office which had urged that no such suggestion should be made. That being so, it still remained to satisfy the desires of the United States of America, and it was with that object that the formula of the 1926 Conference, redrafted by Sir Cecil Hurst and approved by Mr. Root, had been submitted to the Committee.

The Chairman, however, had already voiced the main objection to this formula which was that it did not cover the case in which an advisory opinion was sought for by a majority vote. If in such a case the United States of America would be content with one vote, which meant that she could not impose her veto on the majority, then M. Politis was prepared to withdraw his draft for he did not at all wish to be more American than the Americans themselves ; but if, as he thought probable, Mr. Root would bow to the force of the Chairman's objection, then the only solution which appeared to M. Politis to be possible was that embodied in his own draft, which contained provisions for an exchange of views between a Committee of three persons appointed by the Council or by the Assembly and a plenipotentiary of the Government of the United States. Their duty would be to reach agreement if possible : (a) in regard to the question whether the matter in dispute affected the interests of the United States, and (b) whether it was opportune to seek an advisory opinion from the Court.

In the view of M. Politis, this was a suitable solution, for he could not imagine it possible that in a case where the United States of America had clearly shown that it had a real interest at stake and could not agree to recourse to the Court, the Council would disagree. Similarly, in the opposite case ; if the Council were in the same position, it was impossible to believe that the United States would exercise its right of veto. The Committee should not draw up provisions to meet purely theoretical cases. The whole basis of the relations between the League and the United States of America in regard to the Permanent Court must be mutual confidence. So strong was the feeling in the United States of America in favour of international justice that it was almost impertinent to suggest that the United States would ever prevent its operation. Mr. Root had especially emphasised this and the Committee was more than justified in giving the greatest weight to his opinion.

M. Politis ventured to believe, therefore, that the solution which he proposed was the best in the circumstances. It left the United States free to withdraw, under the terms of paragraph 7, without any difficulty or any imputation of unfriendliness. There would be no necessity to amend the Covenant or the Statute of the Court, a matter which invariably gave rise to considerable difficulty.

Nor was there any necessity for a stipulation such as that contained in the fourth paragraph of Sir Cecil Hurst's proposal. A contract would have been concluded between the United States and the Members of the League signatories to the Statute of the Court. If the terms of that contract were not fulfilled by the Council for urgent political reasons, the United States would merely inform the Court that a preliminary exchange of views had not taken place and the Court would then automatically be bound to declare itself incompetent. There was no need, therefore, to make special mention of this case in the solution.

In conclusion, M. Politis said that if Mr. Root preferred the proposal of Sir Cecil Hurst, despite the interpretation put upon it by the Chairman, he would naturally withdraw his own proposal.

Mr. Root said that he would very carefully study the proposal of M. Politis. The terseness and brevity with which it had been drafted might have caused M. Politis to omit a point of importance. Mr. Root, however, was at first sight much in favour of the proposal that an *ad hoc* Committee should be set up for the purpose of an exchange of views between the Council and the Government of the United States. Such a proposal was a practical step and was a useful method of procedure.

The remainder of the discussion was postponed to the next meeting.

FOURTH MEETING.

Held on Tuesday, March 12th, 1929, at 5 p.m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

9. Question of the Accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice : Letter from the United States Government and Proposals by Mr. Root, Sir Cecil Hurst and M. Politis (continuation) : Conclusions of the Sub-Committee of Four.

M. POLITIS, reporting on behalf of the Sub-Committee of Four, said that the Sub-Committee had carefully examined the drafts submitted by Sir Cecil Hurst and by M. Politis himself, and had come to the conclusion that Sir Cecil Hurst's text was the closest to that of the preliminary draft of 1926, and as such conformed more nearly to the spirit of the United States Government's desiderata. The Sub-Committee further considered that Sir Cecil Hurst's draft was of a nature to satisfy all the Governments concerned and that it was therefore suitable for recommendation by the Committee with a view to the conclusion of an agreement. The Sub-Committee had thought that M. Politis' own proposal was calculated to confer various privileges on the United States and might thus give rise to objection on the part of the Members of the League, whereas Sir Cecil Hurst's draft placed the United States on the same footing of equality as the Members of the League since it gave the vote of the United States Government the same value as that of the other Governments. Sir Cecil Hurst's draft, therefore, would naturally find easier acceptance than any other.

The Sub-Committee had accepted without difficulty paragraphs 1, 2 and 3 of Sir Cecil Hurst's draft. It had been more difficult to come to an agreement on paragraph 4 in view of the criticisms which had been made at the morning meeting by M. van Eysinga. In order to meet M. van Eysinga's objections, an attempt had been made to combine with paragraph 4 as it stood in Sir Cecil Hurst's draft a text which would cover the point raised by M. van Eysinga. The purport of that text would be that, when the Council addressed an application to the Hague Court for an advisory opinion, it would notify the United States thereof at the same time and, if the United States considered that its interests were involved, the Council should invite the Court to hold up the procedure until the United States Government had given its consent. Mr. Root had desired that Sir Cecil Hurst's fourth paragraph should be maintained in its original form, but he had intimated that he would have no objection to the addition of M. van Eysinga's text in a condensed form, since the latter text appeared in certain points to overlap that of Sir Cecil Hurst.

In conclusion, M. Politis hoped that the Committee would agree to the proposal of the Sub-Committee and would thus be able to congratulate itself upon having found a solution with the greatest possible rapidity.

M. FROMAGEOT said that he would like to have the proposal in writing before taking a decision.

M. POLITIS observed that the first three paragraphs of Sir Cecil Hurst's draft were to be maintained in their original form with the exception of the words "Where an interest of the United States is affected" in paragraph 3, which should be replaced by the words "whether an advisory opinion should be asked for". In the fourth paragraph, the original text of Sir Cecil Hurst was to be retained *in toto* but allowance was to be made for the proposal of M. van Eysinga, which would be either added to or merged in Sir Cecil Hurst's text.

Jonkheer VAN EYSINGA observed that, according to his proposal, the point made in Sir Cecil Hurst's text with regard to Article 73 was to be maintained. He did not think, therefore, that it would be difficult to agree upon a final text.

Sir CECIL HURST suggested that, as there had been no formal appointment of a Drafting Committee, it would save both time and trouble if the Committee authorised him, in conjunction with M. van Eysinga and the Committee of Four, to redraft his text in accordance with their ideas.

M. RAESTAD said that he had only just learned that a Sub-Committee had been set up to consider the redrafting of Article 4 of the preliminary draft of the 1926 Protocol, and he congratulated the Sub-Committee on the rapidity with which it had worked. Taking into consideration, however, the various drafts that had been submitted and especially the last draft, M. Raestad wished to say that he preferred Mr. Root's original proposal to all the others, including the last. He would be glad if he could think that the successive drafts that had been proposed contained certain improvements in points of detail, but in his opinion the last draft submitted was, taking it as a whole, less satisfactory than the others.

He had at the morning meeting indicated two points regarding which he preferred Mr. Root's original draft. In the first paragraph of Mr. Root's draft it was laid down that "the Court shall not without the consent of the United States render an advisory opinion touching any dispute to which the United States is a party". On the contrary, the corresponding provision in the last draft would have the effect of placing the negotiations on a more or less political basis.

The second reason for which M. Raestad preferred Mr. Root's original draft was that it contained the provision that "if . . . it shall appear (1) that no agreement can be reached as to whether the question does touch an interest of the United States within the true meaning of the second paragraph of this Article . . . it shall be deemed . . . that the exercise of the powers of withdrawal provided in Article 7 hereof will follow naturally . . ." The omission of that provision in Sir Cecil Hurst's draft was, in M. Raestad's opinion, a serious disadvantage.

There were two further reasons for preferring Mr. Root's original proposals. First, there was the difference to which M. Ito had drawn attention at the morning meeting. In Mr. Root's original draft it was laid down that, whenever it was proposed to submit a request for an advisory opinion, the Council or the Assembly might invite an exchange of views with the United States, and such exchange of views would proceed with all convenient speed. The provision in question conferred on the Council or the Assembly powers to open up negotiations with the United States which undertook to follow up the suggestion made. The obligation rested, therefore, with the United States. In Sir Cecil Hurst's draft, on the other hand, it was stated that the Secretary-General should inform a representative of the United States, that was to say, that the obligation now rested on the Council or the Assembly. This division of responsibility did not seem to be quite logical.

Lastly, in Sir Cecil Hurst's draft it was laid down that the Council or the Assembly would "attribute to an objection of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League in the Council or in the Assembly". In Sir Cecil Hurst's draft this provision formed an essential portion of the text, while in Mr. Root's proposals it was put in parenthesis and referred only to cases where the Council or the Assembly maintained its resolution to ask for an advisory opinion, in spite of the opposition of the United States of America.

Sir Cecil Hurst's and Mr. Root's drafts differed fundamentally from the proposals made in 1926 under which it was for the International Court to attribute to an objection on the part of the United States the same force and effect as those attaching to a vote of a Member of the League. Sir Cecil Hurst's draft, therefore, imposed an obligation on the Council or the Assembly, without giving them the right to consult the Court. The fact that this provision was introduced in Mr. Root's draft only in a parenthesis gave it a less formal character than it had under Sir Cecil Hurst's draft.

Remembering that he was, in the present case, in the service of the Council of the League, M. Raestad was, for the foregoing reasons, unable to agree to the draft proposed by the Sub-Committee.

The CHAIRMAN suggested that the Committee should ask Sir Cecil Hurst and M. Politis, in consultation with Mr. Root and M. van Eysinga, to redraft paragraph 4 of Sir Cecil Hurst's proposal in accordance with M. Politis' report. The same members might also be requested to redraft the text of the preliminary draft of 1926 which contained certain terms which could not be left in their original form. The text of Sir Cecil Hurst's draft would then be inserted in that of the preliminary draft of 1926.

The Committee agreed to this proposal.

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

M. FROMAGEOT thought that the simplest method of meeting the Council's desires would be to take the Statute article by article and, in regard to each article, to see whether it gave rise to any observations on the part of the members of the Committee. If, as a result of that examination, it appeared to the Committee that certain provisions of the Statute required modification or that certain recommendations should be made, the Committee would formulate them and transmit them to the Council which, if it approved them, would send them to the Assembly. A general discussion on the principles at the basis of the Statute would, he thought, go beyond the terms of reference of the Committee. It had been explained during the discussion in the Assembly that the Committee was not required to remodel the Statute entirely or to examine new bases on which it might be founded. It had merely to ascertain, in the light of experience gained during eight years, whether certain amendments might be introduced. M. Fromageot therefore proposed that the discussions of the Committee should remain within the limits he had outlined.

M. POLITIS regretted that he could not agree with M. Fromageot's suggestion. The Statute contained sixty-four articles, and it would be a waste of time to read them out and consider them one by one, since the great majority would require no alteration whatever. Those members of the Committee who had studied the question would most certainly have observations to make on some of the articles, and it would be more expeditious to enquire which articles gave rise to observations on the part of each member, so that the Committee could undertake the necessary preliminary studies with a view to the revision of the Statute.

The CHAIRMAN thought that some members might have proposals to make which would refer to more than one article, and that it would therefore be difficult to consider the Statute article by article.

M. FROMAGEOT feared that he had expressed himself badly. He had merely intended to propose that the Committee should follow the order of the articles, stopping successively at those which gave rise to observations. Moreover, it was evident that a proposal with regard to one article might make it necessary to reconsider some other article. His intention was merely to avoid any general discussion of the Statute, which might take the Committee too far and lead to a waste of time.

M. POLITIS agreed with M. Fromageot's observation.

Article 1.

M. FROMAGEOT said that he personally had no observations to make on Article 1.

Article 2.

M. FROMAGEOT suggested that after the words "of recognised competence" there should be added the words "and experience", since competence did not necessarily involve experience. The Court of Justice was a judicial body, and its task was not to attempt the scientific solution of legal questions, but to judge disputes between States and decide upon their cases and claims. It would be for the experts in doctrine, by a study and analysis of the judicial decisions, to extract from them general principles, and subsequently, by a synthetic study, to elaborate universal rules of international law. With these ideas in mind he had proposed his addition to Article 2, since a person might possess all the qualities necessary to fill the highest posts in the judicial administrative or educational departments in his own country and yet not have any experience of the international affairs which divided States and, therefore, might not be in a position usefully to fulfil the duties which he would have to perform on the Permanent Court of International Justice.

M. Fromageot added that it might possibly be found unnecessary here to make any alteration in the Statute itself and that it might be sufficient to submit a recommendation to the Assembly, which recommendation should in future be taken into consideration in the election of the judges. That was a question of method which M. Fromageot would prefer to reserve till later, but he would like to see the principle of his proposal ratified and adopted.

The CHAIRMAN observed that it was understood that any amendments which might be voted by the Committee would not come into application before the next election of judges by the Assembly.

M. URRUTIA raised a point of order. Was it proposed that each member of the Committee should make certain observations and suggestions on the various articles of the Statute, but that the Committee should not come to any decision on those observations and suggestions, which would be merely recorded in the Minutes?

M. POLITIS thought that the Council did not expect individual proposals from each member of the Committee, but recommendations from the Committee as a whole. If the Committee rejected a proposal made by any member, that proposal would fall. If, on the other hand, it accepted a proposal, the Committee would endorse it and pass it on as its own.

In regard to M. Fromageot's proposal for the amendment of Article 2, M. Politis warmly supported it. He had observed the effects of the present wording of the article in many countries where candidates had been put forward who based their claims on a knowledge of international

law but who could easily have been eliminated if it had been clearly laid down that experience was a necessary qualification. It would be well to point out that judgeships in the Permanent Court were not open to all barristers throughout the world.

M. FROMAGEOT said that he had another proposal to make which was related to the previous one and affected Article 5. It would be useful that, when a candidate was put forward by a national group, the latter should indicate what offices he had filled which justified him in considering that he satisfied the requirements of Article 2. It might be laid down that the nomination of candidates must be accompanied by a kind of statement of offices they had held which qualified them for election. The effect of this would be to eliminate candidates who were disposed to look upon the duties of the judges as a means of shining in the international sphere.

M. RAESTAD recalled that the question of adding practical experience to competence as a necessary quality for election as a judge had been discussed at great length in 1920 and a proposal in that sense had been rejected. He agreed with the idea put forward by M. Fromageot, but the point of view which had predominated in 1920 had been that competence implied experience, or, to put it otherwise, that experience was one of the sources of competence. M. Raestad thought it necessary to be extremely prudent in changing the principles on which the Statute was founded, and he therefore would be obliged to vote against M. Fromageot's proposal in regard to Articles 2 and 5.

M. ANZILOTTI said that he agreed with M. Fromageot. Indeed, it would be difficult not to agree with him. It could, it was true, be argued that competence implied experience. Was it, however, necessary to amend the Statute merely to give effect to that proposal?

M. Anzilotti thought that the Committee should first consider whether it was desirable to make a change in the Statute or merely to submit a recommendation to the Assembly. Any addition to the Statute would have the effect of restricting the powers of those who had to apply it. Was it worth while making this slight change in the Statute if it were felt that a recommendation to the Assembly would be sufficient to draw the attention of the national groups to the necessity of candidates having the requisite experience and to the importance of receiving a written statement of their qualifications?

M. FROMAGEOT thought M. Anzilotti's observations premature. The Committee should begin by ascertaining what improvements it thought necessary and should then decide to what extent those improvements called for amendments in the text of the Statute. It seemed useless to modify the Statute as regards some insignificant points but it might be that the Committee would conclude, as a result of its discussions that there were really important points on which the Statute required amendment.

In regard to the objection raised by certain members to the effect that the term "competence" might be taken to include "experience", M. Fromageot could not agree with that view, Experience in international affairs was one thing and legal competence another. Both were necessary.

The CHAIRMAN requested the Committee to vote on M. Fromageot's amendment to Article 2. If the amendment were adopted, it would be held over pending the subsequent adoption of amendments to other articles.

Sir Cecil HURST enquired whether he was at liberty to vote provisionally in favour of M. Fromageot's amendment on the understanding that he was only in favour of the idea but was against inserting it in the Statute.

The CHAIRMAN thought that Sir Cecil Hurst would be obliged to vote against the amendment.

M. ITZ thought that, if the amendment could be accepted provisionally, he could vote for it provisionally.

The CHAIRMAN replied that if M. Fromageot's proposal were the only amendment accepted by the Committee, the Committee would not be justified in inserting it in the Statute since it was not of sufficient importance. If, however, other amendments were adopted later and M. Fromageot's amendment had been accepted provisionally, it would be open to the Committee to decide later whether it should be introduced into the Statute.

M. ANZILOTTI asked whether it would not be desirable for him and for M. Huber to abstain from voting on the proposals which had been or would be submitted to the Committee of which they were not members, though they had been invited to participate in its work.

After an exchange of views with the Chairman, he stated that he and M. Huber would not vote so that the Court might be left quite free when it would be called upon to express an opinion on the proposals or recommendations of the Committee.

M. Fromageot's proposal in regard to Article 2 was adopted by seven votes to one.

Article 5.

M. FROMAGEOT submitted the following amendment to Article 5 :

"The nomination of candidates shall be accompanied by a statement of the career of the nominee showing that he possesses the qualifications required under Article 2."

M. POLITIS had a similar amendment to propose in regard to Article 8. He had attended several elections held by the Assembly and the impression he had gained was that the Assembly as an electoral body was far from perfect. Candidates for the Court were elected without any statement of their qualifications being laid before the electors. To say the least, this was a somewhat curious procedure which M. Politis thought should be rectified. He would accordingly propose that a statement of the qualifications of each candidate should be submitted to the Assembly and that delegates should have an opportunity of speaking in support of a particular candidate. It was essential for the Assembly to be given as much information as possible in regard to the qualities of candidates in order that all suspicion of political influences might be removed.

The CHAIRMAN was unable to agree with M. Politis. Such a proposal was, he was convinced, dangerous both in regard to the Court and to the Assembly.

While he agreed that no Assembly could be said to be the best conceivable electoral body, the position would not be improved if a statement of the qualifications of each candidate were laid before it. Who would provide such a statement? Presumably, the groups proposing each particular candidate. That meant, however, that an inevitable confusion of ideas would arise, for what appeared admirable qualifications to a particular group coming, for example, from a European State, might be regarded in an entirely different light by the representatives of, for example, an American or an Asiatic State.

But there was a further objection of greater force. If a delegate to the Assembly were given the opportunity of recommending a particular candidate, should the delegate in question be possessed, like M. Politis for example, of great influence, the candidate which he recommended would have a very strong chance of being elected. His election, however, would, in reality, be due not to his qualifications, but to the eloquence and influence of the person supporting him.

Further, how would it be possible to define the necessary qualifications? They differed widely according to country. Supposing a particular candidate was an expert in regard to a dispute between, for example, Chile and Peru. The delegate in the Assembly supporting him might urge his claims and he might therefore be elected regardless of the fact that expert knowledge of a dispute between two States was not necessarily a very high qualification for membership of the Permanent Court.

The Chairman was therefore in favour only of circulating the qualifications of candidates among delegates to the Assembly and of making no change in the articles of the Statute of the Court. Under the present rules of procedure there was nothing to prevent a delegate of the Assembly from speaking in support of a particular candidate if he desired to do so.

M. FROMAGEOT thought that a further objection to the proposal of M. Politis might be raised, namely, the large number of candidates submitted for election.

M. POLITIS did not regard this to be a matter of any great difficulty. The Assembly could refer the list of candidates and their qualifications to one of its Committees which would make a report.

The CHAIRMAN agreed that such a procedure was possible, but saw no necessity for amending the Statute of the Court to that effect.

M. HUBER thought it dangerous to discuss the qualifications of candidates in public.

The CHAIRMAN pointed out that members of the Court were elected both by the Council and by the Assembly. This procedure was in itself a safeguard, especially as the Council was a smaller body than the Assembly and less subject to political influence.

Sir Cecil HURST enquired what would be the effect of the adoption of M. Fromageot's proposal in the event of a national group submitting a list of candidates not accompanied by an adequate statement of their qualifications. Would the omission of their qualifications automatically debar those candidates?

M. FROMAGEOT thought that Sir Cecil Hurst wished to know whether it was desirable to make it compulsory to submit a statement of the qualifications of candidates, or whether it would be sufficient to recommend that one should be supplied. The Committee could either make the validity of a list of candidates depend on the submission of a statement of their qualifications, or else it could merely recommend that such a statement should be made, in which case all candidates submitted without a statement of their technical qualifications would none the less be qualified to stand for election though they would not have so good a chance of election. M. Fromageot ventured, however, to urge most strongly on his colleagues the utility of this guarantee as regards the particular value of the candidates, a guarantee which was calculated to enhance the authority of the Court.

Sir Cecil HURST thought that the amendment proposed by M. Fromageot was admirable in the form of a recommendation for adoption by the Assembly, but that it should not be made the object of a formal amendment to the Statute of the Court.

Jonkheer VAN EYSINGA pointed out that Article 6 of the Statute was in itself a recommendation. That being so, could not M. Fromageot's proposal also find a place in the Statute?

M. FROMAGEOT agreed. If the utility of Article 6 of the Statute — recommending that scientific bodies should be consulted — were admitted, the practical value of the recommendation he now proposed was certainly not less. The proposal might be modified as follows :

“ Each national group is recommended to attach to their nominations of candidates a statement of their career showing that they possess the qualifications required under Article 2. ”

What seemed to him useful was to be in a position to ascertain the experience of each candidate, and of the work he had done from an international point of view, that was to say, work connected with arbitration, conciliation committees, committees of enquiry, etc. Candidates who had successfully performed work of this kind, and who, at the same time, possessed a wide knowledge of law were obviously the most suitable. Candidates who had merely held legal posts in their own countries, however high they might have been, possessed thereby only experience of national affairs.

Mr. Root suggested a middle course. Could not the proposal of M. Fromageot be better enforced if it were included in the written request, mentioned in Article 5 of the Statute, which was sent by the Secretary-General to the members of the Court of Arbitration and to persons appointed under the terms of Article 4, inviting them to nominate candidates ? If, in the written requests to the national groups, the Secretary-General asked for a statement of the qualifications of the candidates, a much greater effect would be obtained, and such a procedure would relieve national groups of a certain amount of embarrassment, especially when they nominated persons of foreign nationality.

M. FROMAGEOT said he was fully prepared to agree to Mr. Root's suggestion.

In reply to M. Anzilotti, he said that the statement of qualifications should be made both in regard to the candidates of the same nationality as the group proposing them and in regard to candidates of foreign nationality. Groups should be able to give their reasons for presenting a candidate, even if he were a foreigner.

The amendment of M. Fromageot was adopted in the following form :

“ ...each nomination being accompanied by a statement of the career of the person nominated showing that he possesses the qualifications required under Article 2 ”.

The remainder of the discussion was postponed to the next meeting.

FIFTH MEETING.

Held on Wednesday, March 13th, 1929, at 10 a.m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

11. Question of the Revision of the Statute of the Permanent Court of International Justice (continuation).

Article 3.

M. FROMAGEOT reminded the Committee that the Court consisted of fifteen members, of whom four were deputy-judges. The institution of deputy-judges had given rise to certain criticisms. The system had in fact its advantages and disadvantages. The rule presented the advantage that the deputy-judges were at the disposal of the President of the Court to take their seats in the absence of the ordinary judges. Its disadvantages were of various kinds.

(1) If a deputy-judge was to take a really useful part, he must be at the disposal of the President, and for this purpose reside within a sufficiently short radius of The Hague, at any rate in Europe. This requirement, in fact, excluded the appointment of non-European deputy-judges and created a privileged situation in favour of Europeans.

(2) Certain disabilities were very rightly placed upon the ordinary judges. The same conditions could not be imposed on the deputy-judges, who might not be called to The Hague for many months. The Statute of course prohibited their engaging upon any other work during the period for which they took their seat; this was an elementary truth. It was none the less true that the ordinary judges and the deputy-judges who sat on the same bench were not on an equal footing. The fact that deputy-judges could, in the exercise of their normal profession, enjoy certain advantages conferred upon them by their duties at the Court, was perfectly legal, but was attended by certain disadvantages.

Other objections of a financial nature had been made to the present state of affairs, but M. Fromageot considered them of minor importance and did not wish to dwell on them.

He might finally point out another disadvantage due to the existence of deputy-judges. Obviously, all judges made and must make the greatest possible effort to take their seats and to discharge the duties assigned to them, but some allowance must be made for human nature. If a judge were aware that there was a deputy prepared to take his place, he might be tempted to be less particular in his attendance at the Court.

It had therefore been asked whether there was not some means of remedying this situation. Many people had thought that perhaps the deputy-judges might be abolished and that the number of ordinary judges, which was at present eleven, might be increased to, say, thirteen or fifteen. The disadvantage of conferring on the present deputy-judges the status of ordinary judges would be an increase in the number of ordinary judges. A court of law worked better, its discussions showed fewer divergencies of opinion, and its work was more rapidly conducted in proportion as its numbers were smaller.

The suggestion had then been made that the judges should be given periods of leave. That suggestion would be justified, not only on the foregoing grounds, but above all in view of the actual composition of the Permanent Court. The Court must consist of judges belonging to different civilisations. It had, therefore, been thrown open to judges from overseas countries. It was quite natural that judges from the American or Asiatic continent should wish to pass some of their time in their own homes. If, as the Court was entitled to do, they were required to attend on all occasions on which the Court sat, judges belonging to overseas countries would find themselves obliged to be away from their homes for long periods. Such would not be the case in regard to the European judges. It would, therefore, be legitimate and logical to establish, as between the judges, a kind of roster which would assure them a fixed period of leave, thus permitting all alike to spend a certain period of time in their homes. Supposing there were fifteen ordinary judges, of whom four were always on leave, or supposing there were thirteen judges, of whom two were always on leave, the figure eleven laid down in the Statute would be retained. It was useful to maintain that figure, since it was further laid down that there must be a quorum of nine members, and to secure that quorum a margin of two would not be excessive.

The foregoing solution, or any other of the same kind that might be conceived, would eliminate the disadvantages to which attention had been drawn in regard to the existence of deputy-judges. The members of the Permanent Court present at the meeting might perhaps give their opinion on the practical consequences of the suggestions which had just been put forward.

M. ANZILOTTI wished to call the Committee's attention to the connection existing between the appointment of deputy-judges and the requirement that ordinary judges should stay at The Hague or in the neighbourhood. The present situation, like all human arrangements, offered certain disadvantages and certain advantages. Both advantages and disadvantages had been very closely examined in 1920, and it was not without hesitation that the present system had been adopted. It must not be overlooked that the advantages and disadvantages of the present state of affairs had an absolutely different bearing according to whether the standpoint from which the question was regarded was that of a Permanent Court comprising members who were always at the President's disposal and engaged solely on their duties as judges of the Court, or of judges who could normally stay at home and undertake other work. The importance of the question might differ very greatly according to the point of view from which the Committee considered it. Even under the present Statute the judges were unquestionably obliged to be at the disposal of the Permanent Court. In what way was this obligation to be fulfilled in practice? The question of the deputy-judges would lose its importance if the Committee thought that the presence of ordinary judges at The Hague or in the neighbourhood and in sufficient numbers and always at the disposal of the President could be assured.

What was the origin of the disadvantages of the position? Quite frankly, if the composition of the Court had varied so much hitherto, it was because certain judges had only come to The Hague for the ordinary session. It had been believed at the beginning that the Permanent Court would have little work to do. The truth was quite the reverse, so that the Permanent Court had been composed in one way during the ordinary sessions and in quite a different way during the extraordinary sessions. These disadvantages would have been far less serious if the deputy-judges had only been convened as an exceptional measure.

M. FROMAGEOT noted that M. Anzilotti had very properly linked up the question with that of attendance at the Permanent Court. He himself wished to draw the Committee's attention to Article 16 of the Statute regarding the disabilities of judges (which he then read). It appeared to him essential to lay down the principle that the members of the Permanent Court must confine their activities exclusively to the discharge of their high functions, outside which they could not hold any post. Nevertheless, the post of member of the Permanent Court of Arbitration under the 1907 Convention or the right to sit in accordance with the terms of a private agreement or special convention was not incompatible with the duties of the judges.

Furthermore, in regard to Article 23 it would be well to provide that, at any time and outside the regular periods of leave or apart from other legitimate reasons for absence, the members of the Court were required to be able to attend at The Hague. This question was very closely bound up with that of the number of the judges.

If the Committee agreed to the disabilities that had been suggested and that it was an absolute obligation on the part of the judges to attend the Court, it would then have to consider whether it would be desirable to continue the arrangement of deputy-judges which, as M. Anzilotti had said, would lose much of its importance according to the solution adopted.

Again, as M. Anzilotti had said, in 1920, when the Statute was being framed, some scepticism had been felt as regards the work of the Permanent Court. Reference had been made to the

experience of the Permanent Court of Arbitration, whose work had been by no means considerable. In organising the Court a similar conjecture had been made as regards the future and it was on that basis that the judges designated had accepted their duties ; it would therefore be a breach of loyalty to make any sudden change in their position. As a matter of fact the conditions had been quite otherwise and would be still more so in the future.

If the Court's business were considered, it would be seen that in 1922 it had sat for about four months, in 1923 for about five months, and since 1925 for about six months. At the moment the Court had at least four cases on its register. Moreover, if the increase in the number of arbitration treaties for some years past were taken into consideration, it would be seen how different the Court's position was at the present time from what had been anticipated in 1920. In these circumstances, was it not really necessary to adapt the Court's organisation to present circumstances ?

M. RUNDSTEIN wished to submit an observation on the question of the residence of the judges at The Hague. That question appeared to him to be linked up not with Article 23 but with the second paragraph of Article 22, in which it was stated that " the President and Registrar shall reside at the seat of the Court ". The question of leave, on the other hand, on which M. Rundstein agreed with M. Fromageot, fell within the scope of the Rules rather than of the Statute of the Court.

In reply to a question by the Chairman, M. FROMAGEOT said that he was ready to prepare any draft which the Committee might ask him to draw up. If the Committee considered that the deputy-judges should be abolished, Article 3 would have to be re-drafted accordingly, and must contain a provision as to the number of ordinary judges thought desirable.

In reply to M. Rundstein's observation, M. Fromageot said that he had not in mind compulsory residence on the part of the judges at The Hague, but that when the business of the Court did not keep them there, they should be able to reach The Hague within twenty-four or forty-eight hours of a summons. This did not mean that it was essential to oblige a member of the Court to set up his home at The Hague. The granting of certain vacations must obviously be settled by the Court in its Rules, but the important thing was the principle of the permanency of the Court. It was bound up with the question of the number of judges. It was necessary that the Court should be at all times at the disposal of States and ready to carry out its duties.

M. URRUTIA appreciated the great importance of M. Fromageot's remarks. While recognising the desirability of making attendance on the part of the judges at The Hague compulsory in all cases when necessary, he drew attention to the possibility that it might be difficult to find American judges. Theoretically, the ideal would be to have judges who would be ready at all times to discharge their duties in the Permanent Court, but in view of the generally admitted desirability of having some American judges, it would be difficult to find people with the necessary capacity and authority who would agree to make their homes in Europe for the whole period of their service. If the Committee decided to propose any reform, it would have at the same time to find some means of facilitating acceptance on the part of judges from the American countries.

Sir Cecil HURST asked the President and Vice-President of the Permanent Court to be good enough to give certain information based on the practical experience of the Court. In M. Fromageot's view it should be compulsory for a judge to be in a position to attend at The Hague twenty-four or forty-eight hours after receiving a summons. Was it really necessary to make the notice so short as that, and did the experience of the Court show that it was necessary to convene the judges with such rapidity ? If the notice were to be as short as that suggested, the situation would indeed become far more difficult than M. Fromageot seemed to think.

As M. Urrutia had said, the problem was one of great importance. Hitherto the Court had had the privilege of having among its judges such high authorities as Mr. Moore and Mr. Hughes. If the condition were to be laid down that the judges must be able to attend within forty-eight hours, that would mean that an American judge or a judge from any other overseas country would have to live in Europe, and the danger might be that in this way the Court would lose the assistance of those people whose training and authority most fitted them to sit on it. Would it not be better to stipulate a notice not of forty-eight hours, but of, say, ten days ? Did M. Anzilotti and M. Huber think that such a period would cause any appreciable change in the present situation ?

M. ANZILOTTI replied that obviously the Permanent Court had never been obliged to meet at such short notice. Its procedure even prevented it from doing so. He thought, however, that if M. Fromageot had mentioned a notice of twenty-four or forty-eight hours, it was only as an indirect method of ensuring that the judges would be at the disposal of the Court. Experience showed that there had been no case in which such short notice had been necessary.

M. FROMAGEOT said that such had been his idea.

M. ANZILOTTI drew attention to another aspect of the problem. M. Fromageot had quite correctly linked up the question of residence at The Hague with that of the disabilities of judges. It was obvious that if a judge were to be always at the disposal of the Court, it would be very difficult for him to follow any other occupation. But account must also be taken of other circumstances, and it was, above all, for that reason that, at the beginning of the session, he had put forward certain reservations concerning the desirability of changing the Statute which might undoubtedly be defective in certain respects but, the parts of which held together and made a whole.

There were at present judges appointed for nine years — a fairly long period in the life of an old man, but not in that of a man who was still young. Since the people to whom judgeships

were offered occupied important posts, would it always be easy to find men who would be prepared to give up everything and accept duties at the end of which they would not even be entitled to a pension, which was only given from 65 years of age? This fact might cause a large reduction in the number of persons prepared to accept a judgeship.

Obviously, better systems than that existing could be imagined, but it must be borne in mind that a change in the present system in any one way involved the danger of consequences which could not be foreseen at a first glance.

M. FROMAGEOT, in reply to M. Urrutia, Sir Cecil Hurst and M. Anzilotti, said that the leave system which he had contemplated had been designed precisely in order to meet the observations of M. Urrutia. A person belonging to a non-European country had the very legitimate right to return to his home from time to time during his nine years of office.

In so far as the period of notice for the sitting of the Court was concerned, it could be fixed not at forty-eight hours but at three, five or ten days, if that were sufficient from the practical point of view. What was essential was to be able to count on the presence of judges after a fairly short notice. Moreover, up to the moment, there had been no case in which the Permanent Court had had to meet very quickly though such a case might arise, particularly as a result of certain treaties which were now in force.

In all countries persons prepared to live abroad were found who were ready to join the Diplomatic Corps. As regards the question whether it would be possible to continue to find persons ready to abandon their profession to take the office of judge, it was for them to choose. In M. Fromageot's view, the office of judge of the Permanent Court certainly required special qualities, competence, authority, experience, a high moral standard and character; he would, however, be very much surprised if it were no longer possible to find persons possessing these qualities and ready to devote themselves to such duties. The world had moved on in the past eight years; new generations were growing up and the number of persons who step by step, with age and on the basis of sound legal training, would constitute excellent recruits for the Permanent Court was ever on the increase.

Jonkheer VAN EYSINGA had been much struck by the observations of M. Anzilotti, which proved how much the members of the Committee should congratulate themselves on the presence among them of the President and the Vice-President of the Permanent Court. Without their assistance, it would have been difficult to obtain any information on the exact position. M. Anzilotti had pointed out that, even under the present Statute, judges were required to be at the disposal of the Court but, in fact, that did not always seem to be the case. M. van Eysinga wondered if exactly the same state of affairs would not occur whether the office of deputy-judge were maintained or abolished. In his view it would be an excellent thing to abolish the deputy-judges unless the Committee had adequate reasons for retaining them. No argument had, however, yet been put forward in favour of their retention.

As regards the financial aspect of the matter, M. van Eysinga regretted that he could not show the same detachment as M. Fromageot. He had frequently been a member of the Fourth Committee of the Assembly where financial problems played a great part and, no doubt, M. Osuský, who was Chairman of the Supervisory Commission, would hold the same view. He thought that the financial effect of measures recommended by the Committee should be examined in detail.

Sir Cecil HURST would be grateful to M. Fromageot if he would withdraw his proposal that forty-eight hours' notice or any particular period of time should be laid down. Any time-limit would become superfluous if the various other changes proposed by M. Fromageot were adopted. What was necessary was to lay down the definite rule that the presence of the judges at The Hague was compulsory every time it was required. Such a measure would be sufficient and the judges would be perfectly free to fix their domicile where they desired. From the psychological point of view, there was nothing more annoying than to be compelled to live in a foreign country where a person had no work to do for such long periods as six months.

The comparison made by M. Fromageot between the duties of a judge and of a diplomat was not correct. What made the diplomatic life agreeable was continuous occupation and, if M. Fromageot were himself invited to carry out in China duties which would only keep him occupied for six months of the year, he would probably find it very difficult to accept the position.

Mr. Root thought that perhaps the object desired by M. Fromageot could be achieved by an amendment to Article 23 providing for an ordinary annual session. Two ordinary annual sessions a year could be held, which would do away with the present necessity of convening judges to attend extraordinary sessions suddenly. Further, at the beginning of each year, the Permanent Court could definitely fix the dates when each judge would go on leave and the period during which he would be required to perform his duties. If deputy-judges were replaced by full judges, the task of the members of the Court would be made easier and each one of them would be responsible for fulfilling his duties in the most satisfactory manner. The unfortunate part of the present position was that it contained a degree of uncertainty, and there was no need to impute any ill-will to anyone. A regulation of the kind which he had suggested would make it possible to avoid placing restrictions on the family life of the judges. Persons of the age and authority of members of the Permanent Court were no longer ready to accept such obligations.

The CHAIRMAN understood that Mr. Root thought it indispensable for the judges to be present during the period of time required.

Mr. Root replied in the affirmative.

M. ITO noted that M. Fromageot had raised the question of the possibility of abolishing deputy-judges. In his view, this was one of the fundamental points of the organisation of the Court, which had been founded on the system of ordinary judges and deputy-judges. In these circumstances, the Committee must reflect very carefully before it took any decision. If he remembered rightly, when the question had been discussed by the First Committee, during the ninth session of the Assembly, the general opinion had been that the fundamental principles of the present organisation should be respected and an endeavour made to improve secondary points.

Before taking a decision in regard to the fundamental question raised by M. Fromageot, it would be useful to discover whether the Permanent Court itself had up to the moment found any inconvenience in the present system. M. ITO would be grateful to hear the views of the members of the Court attending the Committee.

M. POLITIS recalled that the resolution adopted by the Assembly at its ninth session made no distinction between fundamental and other points. The Assembly had decided that "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", and the Council in its report of December 13th, 1928, had used these words: "Having regard to the terms of the Assembly's decision, the Committee should have wide terms of reference...". He did not think, therefore, that there was any objection of principle to be made to the proposals of M. Fromageot or to any other proposal to amend a vital article of the Statute.

M. HUBER thought that Mr. Root had raised a very important question affecting the regularity or irregularity of the work of the Permanent Court. The element of uncertainty was perhaps, from the point of view of the judges, the most unpleasant part of the present system. If it became possible to regulate the work to a certain degree in the manner proposed by Mr. Root, it would be easier for the judges to be present. The Committee, however, should bear in mind the special nature of international questions. It would hardly be possible to arrange in January the work for the ensuing year. Even in the case of contested cases, it was very difficult to know what date they would in actual fact come before the Court. A period of time for their presentation was fixed, but Governments themselves sometimes asked for postponement or made arrangements between themselves.

Another element of uncertainty lay in the request for an advisory opinion made by the Council. Sometimes these requests were urgent and might lead to a convocation of the Court for an extraordinary session. On two occasions in 1926, for example, the judges had thought that they would shortly have to meet while in actual fact the matter with which they would have had to deal had been removed from their agenda. On other occasions they had been suddenly convened at very short notice. It was obvious that this state of things was especially inconvenient for the overseas judges.

Instead of the ordinary session called for June 15th, two or three sessions might be contemplated. Thus, as far as possible, judges would know that they would have to be at The Hague from a certain date onwards. This would mean that the Council and the Governments would conform to the dates so fixed.

The Court had on occasion discussed the possibility of having, at least in fact, two sessions a year. This idea had encountered opposition, for some judges had taken the view that for reasons of health they could not be present at The Hague during certain months. It would therefore not be easy to hold two or three ordinary sessions and at the same time be certain that all the judges would attend. However, to regulate the organisation of the Permanent Court would mean in any case adopting a system of two or three ordinary sessions instead of a single session which was at present the case.

M. PILOTTI asked the President and the Vice-President of the Permanent Court whether they had considered another possibility, namely, completely to transform the system laid down in Article 3 and to provide, as was the case in Courts throughout the world, that the Permanent Court should sit all the year round. Nevertheless, the Court would settle at the beginning of each year the leave to be taken by its members. If, during the year, the Court had no matters referred to it, the President would be free to grant additional leave, provided that the judges did not go too far away from The Hague. In case of need the system proposed by M. Fromageot would then be applied, that was to say, judges would be recalled at very short notice. In any case, the presence of at least nine judges could be ensured for a fixed period during the year, two or three judges being on leave.

M. ANZILOTTI, replying to M. ITO, said that he had already described the present state of affairs, which gave rise to difficulty. It must be admitted that, among the present members of the Court, some who lived farthest away from The Hague had accepted a judgeship in the conviction, at that time universally shared, that they would have to come to Europe only once a year to attend the ordinary summer session. These judges had continued this practice and were therefore absent from extraordinary sessions. Personally, M. Anzilotti was convinced that if the ordinary judges had accepted all the invitations of the President to attend, the appointment of deputy-judges would not have given rise to objection.

M. POLITIS pointed out that in that case the deputy-judges would have been useless.

M. ANZILOTTI replied that it was impossible to foresee everything — inability of a judge to attend for reasons of ill health, etc.

In reply to M. Pilotti, he said that the Permanent Court had often discussed the possibility either of changing the date of ordinary sessions, which could be done under the provisions of the present Statute, or of adopting two different dates; there was some doubt whether it would be possible to adopt the second solution under the terms of the present Statute. The change of date had been opposed by the American judges. M. Anzilotti had himself contemplated the adoption of a system similar to that suggested by M. Pilotti, whereby the legal year would begin in January and last until the agenda of the Court had been completed, the Court being free to take two months' vacation if its session lasted longer than six months. At that moment the question of revising the Statute had been brought before the Assembly and M. Anzilotti had provisionally abandoned his proposal.

The proposal of M. Politis was certainly very wide, but in the report of M. Cassin to the ninth ordinary session of the Assembly the following passages were to be found:

“ It is all the more important not to interfere with the framework of an established institution in that a large number of States have already concluded treaties agreeing beforehand to submit their international disputes to the jurisdiction of the Court, or treaties which are actually based on the Statute of the Court. ”

And again:

“ As you will see, then, there is no question of re-casting the Statute of the Court or of actually revising it. All we are proposing is that it should be examined with a view to remedying such defects as experience may have brought to light, and introducing amendments which could be effected by general agreement without undue delay. ”

Consequently, M. Anzilotti thought that the observations of M. Ito were quite correct. If it were possible to achieve a satisfactory result without touching the fundamental principles of the Statute, this should be done.

M. FROMAGEOT thought that the Committee had somewhat strayed from the original question, which was that of Article 3 concerning the number of judges, in order to discuss Article 23, which dealt with the organisation of the Court's work on which the experience of M. Anzilotti was pre-eminent.

The CHAIRMAN thought that the two questions were cognate to one another.

M. FROMAGEOT readily agreed, but considered it preferable to solve first the question raised in regard to Article 3 before taking up that raised by Article 23, especially since several proposals might be made later in regard to the latter article. It would be better, he thought, first to settle the question of the number of judges, since this was one of the main elements in the organisation of the Court.

The CHAIRMAN did not agree with M. Fromageot. The latter was quite right in saying that the number of judges was one of the elements to be considered, but it was on that account that the Chairman thought that, when considering the number of judges, the Committee must at the same time take into account the other questions of organisation.

He was entirely in favour of the proposal to abolish the system of deputy-judges. M. Anzilotti had argued that the main lines of the Statute should be retained, because it was the basis of a large number of treaties. The Chairman would point out, however, that the Permanent Court was not in all respects working in accordance with the spirit of its Statute. When the deputy-judges had been appointed, it had been intended that they should sit only in exceptional cases; in actual practice, however, they had been very frequently called upon to replace one of the ordinary judges. The Statute, therefore, had not been carried out exactly in conformity with the original intentions. The result was that the Court was often composed of judges who belonged to two different categories — the ordinary judges and the deputy-judges. The deputy-judges could not be regarded as having entirely the same competence in their work as the ordinary judges, and as a former Minister of Justice, the Chairman had always deprecated the appointment as judges of men who were not fully qualified for their work. He would not himself care to be tried by a deputy-judge, but would prefer that the Court which tried him should be composed of persons who were entirely competent to judge the evidence and render their award upon that evidence. That, indeed, was the only way of safeguarding the liberties of the parties.

If the Committee decided to make a change in the number of judges, that would presuppose an amendment to Article 3. Such an amendment should not, however, be regarded as making any fundamental change in the Statute of the Court. The only essential point in regard to the election of the judges, and the one in which the Committee could make no change, was the provision that they should be nominated by the Assembly and by the Council and should be elected freely from all countries of the world.

Again, the question of the organisation of the Court's sessions was a purely administrative one, and did not in any way affect the basic principles of the Statute. The Chairman thought that Mr. Root's proposal to increase the number of sessions to two afforded a method of eliminating the dangers to which M. Anzilotti had drawn attention.

M. Anzilotti had argued that, if the new proposals for the organisation of the Court's work were adopted, there would be a risk that certain eminently desirable candidates might refuse the offer of a judgeship, since they would be unable to send a deputy in their place. The Chairman, however, did not think that a man who had accepted a judgeship but who failed to attend the sessions was of greater value to the Court than a man who had refused to accept a judgeship, and, therefore, when the new election took place, those who were offered judgeships must decide

whether they would be able or not to spare the necessary time to attend the Court's sessions. If a very eminent candidate were to say that he would be unable to devote the necessary time to the sessions, it would be better to take a less important man who would be prepared to discharge his duties. The remedy for this situation was that proposed by Mr. Root in regard to the number of sessions. If there were two sessions a year, it would be possible to establish at the beginning of each year a roster of those judges who were to be convened for each session. In that way, when a candidate had been appointed to a judgeship, he would know that he was expected to give all the time that was required of him to his duties as a judge, a condition which had not existed hitherto.

The Chairman was not impressed by M. Huber's point that the Court had experienced difficulties in carrying out its full programme in the past. In this connection the experience of the past was of no great value for the future. The statistics of the Court showed that its business was increasing daily, and that in future there would be very few blank days during the Court's session. It was, in particular, the litigious business of the Court that was increasing every day and now formed the most important part of its work.

Lastly, the Chairman wondered whether it might not be possible for the Court to curtail somewhat the length of its judgments. The Chairman was perhaps influenced in this matter by his everyday experience, but, in his opinion, the best judgment was one which did not contain a single word over and above the actual decision of the Court. He did not think that it had been the intention of those who created the Court that it should act as a factory of international law, or that its judgments should build up a system of international law. The Court had perhaps been overconscientious in this respect hitherto. The best law was that which was built up objectively and it was objective law that was the true law. If, therefore, a different method were followed in drafting the Court's judgments, the members of the Court would have more time at their disposal and they would be free for other work without their ordinary work being made any heavier.

To sum up, the number of ordinary judges should be such as to make it possible to draw up a regular roster so that the number of judges attending the session would always be sufficient to form the quorum of nine in case of sickness or other valid excuse for non-attendance. In making the necessary modifications in the Statute for this purpose, the Committee would not in any way be changing anything that was essential in the relations between the Court and the Statute. The proposed changes would be purely administrative and as such would not affect the substance of the Statute.

M. GAUS assumed that, if the proposal for the abolition of the deputy-judges were accepted, it would involve an increase in the number of the ordinary judges.

The CHAIRMAN agreed.

M. RAESTAD wished to revert to one point on which M. Anzilotti had touched, namely, Mr. Root's proposal for two annual sessions. M. Raestad understood that M. Anzilotti considered that to hold one session lasting a whole year would be contrary to the terms of Article 23. M. Anzilotti had added that he had doubts with regard to the possibility of introducing a provision for two sessions and whether such a provision would be compatible with Article 23. M. Raestad thought that the only intention of Article 23 was that the Court should meet at least once a year and that there was nothing in the Statute which conflicted with its holding more than one session.

M. RUNDSTEIN thought that, in considering the proposal to increase the number of ordinary judges and the number of sessions, the Committee must not overlook the terms of Article 29 providing for the hearing and determining of cases by summary procedure. It might be found difficult to reconcile that rule with the proposal for the increase in the number of sessions. It would be desirable, moreover, to contemplate the possibility that the Chamber of Summary Procedure might meet even during the vacations.

M. ANZILOTTI said that he personally had always held the view that under Article 23 one session a year was to be regarded as a minimum and that there was nothing to prevent the Court from holding more than one session. He had said that it was true that the Court had contemplated changing the dates of its sessions, but certain of the judges, more especially the South American judges, had objected to any such changes. Further, the members of the Court felt certain scruples, which M. Anzilotti personally did not share, in regard to the possibility of fixing two sessions a year in view of the terms of Article 23.

Sir Cecil HURST enquired whether it would be possible to have from M. Fromageot or from some other member at the beginning of the Committee's next meeting a text of the amendments which would be required to carry out the proposals he had made and which seemed to have met with general approval — first, as to the number of judges and, second, as to rendering attendance on the part of the judges at The Hague obligatory, omitting the proposal for attendance within forty-eight hours of the summons.

M. FROMAGEOT replied that his amendment was very simple. It was that Article 3 should be amended to read "The Court shall consist of fifteen members."

M. PILOTTI pointed out that this text would omit any reference to the powers of the Assembly to increase the number of judges up to a total of twenty-one.

M. FROMAGEOT thought that the question raised by M. Pilotti was somewhat different. He personally considered that fifteen members was quite enough.

M. PILOTTI pointed out that there were many people who were in favour of a quorum of eleven instead of nine judges and fifteen might be rather a small total number from which to obtain a quorum of eleven.

M. FROMAGEOT remarked that, leaving on one side the inconveniences to which a too large number of judges might give rise, there might be financial obstacles to the appointment of as many as twenty-one judges.

The CHAIRMAN thought that the financial difficulties were perhaps more apparent than real. As the work of the Court regularly increased and as more cases were brought before it by States which did not contribute to its upkeep, it would be only right and proper that such States should be expected to pay contributions. The financial question, therefore, was not necessarily of very great importance.

Sir Cecil HURST understood that the Committee had agreed unanimously that judges who had been elected to the Court should attend whenever they were convened. M. Fromageot's text made no mention of that point.

Jonkheer VAN EYSINGA agreed with Sir Cecil Hurst that the obligation to attend, on which members of the Committee had agreed, should appear in some article in the Statute. He thought perhaps Article 23, which had been reserved at Sir Cecil Hurst's request, might be the best place.

M. POLITIS pointed out that Article 15 would disappear in consequence of the decision to abolish the deputy-judges. It would therefore save the necessity for altering the numbering of the articles if the obligation to attend were contained in a new Article 15.

Jonkheer VAN EYSINGA wondered whether it would be possible immediately to draft a final text covering the obligation to attend, since there were certain cases where there would be overlapping and this was one of them. As the plenary Committee was too large to act as a Drafting Committee, he suggested that it would be better to set up a Sub-Committee to prepare a draft covering the three proposals which had been made and upon which there appeared to be agreement, namely, (1) Mr. Root's suggestion for the holding of two annual sessions, (2) the proposal for the abolition of the system of deputy-judges, and (3) the obligation on the part of judges to attend when convened.

M. FROMAGEOT proposed the following text to cover the obligation to attend the sessions of the Court :

“ Members of the Court shall be bound, unless they are absent for reasons of ill health or for any other serious reason duly explained to the President, to hold themselves at the disposal of the Court from the date when they may have received the notice of convocation addressed to them.”

The CHAIRMAN proposed that Sir Cecil Hurst, M. Fromageot and M. Politis should form a Sub-Committee to prepare a definite text of the various articles in the Statute which would require amendment from the point of view of the discussion held that morning.

The Committee agreed to this proposal.

SIXTH MEETING.

Held on Wednesday, March 13th, 1929, at 5 p.m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

12. Question of the Revision of the Statute of the Permanent Court of International Justice (continuation).

Article 23 (revised).

The CHAIRMAN submitted the following amended text of Article 23 proposed by the Sub-Committee :

“ Article 23.

“ Replace this article by the following text :

“ “ The Court shall remain permanently in session except during the vacations, the times and duration of which shall be fixed by the Court at the end of each year for the following year.

“ ‘Members of the Court whose homes are situated at more than five days’ normal journey from The Hague will be entitled, apart from the ordinary vacations, to six months’ leave every three years.

“ ‘Except during the vacations, members of the Court shall be bound, unless they are on regular leave or prevented by illness from attending, or are absent for any other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court ’”.

An exchange of views took place on the proper wording to be used to describe the domicile of members of the Court.

Sir Cecil HURST was in favour of the term “ national ”. The idea of nationality was preferable to that of domicile.

The CHAIRMAN pointed out that in the present amendment, which was designed to give additional leave to those judges who lived more than five days’ journey from The Hague, it was essential to find some term to define their ordinary place of residence.

Jonkheer VAN EYSINGA suggested “ residing in ”.

M. POLITIS proposed “ established ”.

M. RAESTAD pointed out that a town situated near the frontiers of a country, for example Russia, might be within five days journey of The Hague but that a judge living in the interior of the country might need a longer time in which to do the journey.

M. POLITIS suggested the phrase “ effectively domiciled ”.

M. GAUS proposed “ ordinarily resident ”.

M. URRUTIA suggested that the real object of the amendment was to grant certain facilities to non-European judges. How was it possible, in those circumstances, to fix five days as the minimum ? Under modern transport conditions distances were much reduced ; that being so, why should not the amendment definitely state that it was intended to apply to non-European judges only ?

The CHAIRMAN pointed out that the amendment also applied to certain European judges. Further, account must be taken of the fact that journeys took longer in winter than in summer ; for example, a judge from Finland might be held up by bad weather conditions and be unable to reach The Hague within five days.

Jonkheer VAN EYSINGA suggested taking as a basis not the number of travelling days but the distance.

M. GAUS saw no reason why extra leave should be granted only to overseas judges. Would it not be better to extend it to all judges ? This would mean that three judges out of the fifteen would always be on leave.

Sir Cecil HURST thought that the Committee was losing itself in a mass of detail. The really essential point was to adopt adequate provisions ensuring that the best possible persons should be judges of the Permanent Court. To do so it was essential to choose persons coming both from near and from distant countries. It would be impossible, however, to induce the best persons to accept the position of judge if the conditions of service were such as to prevent them from ever visiting their homes. It was to avoid this difficulty that the special rule had been drafted and it was intended that it should apply solely to judges living long distances away from The Hague. For example, there might be an Australian lawyer, possessing to the full all the necessary qualifications required in a judge of the Court, who would not accept such a position unless he were allowed occasionally the possibility of visiting his home. The Sub-Committee had been assured by the representatives of the Permanent Court, whom it had consulted, that such a rule was adequate in the circumstances.

Further, the rule itself might become a dead letter in the near future owing to the rapidity with which transport conditions were changing.

For that reason, the Sub-Committee had thought it better not specifically to mention overseas judges but to base the amount of extra leave granted on the number of days it took to reach The Hague.

M. FROMAGEOT recalled that his original proposal had been to grant this extra leave to all judges in rotation. The disadvantage of granting it only to overseas judges was that the latter were placed in a position of inequality in regard to their colleagues in Europe who would attend the Court more frequently since they did not receive the same amount of leave. He was still of opinion that the cardinal principle should be that all judges must be placed in the same position. If, therefore, the extra leave were granted to all the judges, the Court normally would be composed of twelve judges with three absent on leave.

In reply to the Chairman, M. Fromageot considered that eighteen months’ leave in nine years was not excessive.

M. ANZILOTTI said that to reduce the number of judges ordinarily sitting to twelve would mean that the President might, in certain cases, have to give his casting vote since twelve was an even number. Every effort had so far been made to avoid placing the President of the Court in that position.

M. RAESTAD pointed out that it was impossible, in fact, to put all the judges on an equal footing. Judges living outside Europe were not compelled to take that extra leave if they did not wish to do so. There seemed no reason therefore to extend the privilege to all judges. If it were so extended, either the number of judges must be increased to cover possible cases of illness or else the quorum must be lowered.

Sir Cecil HURST did not consider that the argument of M. Fromageot was well founded. Inequality in the position of the judges was really due to the fact that the seat of the Court was at The Hague which was not equi-distant from the homes of all the judges. The suggestion of the Sub-Committee was an attempt to create, as far as possible, equality between all.

M. URRUTIA, while not entirely opposed to the suggestion to grant the extra leave to all the judges, would point out that all amendments to the Statute of the Court must be adopted by the Assembly and ratified by the signatory States. That being so, it would be bad policy on the part of the Committee to propose any amendment which had not a fair chance of being accepted. Some States might think that, since it was more difficult for a judge coming from a far distant country to sit on the Court than was the case as regards a European judge, it would also be more difficult to elect a non-European judge. Unless there could be some assurance that persons coming from far distant countries had the same chance of election as persons resident in Europe, those States would refuse to ratify the amendment and the Committee's work would be useless. He therefore agreed with M. Fromageot that it was impossible to ignore the fact that some countries were farther off than others. If, therefore, certain privileges were granted to non-European judges, far from creating inequality among the judges the opposite would be the case; equality would be re-established.

M. GAUS thought that the equality of the judges was not affected by granting the same amount of leave to all, since, if extra leave were granted only to overseas judges, the European judges would sit more frequently on the Court and therefore have greater influence.

The CHAIRMAN pointed out that judges remaining at The Hague were more highly paid than the others. Equality was thus maintained between the judges from overseas, who would get more leave, and the European judges, who would receive higher salaries.

M. ANZILOTTI recalled that, when the Court had been established, it had been decided to pay each judge a fixed salary and an allowance which varied according to the number of times he sat on the Court. If, however, as now seemed to be the case, the Court was to sit permanently, the system would, he thought, have to be changed and judges should in that case receive fixed salaries.

The CHAIRMAN observed that the reason why judges had hitherto been paid an allowance calculated according to the number of days they sat on the Court was to prevent their position from becoming a sinecure. If a judge did not sit on the Court, he was not paid. It was impossible to impose any penalty on a judge of the Permanent Court for non-attendance except indirectly by not paying him his allowances.

M. ITO agreed in principle with the amendment proposed but thought that the wording was too rigid. More liberty should be given to the judges; if the amendment were re-drafted in a less precise form, the article would stipulate that judges living far away from The Hague should be entitled to a longer period of leave than others, that period to be fixed by the Court.

The CHAIRMAN called on the Committee to vote on the following three questions of principle:

1. That a special period of leave of six months' duration should be given every three years.

This proposal was adopted.

2. That this special period of leave should be granted to all judges.

By 6 votes to 5, *the Committee decided to reject this proposal.*

3. That only those judges who lived far away from The Hague should be entitled to the extra leave.

The Committee approved this principle.

On the proposal of the CHAIRMAN *the Committee decided* to refer these three principles, to the Drafting Committee with instructions to draft them in an appropriate form.

M. FROMAGEOT pointed out that the Committee had yet to decide which members of the Court would have the right to this special leave.

M. POLITIS said that it was necessary to decide also the question of the distance from the Court of the "home" of a judge who would be entitled to special leave. How was that distance to be measured? It was suggested that the "home" should be five days' journey from The Hague. The time taken for the journey would depend, however, on the means of travel adopted. He would suggest that the expression "normal journey" should be used. Such an expression would for the moment preclude a journey by air between Europe and distant countries. If, however, such a means of travel became normal, the text would still apply, and no further amendment would be necessary.

The Committee decided to adopt the expression "home" (*foyer*) and the expression "five days' normal journey" (*voyage normal*), and referred Article 23 to the Drafting Committee for final revision, in accordance with the observations which had been presented.

Article 3 (revised).

The CHAIRMAN recalled that it had been proposed to amend Article 3 by suppressing the reference to the possible increase in the number of judges of the Court. The article as amended would read :

“ The Court shall consist of fifteen members. ”

M. POLITIS said that the reason for this amendment was a desire not to alarm public opinion by referring to the possibility of increasing the Court to twenty-one members.

The amendment was adopted.

Article 8.

M. FROMAGEOT pointed out that the reference to deputy-judges in this article should be suppressed.

Agreed.

Article 13.

M. FROMAGEOT suggested that this article should be taken in connection with Article 16.

Agreed.

Article 14.

M. FROMAGEOT said that, in accordance with Article 14, when a vacancy occurred in the Court, the same procedure had been adopted as for the first election. It had been found, however, that this procedure led sometimes to a prolonged vacancy before the election of a successor could take place. It was impossible to replace a member who died shortly before or during a session of the Assembly of the League of Nations until the next session of the Assembly. A seat might, therefore, be vacant for as long as fifteen months. Would it not be possible to secure the appointment of a successor within a shorter period ?

He had drafted an amendment to the effect that the procedure followed in the first election might, in certain cases, be modified. For example, the Secretary-General of the League of Nations, might, during the month following that in which the vacancy had occurred, proceed to the notification provided for in Article 5, and the date of the election would be fixed by the Council at its next session. He would point out that the only means of hastening the election would be to convene an extraordinary session of the Assembly. That, however, might be too drastic a procedure and the extraordinary procedure he had suggested should only be followed if, for example, two or several vacancies occurred. The Secretary-General might, when the second vacancy occurred, proceed to the notification provided for in Article 5, and the date of election might be fixed to coincide with the session of the Council following the expiry of the period of three months during which the national groups selected their candidates. It might be left to the discretion of the Council to decide whether an extraordinary session of the Assembly should be called in order to render an early election possible. The Committee might feel perhaps that such a procedure would only be justified in the event of three vacancies occurring. He would like to have the views of the Committee on his observations.

M. POLITIS said he would be in favour of applying the extraordinary procedure outlined by M. Fromageot in the event of three vacancies occurring, since he felt that twelve judges were a minimum to ensure the regular and equitable working of the Court.

Sir Cecil HURST enquired whether it was the intention of the amendment proposed by M. Fromageot to ensure that in every case a vacancy should be filled within six months.

M. FROMAGEOT said that the proposed procedure could only be adopted if more than one vacancy occurred. The procedure might already be justified in view of two vacancies. Three vacancies, however, so seriously disturbed the balance of the Court, that every endeavour should be made to avoid the inconveniences of such a situation. The Court had been carefully constituted in order that certain legal systems, civilisations, and national mentalities might be represented, and it was against the spirit of the Statute to allow too many vacancies to subsist unduly long.

The CHAIRMAN suggested that the Committee should request the view of the Secretary-General on the proposal to call an extraordinary session of the Assembly.

The SECRETARY-GENERAL said that an extraordinary session of the Assembly, called to fill a vacancy in the Permanent Court, could hardly be compared with the extraordinary session which had taken place in 1926. The extraordinary session of 1926 had been convened to deal with a definite political problem, and it had necessarily been attended by representative statesmen. An extraordinary session of the Assembly to appoint two or three judges would present no real difficulty. The States would presumably nominate their Ministers at Berne or in some capital near at hand with definite instructions as to their voting. No considerable expense or practical inconvenience would be involved. He would point out in this connection that the Council might convoke an extraordinary session of the Assembly by a majority vote.

The CHAIRMAN represented that the election of a judge to the Permanent Court was a very delicate matter, and a matter of special importance to the small States. Were these States likely to have suitable representatives near at hand ?

M. POLITIS pointed out that all the States had representatives either in Paris or London.

M. FROMAGEOT said there were two questions to decide if the procedure of an extraordinary session of the Assembly were accepted in principle. The first was the question of the procedure to be followed if two or more vacancies occurred. The other question was whether it should be left to the Council to decide whether an extraordinary session of the Assembly should be called, or whether the convocation of an extraordinary session should become obligatory.

M. GAUS said he would prefer to leave it to the discretion of the Council to decide whether an extraordinary session of the Assembly should be called. If the convocation of an extraordinary session became obligatory, it might be necessary to call one in July or August, though in a short while the ordinary session of the Assembly would be taking place.

M. URRUTIA said he would like to take advantage of the presence of the Secretary-General to raise a point which was closely connected with the question under discussion. Last year there had arisen the question of the procedure to be followed in accepting the resignation of a judge of the Court. As a matter of form, it would seem that such a resignation should be accepted by the Assembly, but in the particular case mentioned the Council, in order to avoid delay, had decided to accept the resignation provisionally in order that machinery for the nomination and election of a new judge might be immediately set to work. The Council had taken this action, on the understanding that the Assembly would be asked to confirm its decision. Would it not be advisable to provide that the Council might, in future, accept a resignation?

The SECRETARY-GENERAL said that, as the judges of the Court were elected by the Council and the Assembly, it had been felt that it was necessary both for the Council and the Assembly to accept their resignation. It might be assumed, however, that neither the Council nor the Assembly would wish to withhold its acceptance. There was no objection to inserting a clause in the Statute to the effect that the Council might accept a resignation, but the present system worked quite satisfactorily, subject to the interpretation which had been placed upon it by the Council in dealing with the resignation which had occurred in the past year. It would be sufficient if it were agreed that the Council might accept a resignation subject to confirmation of its action by the Assembly.

Jonkheer VAN EYSINGA thought that, if a rule were laid down that the extraordinary procedure should be applied in the event of two vacancies, it should not be left to the discretion of the Council to apply that procedure. In such circumstances, it should be the duty of the Council to convene an extraordinary session of the Assembly. He recognised, however, the difficulty to which M. Gaus had drawn attention. It would be unreasonable for an extraordinary session of the Assembly to be called in July or August. That contingency might, however, be provided against by laying down that the extraordinary procedure should only be applied in the event of a vacancy occurring in the early part of the official year.

M. POLITIS enquired whether there was not a danger of risking unnecessary delay if the convening of an extraordinary session of the Assembly were left to the discretion of the Council. The Council would then have to meet in order to discuss whether it was necessary to apply the extraordinary procedure, and, for that purpose, an extraordinary session of the Council might be necessary, in order to avoid delay.

M. FROMAGEOT doubted whether it was possible to lay down in the Statute that an extraordinary session of the Assembly should necessarily be convened. The signatories to the Statute of the Permanent Court could not, he thought, by means of a provision in the Statute, restrict the powers of the Council, which alone had the right to convene the Assembly.

Sir Cecil HURST, replying to M. Politis, pointed out that there would always be a session of the Council within the three months during which the national groups were considering their candidates, and at that session of the Council the question of convening an extraordinary session of the Assembly might be considered.

M. FROMAGEOT thought the Committee was agreed in principle, and that his amendment might be referred to the Drafting Committee. The explanations of the Secretary-General had convinced the Committee that an extraordinary session of the Assembly was practicable.

The SECRETARY-GENERAL hoped the Drafting Committee would bear in mind that it was quite possible to convene an extraordinary session of the Council in order to convene an extraordinary session of the Assembly. He hoped that the Council would be allowed discretion in the matter, and he did not think the exercise of that discretion would lead to any loss of time.

Jonkheer VAN EYSINGA, replying to an observation of M. Fromageot, said he would have no legal scruples in laying down that the Council was bound in certain circumstances to convene the Assembly. Provisions of a far more important character had been inserted in the Statute laying obligations upon the Assembly and the Council.

The CHAIRMAN pointed out that there was nothing in the Covenant indicating who should convene the Assembly. He thought that it was juridically possible to remedy that omission in the Covenant by inserting a provision such as was at present under discussion. He would ask M. Fromageot to revise his amendment in the light of the observations which had been made.

SEVENTH MEETING.

Held on Thursday, March 14th, 1929, at 10.30 a.m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

13. Question of the Revision of the Statute of the Permanent Court of International Justice (continuation). Proposals of Sir Cecil Hurst.

M. FROMAGEOT recalled that, as a result of the Committee's decision to abolish deputy-judges, Article 15 of the Statute should be deleted.

Sir Cecil HURST desired to draw the Committee's attention to a general question. At the previous meeting various amendments had been suggested of very varying importance. Sir Cecil Hurst referred more especially to the changes which it was proposed to make in Article 3 of the Statute regarding the abolition of deputy-judges, as compared with the amendment which had been proposed for Article 5, dealing with the fact that judges of the Court must have great practical experience.

Sir Cecil Hurst feared that, if this procedure were followed, the Committee would end by submitting for the approval of the Council and of the Assembly a list of amendments differing greatly in importance. Although the Council might have instructed the Committee to revise the Statute of the Court, the Committee must remember that any proposed change would have, in the last resort, to be ratified individually by each of the States which had adhered to the Protocol of the Court. A series of formalities had to be fulfilled, beginning with the drafting of the diplomatic instruments which would have to be communicated to Governments. These would have to be ratified by States and finally the Protocol would have to be signed. The amendments which the Committee might propose would be discussed by the Assembly in September 1929. In September 1930 the Assembly would have to proceed to a new election of judges of the Court. In the very short period of a year, therefore, the formalities to which he had referred would have to be completed.

No one was more aware of the slowness of this procedure than the Chairman of the Committee, who know by experience, as a member of the Council, the constant efforts which the Council had to make to secure the ratification of conventions. If the ratification of the new Protocol had not been obtained before September 30th, 1930 the Assembly, whose duty it would be to elect new judges, would be faced by a complicated situation and great confusion might result.

How could the Assembly elect the judges if it did not know whether it should elect ordinary judges and deputy-judges or only a larger number of ordinary judges and if it did not know what qualifications must be possessed by candidates? So far as the candidates themselves were concerned, uncertainty with regard to the conditions required of them would make their decision to accept the post of judge, if offered, difficult. In the view of Sir Cecil Hurst, therefore, the Committee should do nothing which would jeopardise the hope that the new Protocol would have entered into force before the members of the Court had to be appointed. In the period since 1920, that was to say, over a period of eight years, fifteen States had still not ratified the present Protocol. What therefore would be the situation if in 1930 only half a dozen States had ratified the new Protocol?

The Council could and must bring a certain amount of pressure to bear on the States concerned in order to induce them to ratify before 1930 and, in order to make it easier for the Council to hasten the putting into force of the revised Protocol, Sir Cecil Hurst desired to propose that the Jurists' Committee should only submit amendments involving really important points and of an urgent character. To take but one example, Sir Cecil Hurst thought that the modification suggested in Article 2 of the Statute (the condition that the candidates should possess practical experience) was a secondary point and should not be made the object of an amendment.

In his view, the end desired could be attained in some cases quite as well by recommendations to be adopted by the Assembly as by amendments of the Statute. Such a procedure was infinitely easier to follow and quite as effective.

Sir Cecil Hurst did not share the doubts of M. Fromageot in regard to the utility of these recommendations. The Secretary-General could, for example, draw the attention of the national groups in advance to the importance of the possession of practical experience by candidates for the post of judge. Sir Cecil Hurst was convinced that this suggestion would be fully effective. The groups would wish to secure the election of the candidates they submitted and would certainly take steps to ensure that their candidates possessed all the qualifications which they had been informed were essential.

As far as Article 5 was concerned, Sir Cecil Hurst suggested that the candidates submitted by the national groups should possess a working knowledge of the two official languages of the Court, both French and English. This was a question of importance of which account should be taken either in the amendments or the recommendations to be submitted to the

national groups, if the method of recommendations which he had just outlined were adopted. To require a knowledge of these two languages had nothing to do with the manner in which the Court worked, with the translation of the pleadings or after.

The reasons why Sir Cecil Hurst insisted on the importance of the question of languages were based on the special nature of the international disputes submitted to the Court. There were at the moment, on some questions of international law, two schools of law: the Anglo-American school and what might be called the Continental school. Judges were called upon, therefore, to give decisions on problems which presupposed a knowledge of both these legal systems. Sir Cecil Hurst thought it impossible that a judge who knew only one of the official languages could fulfil this condition. Most of the books enumerating the Anglo-American point of view were published in English and those enumerating the continental point of view were published in great part only in French. Judges must, therefore, have a knowledge of both languages in order to be acquainted with the writings giving both points of view.

Without dwelling on the secondary considerations which might make it necessary to require such knowledge from the judges, especially such considerations as the fact that they should all be in a position to understand the pleadings, Sir Cecil Hurst, for reasons which he had just explained, suggested that the need of an acquaintance with both languages should be mentioned in the recommendations to be made to the national groups.

To sum up his observations, Sir Cecil Hurst formally proposed: (1) that the Committee should only put in the form of amendments changes which were of urgent and real importance, justifying the exercise of pressure by the Council on States in order to obtain their ratification before September 1930; (2) that secondary points should be dealt with by means of "vœux" or "recommendations"; (3) that it should be laid down in a recommendation that an adequate knowledge of the two official languages of the Court was desirable for all the judges.

M. FROMAGEOT, in reply to the observations of Sir Cecil Hurst, wished to lay before the Committee information regarding the dates of the ratifications of the Protocol of the Court. Most of these ratifications had been obtained in less than one year, that was to say, before August 1921. Among the States which had ratified later there were some which had been in a peculiar position such, for example, as Germany, which had not belonged to the League of Nations at that time but which had ratified the Protocol of the Court almost immediately after its entry into the League.

M. Fromageot thought that the fears of Sir Cecil Hurst appeared to be exaggerated. If most of the States had ratified the new Statute, it would no doubt be possible to bring pressure to bear on the others in order to obtain their adhesion by the requisite date.

The CHAIRMAN said that, according to his experience, it was easier to obtain the ratification of a considerable number of amendments submitted together than of a few isolated ones. Isolated amendments would be easily regarded as matters of secondary importance, as the League had had occasion to note several times in connection with a number of amendments to the Covenant, some of which had not been ratified after a lapse of four or five years. An entire reform to which greater importance was attached in advance was more rapidly accepted. For that reason, he took the view that the number of amendments proposed would have no influence on the speed with which the ratifications would be obtained.

M. POLITIS wished to refer to two points mentioned by Sir Cecil Hurst. His view was that the fears of Sir Cecil Hurst with regard to the difficulty of obtaining ratifications of the new Statute by the requisite date were exaggerated. As regards the ratification of the Protocol of 1920, a period of nine months had sufficed. For the ratification of the new Statute, however, States would be allowed a full year and it was therefore logical to suppose that for some amendments a period of three months longer than that which had been necessary for the ratification of the original Statute would be amply sufficient.

M. Politis did not understand why the ratification of the secondary points would be more difficult to obtain than the ratification of any important amendments which might be proposed. He would prefer to see the necessary modifications put in the form of amendments properly so called rather than that the Committee should draw up a list of recommendations which might easily be rejected.

Sir Cecil HURST replied in the first place, to the observations of M. Fromageot, that the ratifications of the 1920 Protocol had only been obtained as a result of great pressure which had been brought to bear by the League on the various States.

Moreover, he would point out to M. Politis that in reality the time-limit for the ratification of the new Statute would not be, as he had himself mistakenly indicated, a period of twelve months, but only of nine months, since it was necessary to deduct three months, as the notifications to the national groups to present their candidates were issued three months before the Assembly. By that time the national groups must know the number of judgeships for which they were to present candidates.

As to the third point raised by M. Politis, the question was not so much the difficulty of obtaining ratifications as the extent to which the amendments, which appeared at first sight to be of small importance, would receive general approval. He would mention as an example the proposal requiring the judges to have had practical experience. That proposal had already been opposed within the Committee by M. Raestad, who had pointed out that it had been rejected in 1920 after a thorough examination. If the Norwegian Government took the same view as M. Raestad, it would reject the new Statute upon a question of secondary importance.

The same thing might happen in respect of other questions, and for that reason he thought that only modifications which were likely to meet with unanimous acceptance should be presented in the form of amendments.

The CHAIRMAN observed that the amendments were distinct from one another, and that it would be sufficient if the more important of them were ratified.

Jonkheer VAN EYSINGA agreed with Sir Cecil Hurst that the Committee should take into account the importance of the questions with which it would have to deal. He would observe that the position in regard to the ratification of the new Statute would differ from the position in 1920, for ratification by the majority of the States Members of the League had been sufficient to bring the original Statute into force, whereas the new Statute would have to be ratified by all the States which had ratified the previous one.

M. POLITIS, replying to the observations of M. van Eysinga, drew attention to the fact that in 1920 ratification by the majority of Members of the League had been declared sufficient by a unanimous decision of the Assembly, and he considered it quite possible that the Assembly of 1929 would take a similar decision concerning the ratification of the new Statute.

M. RAESTAD emphasised the importance of the observations of the Chairman. In 1920 the Protocol had formed a single whole, to be adopted or rejected by the States, whereas now a series of separate amendments or at least groups of separate amendments would be submitted to them. Ratification would thereby, in his opinion, be rendered more difficult. It was not yet known whether the amendments which might be proposed would be brought to the knowledge of the States concerned, to be rejected or ratified as a whole, or whether the States would have the option of accepting or rejecting them separately, or in groups. In his view, the apprehensions of Sir Cecil Hurst were well founded if the amendments were regarded as forming a whole, since certain modifications might meet with opposition on the part of certain States adhering to the Protocol, whereas other amendments might be unanimously accepted. On the other hand, he agreed with M. van Eysinga that all the signatory States would have to ratify the new Protocol and not the majority of the States, as in 1920.

M. URRUTIA, replying to Sir Cecil Hurst, said that the Assembly of last year had decided to submit the Statute of the Court to a thorough examination by a Committee of Jurists in view of the renewal of the terms of office of the judges, which would take place in 1930. The Council had followed up that decision of the Assembly by appointing the present Committee. Its task was, therefore, to examine the whole Statute, and it was its duty to propose amendments to all the articles which appeared to it to require modification. That was the principal duty of the Committee, and the Committee must consider that duty before everything else. On the other hand, if the new Statute were not in force by September 1930, the Assembly might then take into account the proposed amendments by means of recommendations such as Sir Cecil Hurst had suggested.

Lastly, he thought that the rapid and complete framing of the new Statute would enable the States which had not yet ratified the Protocol, but whose ratification might without difficulty be obtained within no very distant date, to proceed directly by a single act to the ratification of the revised Protocol.

M. PILOTTI asked Sir Cecil Hurst not to insist on the proposals which he had made as, in his opinion, it was not for the Committee to consider what would be the ultimate fate of the amendments which it was proposing. He thought that, in following up the suggestions of Sir Cecil Hurst, the Committee would be going beyond its present task, and would run the risk of failing to fulfil the object for which it had been established. He would suggest that the reading of the articles of the Statute should be continued and that the question whether it was desirable to give to the various modifications the form of actual amendments or whether they should be made the subject of a mere recommendation should be reserved to the end of the session. It was impossible to say at what moment the ratification of the new Statute would take place and what would be the situation at that time.

Sir Cecil HURST assured the Committee that his suggestion had been inspired merely with the desire to ensure that a positive result might be achieved by the Committee in its present task, and that it was in no way his intention to hinder the progress of the work of the Committee.

The CHAIRMAN asked Sir Cecil Hurst what amendments precisely he proposed to the provisions of Article 5.

Sir Cecil HURST said that he had no amendment to propose, but he would suggest, in reference to Article 5, that the Assembly should be invited to recommend the States to choose candidates who had a practical experience and acquaintance with the two official languages of the Court.

M. POLITIS supported the proposal of Sir Cecil Hurst, but thought that it would be more appropriately embodied in Article 2 and not in Article 5 of the Statute.

The CHAIRMAN observed that, if this suggestion took the form of a recommendation, it would not be connected with any particular amendment.

M. RAESTAD associated himself with M. Politis in supporting the proposal of Sir Cecil Hurst.

The proposal of Sir Cecil Hurst was adopted.

Article 13.

M. RAESTAD drew attention to the last sentence of this article, "Though replaced, they shall finish any cases which they may have begun". Was that sentence intended to mean that a judge who had been replaced should continue to deal with cases regarding which the oral proceedings had already been begun while the judge still held his seat or with all the cases of which the Court as a whole had already been seized? In legal language it was quite clear what was meant by the Court being seized of a case, but no exact meaning had been attributed to a formula stating that an individual judge, member of the Court, had been seized of a case. At the Conference in 1920, it had been suggested that the words "commencé de connaître" should be used, but this phrase had been rejected in favour of the term "saisie". He would ask the members of the Court present to say by what criterion the Court determined whether a judge was seized of a case or not.

M. ANZILOTTI said that the Court had never had occasion to solve the question raised by M. Raestad except, perhaps, indirectly in connection with cases in which the preliminary objection of incompetence had been judged by a Court of which the composition was different from that which later pronounced upon the substance of the question. In that case the Court had recognised that the two issues were entirely separate and it was possible for the Court to be composed of different judges for the preliminary objection and for the substance of the affair.

The CHAIRMAN thought that the provision might be left as it stood in the existing Statute.

M. RAESTAD observed that, in that case, it would be the Court which would decide whether a judge was seized of a case and asked whether, after the new election, it would be for the old Court which had already been seized of a case or for the new Court to take this decision.

The CHAIRMAN observed that the decision would be taken by the new Court since the old one would have ceased to exist. In any case, in his opinion, it was not the individual judges but the whole Court that was seized of the cases that came before it.

M. RAESTAD said, after reading the third paragraph of Article 13, that that paragraph applied to the individual judges and not to the whole Court.

M. POLITIS thought that the paragraph applied to the case of a judge who had not yet been replaced; for example, if at the time of the new election to be held in September 1930 the Court had held over its decision regarding a case with which it had dealt in the previous summer, and if all the retiring judges were re-elected with the exception of two, all those who had been elected would continue to take part in the proceedings, with the exception of the two new judges.

M. ANZILOTTI took the following illustration: If a judge fell sick or was for any reason exempted from attendance after the hearing of a case had begun, he could not be replaced by another judge for the remainder of the hearing of that case.

Article 16.

M. FROMAGEOT pointed out that this article dealt with the question of the disabilities of judges. He proposed the acceptance of the following principle:

"The members of the Permanent Court shall devote themselves exclusively to this high function and may not exercise any other functions. It shall not, however, be incompatible with this provision for them to be members of the Permanent Court of Arbitration under the Convention of 1907 or to sit as arbitrators under the terms of a submission to arbitration or a convention."

The second sentence of the first paragraph should be deleted in consequence of the abolition of the deputy-judges.

The CHAIRMAN thought that there was an objection to the proposal to allow a judge to serve on the Permanent Court of Arbitration, since it was possible that a case which had been submitted to that Court might later come before the Permanent Court of International Justice as the result of an appeal.

M. POLITIS observed that it would hardly be possible for a judge who had already heard a case in the Permanent Court of Arbitration to sit as a judge in the Permanent Court of International Justice for the hearing of the same case.

Mr. ROOT thought that M. Fromageot's proposals might give rise to a somewhat dangerous situation. The Committee had already agreed upon certain new restrictions to the conduct of those who accepted election to judgeships in the Permanent Court, the intention of those restrictions being that the judges should devote themselves entirely to the Court's work as, indeed, they might very properly be expected to do. Moreover, it had been agreed that the judges should be in a position to reach The Hague at very short notice and that the duration of their vacations should be decided by the Court.

Though Mr. Root had nothing against the above provisions, he had accepted them with some apprehension, which was renewed by the addition now proposed by M. Fromageot; he feared that, taken altogether, the particular limitations which it was proposed to

impose on the judges of the Court, would deprive the Court of many men whose services it most needed. The original provision had been quite clear, but the additional words proposing a test applicable to the conscience of those persons who were asked to serve on the Court — and the judges would naturally apply that test in the broadest possible way — might have the effect that many men, when asked to accept a judgeship, would say that they could not thus exclude themselves from all the activities of life. In Mr. Root's opinion the Court needed men of that calibre more than they needed a position in the Court. Supposing it were desired to find an American to take Mr. Hughes' place in the Court, Mr. Root feared that the kind of man who would be willing and competent to serve would think that in accepting these restrictions on his liberty, he was returning to a state of tutelage resembling that of a schoolboy.

M. FROMAGEOT fully appreciated the wisdom of Mr. Root's observations. He thought that perhaps the principle, as he had formulated it, went further than the idea he had in mind. He had not meant to suggest that the judges should be entirely excluded from all other activities, but he considered it inadmissible that, when a man had accepted a judgeship, he should continue to follow in his own country another profession such, for example, as that of lawyer. These remarks also applied to education. If a professor, appointed as a judge, were at liberty to continue lecturing and to develop in this way his views and his doctrines, his decisions would be prejudiced in advance. It would be known that in such-and-such a case he would decide in such-and-such a way. His impartiality and his independence would be compromised. To be a magistrate or an educationalist were two different forms of activity. Both were worthy of respect. A choice might be made between the two, but the two offices must not be held at the same time.

The CHAIRMAN asked whether a man who had written a book on international law was to be excluded from the list of candidates ?

M. FROMAGEOT thought it was difficult to compare this case with the others since the writing of a book was not a professional occupation. When a man had been appointed a judge of the Permanent Court, his only profession should be that of judge of the Court.

The CHAIRMAN enquired whether the judge would be allowed to deal with the business of the League of Nations.

M. FROMAGEOT said that M. Gaus had drawn his attention to the case of Conciliation Commissions. It would be dangerous to allow a judge of the Court to serve on a Conciliation Commission, if the cases submitted to those Commissions had later to come before the Court. A judge's independence was the basis of his impartiality ; if he were not completely and obviously independent, his impartiality might be compromised.

M. Fromageot had already cited the case of the legal profession, which was a perfectly respectable profession but which did not appear to him to be compatible with the holding of a judgeship in the Permanent Court. He was, however, in the Committee's hands ; if the Committee thought that the remedy was worse than the evil, it must obviously reject it.

Dr. RUNDSTEIN did not think that it could be held that it was incompatible for a judge to hold an honorary professorship at a university. If, for instance, a judge had previously been a professor, there should be no obstacle to his giving lectures on the work of the Court. Furthermore, the services of an honorary professor were not remunerated.

Mr. ROOT said that he did not so much object to any particular wording in M. Fromageot's proposal as to the inclusion in it of anything that might seem to carry with it a feeling of suspicion or distrust that the people who were to be asked to render this service of a judge of the Court needed to be treated like children and instructed in their duties. The kind of man required for the Court might perhaps unconsciously resent the idea that he could not be trusted to conduct himself in accordance with the requirements of his office.

M. Fromageot's proposal might therefore perhaps require redrafting in order to obviate any indication that the judges might not abide by the standards of conduct expected of them.

M. URRUTIA thought that the changes of system which had already been adopted would suffice. It would be found, in practice, that a judge would be obliged to devote the whole of his time, except his holidays, to the work of the Court. M. Urrutia held the same views as Mr. Root. Any modification in the present system whereby residence at The Hague would be obligatory would entail more serious disadvantages than the possible advantages to be anticipated. In view of the large volume of business which the Court might in future expect, it would be quite impossible for a judge to bind himself to the exercise of any other profession such as that of teaching.

M. Urrutia had been greatly impressed by Mr. Root's observations and reminded the Committee that, at the time when the Statute was first drawn up, there had been a very lively discussion on this particular question both in the First Committee of the Assembly and in the Assembly itself. That showed how difficult the question was to solve. M. Urrutia would therefore prefer to leave things as they were, and he considered that the Committee should content itself with the changes it had already made.

M. HUBER thought that the question of incompatibilities should be considered from two different aspects, first, that of the nature of the activity of the judges of the Court and, secondly,

that of the actual facts. As regarded the first point, there were obviously certain posts which were, as such, incompatible with the holding of a judgeship. Thus, the Statute had laid down that no ordinary member of the Court might exercise any political or executive function.

As regarded the second aspect, however, there were circumstances which might make the exercise of a function which, in itself, was compatible with that of a judgeship on the Permanent Court, incompatible in fact. For instance, a judge who conscientiously discharged his duties to the Court might possibly not have time to carry on any other form of activity, and, that being so, M. Huber agreed with Mr. Root that the question might be left to the conscience of the individual judges. He understood that Mr. Root thought that the Committee should not define too precisely the things which a judge might or might not do, since the question would be found to solve itself owing to the fact that a member would be required to spend most of his time at The Hague, and hence would not be free for other work.

As to the question of a judge serving on a court of arbitration, it was true that there was not necessarily any incompatibility in such service from a moral point of view, but arbitration cases usually demanded much time, and the work of the Court should come before any other functions whether compatible or incompatible with that work.

M. POLITIS thought that the Committee must devote its most serious attention to this question which was of capital importance, and which involved both the credit of the Court and the prestige of international justice. As his professor of law had frequently said, justice must not only be just, it must also appear just.

It had been said that confidence must be reposed in the judges. There were two observations to make in that connection. In those countries where justice had been organised for centuries traditions had grown up, and the judges knew that there was a strict obligation upon them not to take part in any activity which might be incompatible with their magistracy either in fact or morally. No such traditions existed in regard to international justice. That, however, was not the only difference. In the national courts of justice, the magistrate or judge had a career before him. In international justice, however, that stage had not yet been reached. The appointments were only temporary, although they might of course be renewed. The result was that an appointment to the Permanent Court might be offered to a man who was in the full course of his social or national activity. Such a man would serve for nine years at the Court, and on the expiration of that period he might find it impossible to take up again the position he had previously occupied in his own country. The ideal position of course would be to place the international judges on a footing of equality with the national judges and to make their appointments for life. That, however, was impossible in existing circumstances. It would necessitate a radical amendment in Article 13.

M. FROMAGEOT observed that such an amendment affected also the observations he had made regarding Article 16.

M. POLITIS agreed. Continuing, he wished to make two proposals to meet the difficulties to which he had drawn attention. First, the period of appointment should be increased from nine to twelve years, with the hope that, in future, it would be found possible to go even further and to appoint the international judges for life. The adoption of a twelve-year period would do much to remedy the present situation, since, after serving twelve years on the Permanent Court, the great majority of the judges would have arrived at the period of life at which they would wish to retire from active work. Secondly, he would propose that judges should be given a pension which would carry with it an assurance that they would be able to keep up the honourable position they had earned when they retired to their own countries.

If these proposals were accepted, the material position of the judges would be assured and it would then be quite logical to introduce in Article 16 a provision to the effect that a judge should exercise no other profession or occupation than that of a judge of the Court. Meanwhile, it might be possible to make a stipulation that in the exercise of any profession or any function the judges of the Court should not be called upon to give opinions which might in any way be connected with the business of the Court.

Mr. Root suggested an addition to M. Fromageot's proposal so that it would read :

“Members of the Court may not exercise any political or administrative function or other professional employment.”

M. FROMAGEOT readily accepted Mr. Root's amendment.

M. ITO asked for an explanation. When a national group had to recommend a candidate for a judgeship, it naturally attempted to find the man who had the best chances of being elected. Such a man would probably be one whose services would always be wanted in his home country. If therefore the conditions as to disability were made too severe, the national groups would have great difficulty in nominating a man who otherwise could be employed in his own country. M. Ito therefore considered M. Fromageot's first draft to be too severe, and he was glad to note that he had accepted Mr. Root's amendment.

There was another case, however, to be considered. Suppose a candidate was a member of an extra-parliamentary or extra-governmental commission ; such a function could not be described as political or administrative in the strict sense of the term. Would the exercise

of such functions exclude a candidate from the possibility of election? The national groups at any rate might possibly feel some doubts as to the utility of putting forward his name. M. Ito therefore thought it inadvisable to make any hard-and-fast rule but that it would be better to leave the matter to the conscience of the individual judge.

Jonkheer VAN EYSINGA thought it necessary to bear in mind the observation which had been made by Mr. Root and which had led to the amendment which M. Fromageot had accepted. The difficulty had been greatly lessened by the fact that the Committee had already accepted an amendment to Article 23 by which the judges would be obliged to devote the whole of their time, except their vacations, to their work at The Hague. If the Committee accepted Mr. Root's amendment to M. Fromageot's text, doubtful cases, one of which had been mentioned by M. Ito, might nevertheless arise. In this connection, M. van Eysinga would point out that in the second paragraph of Article 16 as at present drafted there was a provision stating that doubtful cases were to be settled by a decision of the Court.

M. van Eysinga wondered whether certain decisions had already been taken in such cases by the Court. Without wishing to go into details, he would ask the President of the Court whether he could give any general information on the point. Did the President of the Court think that, in the various cases that had occurred, the Court had reached an entirely satisfactory result from the point of view of the provision that members should not carry on other occupations which might hamper their work as judges? If the President's answer were in the affirmative, the Committee would have greater liberty of action, since it would be seen that, in those cases of doubt which had arisen, the Court had succeeded in settling them satisfactorily.

M. ANZILOTTI was unable to say that the application of the existing system had, so far as he knew, given rise to any difficulties or disadvantages. The case had never yet occurred where a judge had refused to discharge his duties on the ground of other professional occupations.

M. RAESTAD reverted to the point made by M. Politis with regard to the assimilation of national and international judges. There would always be a great difference in the status of the two categories of judges, as long as the individual States continued to exist. In the present state of the world it was very rightly laid down that the judges must represent the different forms of civilisation. Hence it was desirable for judges to preserve, to a certain extent, their connections with their country of origin; by working in one way or another a man was best able, as a rule, to maintain his connection with his country. It was probably in order to be able to maintain a Court composed of judges who retained some connection with their home country that the limited term of appointment had been originally adopted.

M. Raestad considered that there was every reason for thinking that in practice the question would settle itself, and that therefore there was no need to make any change in the article (except to suppress the reference to the deputy-judges), especially in view of the new system which the Committee had already adopted as regards the composition and working of the Court.

M. FROMAGEOT then submitted the following proposal for the redrafting of Article 16 :

Article 16, paragraph 1 :

1. Add the following words at the end of the first sentence : “ *nor engage in any other occupation of a professional nature* ”.
2. Delete the second sentence.

The above proposals were adopted.

M. URRUTIA said that he had certain amendments to move in connection with Article 14. He would reserve his right to present them in connection with those which had been adopted in regard to Article 16.

M. FROMAGEOT considered that M. Politis' suggestions in regard to the duration of an appointment deserved careful consideration. An extension of the terms of appointment would be calculated to allay certain legitimate anxieties, but it would raise some delicate questions.

The CHAIRMAN thought that M. Politis' proposal raised a very complicated question. If, for instance, a judge was appointed at a fairly advanced age, he might be past all work before he reached the time-limit of his appointment.

M. POLITIS considered that the question was, nevertheless, of great importance and deserved serious attention. While he fully appreciated the wisdom of the Chairman's observation, he would be glad of an opportunity to offer further comments at a later meeting. In any case, the Committee should consider his second proposal, that of a pension.

The CHAIRMAN thought that this question hardly came within the purview of the Committee but rather of those who held the purse-strings. He thought that the remedy was contained in the Statute as it stood at present. If a judge was still young enough at the end of his nine years' term of office and if he had given proof of his ability to discharge his duties, he would almost certainly be re-elected. If, on the other hand, he was too old or incapable, his appointment would not be renewed.

EIGHTH MEETING.

Held on Thursday, March 14th, 1929, at 4 p.m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

14. Question of the Revision of the Statute of the Permanent Court of International Justice
(continuation).

Article 13 (continuation).

M. URRUTIA had an amendment to propose in regard to the resignation of judges. A case had recently arisen in which a judge had resigned, his resignation being forwarded to the Secretary-General. No procedure, however, had been laid down as to the action to be taken by the Secretary-General in such circumstances. In the case in point he had wisely submitted the resignation to the Council and to the Assembly. The Council had accepted it provisionally, subject to its acceptance by the Assembly. In view of the fact, however, that the vacancy had to be filled at the annual session of the Assembly, the Secretary-General had sent notice of the resignation immediately to all the national groups concerned, with a request that they should submit a list of candidates. This procedure had made it possible to carry out the election without delay, but the matter should be definitely settled by laying down rules in the Statute to govern the action of the Secretary-General in similar cases. The Secretary-General should be empowered, on receipt of the resignation of a judge, to notify the national groups immediately, for it was not, so M. Urrutia thought, legally necessary for such a resignation to be accepted by the Council and by the Assembly. He would therefore propose the following amendment :

“ In the case of the resignation of a judge, the resignation shall be sent to the Secretary-General, who will carry out the notification provided for in Article 5. ”

Jonkheer VAN EYSINGA said that, as a general rule, a resignation was only tendered after due reflection. There were, however, cases in which an individual might wish to withdraw it. He thought, therefore, that there would be a certain advantage in adopting a procedure whereby all resignations of judges should be submitted to the organs which had elected them, that was to say, to the Council and to the Assembly. In certain cases, the Council might wish to urge the individual judge who had resigned to reconsider his decision. M. Urrutia's proposal seemed to be too automatic and left no loophole. M. van Eysinga would therefore prefer that the Council should take provisional note of a resignation. It was true that such cases would be rare, but they should not be forgotten.

M. URRUTIA said that there was a practical objection to the proposal of M. van Eysinga. Experience showed the difficulties attendant on a resignation and a consequent new election. If, for example, a judge resigned in April or May, that resignation would come before the Council in June and it would not be possible for the Secretary-General to fulfil the stipulations of Article 5 and to notify the national groups in time for the election of a new judge to take place at the Assembly's session in the following September. A delay, therefore, of over a year would occur. It was in the general interest that all resignations should be regarded as final from the outset. The same procedure, in fact, should be followed with regard to resignations as was followed in regard to the death of a judge.

Jonkheer VAN EYSINGA pointed out that the Council was not necessarily obliged to accept a resignation in respect of a duty which had been accepted for a period of nine years. All that need be required would be an exchange of correspondence, which would not waste very much time. He urged that in every walk of life there were men who took a decision and afterwards withdrew it. For that reason an automatic guillotine should not be erected.

M. ANZILOTTI suggested a middle course. Could it not be stipulated that the resignation of a judge should be notified to the President of the Court, so that the President could, if it were considered desirable, take steps to induce the judge to withdraw his resignation ?

The CHAIRMAN thought that the proposal of M. Anzilotti would meet the objections of M. van Eysinga and would not affect the substance of M. Urrutia's amendment.

M. URRUTIA accepted the proposal of M. Anzilotti.

Sir Cecil HURST agreed with M. Anzilotti, provided that it was quite understood that a judge could resign of his own right without it being necessary for his resignation to be formally accepted by the Assembly or the Council. He should not be required to wait until his resignation had been accepted by one or other body before taking his departure.

M. URRUTIA agreed with Sir Cecil Hurst.

The CHAIRMAN was prepared to accept the original proposal of M. Urrutia. If judges resigned, their resignation should be regarded as final. In view of the general feeling of the Committee, however, he was prepared to accept the proposal of M. Anzilotti.

The proposal of M. Urrutia, as amended by M. Anzilotti, was adopted in the following form :

“ In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations. This notification makes the place vacant. ”

Sir Cecil HURST, in accepting this proposal, pointed out that it implied that a judge could resign of his own right.

Article 17.

M. FROMAGEOT proposed to delete the first paragraph of Article 17, since it had now become superfluous owing to the decisions of the Committee with regard to Article 16.

M. GAUS doubted whether this was the case. If a member of the Court acted as counsel in one particular case only, he could not be said to be exercising the profession of counsel or advocate.

M. FROMAGEOT thought that, if there was any doubt about the matter, it would be better to leave the first paragraph of Article 17 untouched.

The CHAIRMAN considered that if a member acted as counsel or advocate only on one occasion, Article 17 would not apply. Only persons who actively followed the profession of counsel or advocate were debarred.

M. RAESTAD pointed out, more particularly, that the discharge of the duties of agent had not necessarily a professional character.

M. FROMAGEOT did not wish to insist on his proposal.

Sir Cecil HURST thought that there was a divergence between the French and English texts. The wording of the English text seemed safer and should be maintained.

After a short exchange of views, *it was decided* to maintain the first sentence of Article 17 and to delete the remainder of the first paragraph, which should read as follows :

“ No member of the Court can act as agent, counsel or advocate in any case of an international nature. ”

Articles 26 and 27.

M. URRUTIA desired to draw the attention of the Committee to a possible difficulty in connection with Article 27. By the terms of that article, “ the Court will appoint every three years a special chamber of five judges . . . When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors. . . ”

Article 35 of the Rules of Procedure of the Court defined the procedure of the Court in regard to such special chambers. It was stipulated that “ should the notice of a special agreement, or the application, contain a request that the case be referred to one of the special chambers mentioned in Articles 26 or 27 of the Statute, such a request shall be complied with, *provided that the parties are in agreement* ”.

The deduction to be drawn from the provisions of the articles and from the wording of the Rules of Court was that, even if the parties were in agreement, the ordinary procedure was to be substituted for the summary procedure. That, however, did not seem, in the view of M. Urrutia, to be what had really been intended. He thought that the special procedure could be applied if the parties were in agreement, but he would like the views of the President and ex-President of the Court on the point. The matter had been discussed by the Legal Committee of the Organisation for Communications and Transit, which had expressed the wish that the position should be made quite clear, for it was often very important to have disputes connected with transit matters settled as quickly as possible.

M. Urrutia had been informed that no recourse had as yet been made to any special chamber, but that the dispute had always been settled by the full Court. Was this the case ?

M. ANZILOTTI replied in the affirmative. No special chambers had as yet been called upon to deal with any cases of the kind mentioned in Articles 26 and 27. He also considered that the present Statute precluded recourse to the Chamber of Summary Procedure for cases to which the above-mentioned articles applied. It was in this sense that the Court had interpreted the Statute in the last paragraph of Article 35 of the Rules.

M. URRUTIA thought that in that case some amendment was necessary. Even if the parties agreed, the case could not be brought before the Chamber of Summary Procedure.

Sir Cecil HURST desired to give the history of Articles 26 and 27. The original draft of the Statute of the Court contained no such articles. They had been introduced as a result of a British proposal, but that proposal itself had been amended before the articles had assumed their present form. By the Treaty of Versailles, the Permanent Court had been granted a

measure of obligatory jurisdiction in disputes under Parts XII and XIII of the Treaty. The British Government had desired all such disputes to come before special chambers and had consequently made proposals to that effect. Its view at the time had been that there would be a sufficiently large number of such cases to warrant the creation of special chambers in which judges conversant with such matters would sit. Experience now showed that this was not the case.

At a late stage in the drafting of the Court's Statute, the Assembly had adopted the British proposal, but had made an important change. The establishment of special chambers was not to be compulsory but optional, which meant that labour and transit disputes only went before special chambers if the parties so desired. The assumption that there would be a large number of such disputes had not proved correct. He understood that only four cases concerned with labour and one concerning transit had arisen and that these had all been dealt with by the full Court.

M. HUBER said that M. Urrutia was right in thinking that some labour or transit cases should be dealt with by special chambers, but only if the parties agreed. If they did not agree to accept the ruling of the five judges composing such a chamber, they would probably be less likely to agree to the ruling of three judges. He did not think that the maintenance of the present text would give rise to difficulties.

M. URRUTIA pointed out that the Rules of the Court prevented one party from claiming a special procedure. His point would be met if the words "provided that the parties are in agreement" were deleted from Article 35, paragraph 3, of the Rules of Court.

Jonkheer VAN EYSINGA pointed out that the terms of Article 27: "If the parties so demand, cases will be heard and determined by this chamber", justified the terms of Article 35 of the Rules of Court. It would not be sufficient, therefore, merely to amend Article 35 of the Rules; an amendment should also be made in Articles 26 and 27 of the Statute. A provision should also be included which would make it possible to apply the summary procedure in matters concerning labour and transit, if the parties so desired.

Otherwise, the phrase: "In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25", occurring in paragraphs 2 of Articles 26 and 27 excluded the summary procedure.

M. ANZILOTTI thought it would not be difficult to make the necessary amendment. All that was required was to stipulate that the summary procedure should be applied if the parties so requested.

Jonkheer VAN EYSINGA said that a provision should also be included for the appointment of national judges *ad hoc*.

M. ANZILOTTI, referring to the doubts expressed by M. van Eysinga regarding Articles 26 and 27, observed that it would be sufficient to replace in those articles the words "will sit with the number of judges provided for in Article 25" by the words "will sit in full session"; this would, in fact, include the national judges provided for in Article 31. To ensure the presence of the national judges in the three special chambers it would perhaps be desirable to add a paragraph to that effect in Article 31.

M. RAESTAD pointed out that Article 26 contained the provision that "on all occasions" the judges should be assisted by four technical assessors. It did not seem possible for the Chamber of Summary Procedure to be assisted by such assessors.

(On the proposal of the CHAIRMAN, the Committee adjourned for a short time to enable the text of an amendment to Articles 26 and 27 to be prepared on the lines of the suggestions of M. Anzilotti.)

When the meeting was resumed, the following modifications to Articles 26 and 27 were submitted:

Article 26.

1. Replace the sentence "In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25" by:

"In the absence of any such demand, the Court shall sit in plenary session."

2. Add the following paragraph at the end of Article 26:

"Recourse may always be had to the summary procedure provided for in Article 29 in the cases referred to in the first paragraph of the present article, if the parties so request."

Article 27.

This article to be amended in the same way as Article 26.

M. RUNDSTEIN suggested that the provisions of paragraph 4 of Article 31 should be embodied in an additional paragraph to Articles 26 and 27.

M. HUBER thought that it would be more convenient if paragraph 4 of Article 31 were to form a separate article which would apply to Articles 26 and 27.

M. ANZILOTTI said that, so far as he knew, there had never been any doubt that the principle formulated in paragraph 4 of Article 31 applied also to the special chambers.

THE CHAIRMAN thought it was clear that Article 31 had a general application.

Article 29.

M. RAESTAD recalled that the summary procedure of the Court had hitherto been little used. He wondered whether that was not due, at least in part, to the fact that no provision had been made for the attendance of national judges. On the other hand, at the time when the number of judges was increased from 11 to 15, the number of judges composing the Chamber of Summary Procedure might also be increased. Might it not be advisable to provide in the summary procedure for the attendance of national judges as in the procedure adopted for the special chambers under Articles 26 and 27 ?

M. ANZILOTTI said that the question of admitting national judges to the Chamber of Summary Procedure had been discussed at The Hague. The conclusion had been reached that the introduction of national judges would be inconsistent with the character and object of the summary procedure and interfere with its rapidity.

M. POLITIS supported the suggestion of M. Raestad. He did not think that the addition of national judges to the Chamber of Summary Procedure would be likely to prolong the proceedings. It might, on the contrary, even facilitate their progress.

THE CHAIRMAN said he was not surprised that the summary procedure had not been used to any very great extent in the first years of the existence of the Court. The parties which had appeared before the Court were States which naturally desired that there should be a certain solemnity in the proceedings of the Court and that its judgments should carry as much weight and prestige as possible. The judges who attended the Court also very naturally preferred a more impressive procedure. He thought it would be better to leave Article 29 as it stood. The parties would realise the advantages of the summary procedure when the cases before the Court began to increase in number and its jurisdiction began to be more commonly exercised.

M. FROMAGEOT agreed with M. Raestad and M. Politis. He did not think there was anything in the text of the Statute which was inconsistent with the presence of national judges in the Chamber of Summary Procedure. The institution of national judges had been criticised, but it existed with its advantages and disadvantages. In any case, it might be said that the presence of national judges served as a guarantee for the parties not only from the point of view of the deliberations of the Court but also for the preparation of the awards. A national judge, while of the same opinion as the other judges of the Court, might be able to render an unfavourable decision more acceptable for his country by assisting his colleagues to draft it in terms which would avoid giving unnecessary offence, which the Court might involuntarily do in the absence of a national judge.

He did not see any serious reason why the same arguments in favour of national judges should not apply to the summary procedure as to the procedure followed in the plenary Court or in the special chambers for labour and transit questions. He did not think that the participation of national judges would lead to delay.

M. ANZILOTTI said that, personally, he had always been in favour of admitting national judges to the Chamber of Summary Procedure and had voted in favour of that course. The Court, however, had taken a different view. Care had been taken, in constituting the special chambers for transit and labour questions, that the admission of national judges should not increase the total number of judges sitting in those chambers. Paragraph 3 of Article 26 and of Article 27 had been introduced for that special purpose. If national judges were admitted to the summary chamber, either the number of judges would have to be increased or, if two of the three judges retired in favour of national judges, there would be a majority of national judges. That would hardly be a desirable arrangement. The Court had accordingly decided that national judges should not be admitted.

M. RAESTAD asked whether there was any objection to increasing to five the number of judges in summary cases and admitting national judges in the same way as they were admitted to deal with labour and transit questions under Articles 26 and 27.

Sir Cecil HURST asked M. Anzilotti whether he thought that the summary procedure was likely to prove more useful if the Court consisted of five rather than of three members and if national judges were admitted.

M. ANZILOTTI said it was possible that, in this case, the Chamber of Summary Procedure would be a more useful institution.

Jonkheer VAN EYSINGA said that he was in favour of the proposal of M. Raestad to increase the number of judges to five, as that arrangement would enable the original suggestions of M. Raestad and M. Politis to be carried into effect. The Court would then consist of three neutral and two national judges, the ideal proportion so often advocated by Louis Renault.

M. POLITIS warmly supported the proposal of M. Raestad. In his view the presence of national judges was essential. Personally, he would never again recommend his Government to adopt the summary procedure unless national judges were admitted to the summary chamber.

The CHAIRMAN said that personally he would exclude national judges from the Court in all cases and particularly in cases where the Court consisted of a small number of members. The influence of a man of talent upon a small group was immense and, if national judges were admitted, the decision of the Court might often be the result of a conflict of ability between the national judges on the Court, a conflict in which the Government possessing the most able representative would prevail. The very essence of justice was impartiality, and it was an illogical proceeding to constitute a tribunal in which special views or interests would necessarily have influence. Strict impartiality, however, was perhaps, at the moment, an unattainable ideal.

M. FROMAGEOT pointed out that to secure the proposed amendment it would only be necessary to add a paragraph to Article 31 to the effect that its provisions applied to Article 29 as well as to Articles 26 and 27. The special reference to the introduction of national judges in Articles 26 and 27 could then be suppressed.

Jonkheer VAN EYSINGA said that, as he understood the proposal, there would be five judges in the summary chamber. If only one party were represented in the chamber, one of the judges would retire in favour of a national judge. If neither were represented in the chamber, two of the parties would retire in favour of a national judge. If both parties were represented in the chamber, no one would retire.

M. FROMAGEOT agreed that the object of the amendment would be to ensure that in each chamber there should be three neutral and two national judges.

After some further discussion as to the form to be taken by the amendment, *it was decided* on the proposal of M. POLITIS to suppress paragraph 3 of Articles 26 and 27 and to add to Article 31 a paragraph providing for the introduction of national judges into the special chambers mentioned in Articles 26, 27 and 29.

It was further decided that the judges mentioned in Article 29 should be five in number.

Article 31.

M. FROMAGEOT said he desired in connection with Article 31, to raise a point which had already given rise to considerable discussion. The question of the admission of national judges was closely related to the question of the manner in which the decisions of the Court should be rendered and published. Those decisions were at present given in accordance with Articles 56, 57 and 58. Under those provisions the judgment stated whether it had been taken by a majority or unanimity vote. It stated the judges who had formed the majority, and the judges whose opinions had differed had the right to express a separate opinion.

There was another method on behalf of which very strong arguments might be advanced. The decisions should, in his opinion, be regarded as decisions of the Court, and not as representing the views of its individual members. The present procedure placed the national judge in a difficult position vis-à-vis his Government which had specially appointed him, when he expressed an opinion precisely against that Government. Was it wise to put his independence to such a test?

It was clear that the duty of a judge of the Court was to judge according to his conscience and not in accordance with the interests of his country, and there was a risk that the authority of the national judge would be greatly weakened if he could be regarded as being merely an advocate of his Government. A national judge who knew that his opinions would be published might easily be led to defend his Government instead of judging it. The fact that his attitude during the deliberations of the Court would be publicly declared exposed him, if he decided against his country, to the remonstrances of his Government. Was it reasonably possible always to count on the necessary independence of judgment and firmness of character?

He felt that, in this connection, the manner in which the decisions of the Court were taken should be considered. In his view, all references to the manner in which a decision had been reached, whether unanimously or by a majority, should be suppressed, and the judgment should be given in the name of the Court alone, so that the Governments would not know of the attitude of their national judges. The latter would then be able, in full liberty and independence of spirit, to serve the course of justice.

The publicity given to the manner in which decisions had been reached and thereby to the deliberations of the Court, as well as the publication of the dissentient opinions, did not enhance the authority of the Court. The situation was different as regards domestic jurisdiction. Judges in such a case had no relations with the parties. In international jurisdiction the judges were involuntarily prompted not entirely to dissociate themselves from the States parties to the case, when they had been specially appointed by them.

Sir Cecil HURST said that he must strongly oppose the proposal put forward by M. Fromageot. The effect of that proposal would be to destroy the Court. There was in several continental countries a system which did not admit of the publication of dissentient judgments, but in international affairs it was impossible to regulate procedure in accordance with the practice of individual States.

He would point out that the procedure to be followed in international arbitration had not been regulated for the first time in the Statute of 1920. That procedure had been discussed in 1899 at the first Peace Conference at The Hague, which had set up the Permanent Court of

Arbitration. The principle had then been admitted that arbitrators should be allowed to express dissentient opinions. The matter had again been considered in 1907 at the second Peace Conference with the same result. The question had been again discussed in 1920 by the Committee of Jurists at The Hague, and it had been again decided that individual judges should be allowed to express their views. It was now being proposed to abandon this system.

Such a proposal was particularly untimely, in view of the fact that an endeavour was now being made to make it possible for the United States to adhere to the Protocol. This was not the moment to make a proposal which would revolutionise the whole system of procedure as practised in countries which had adopted the British practice. The effect would be most unfortunate in Great Britain and the Dominions.

The arguments put forward by M. Fromageot were strong arguments for excluding national judges from the Court on the ground that they would have insufficient courage to take a decision against their own countries. These arguments, however, did not apply to neutral judges. The views of distinguished judges who happened to be in a minority were as important to the building-up of an international system of law as the views of the majority. It would certainly not be admitted in Great Britain that the views of dissentient judges were of no value in the development and strengthening of the law of the country.

Mr. Root said that he also felt very strongly that a change in the procedure at present followed would be a serious mistake, and he hoped that M. Fromageot would not press his proposal. The convenience or desires of the national judges of the Court and their relief, to some extent, from the very serious responsibilities involved by their position were small matters in comparison with the preservation of the existing procedure.

The methods of diplomacy were at present being gradually modified in the direction of a greater publicity. It was impossible to ignore the overwhelming evidence which existed of this change in the public mind towards government affairs. The principle of greater publicity was being almost unanimously applied to the conduct of business in courts of law and in executive and legislative bodies. There was at present a wide public interest in political affairs in the broadest sense of the term, and it was impossible to oppose this development.

If there were no official and authentic publication of the views and arguments which underlay the judgments of the Court, there would inevitably be private and secret disclosures. No member of the Court would consent to rest under an imputation of acquiescing in views which he did not hold, and the judges would naturally defend themselves in private. The value of the Court, in his opinion, resided in the respect and authority secured for its judgments, and that respect and authority could not be founded on any suppression of the facts. The suppression of dissentient opinions would, in his view, be disastrous. He sympathised with the arguments which M. Fromageot had brought forward, but regarded them as of slight importance in comparison with the wider interests of the Court.

Jonkheer VAN EYSINGA said that the possible withdrawal from the Court of countries which had adopted the Anglo-Saxon system would be too high a price to pay for the amendment which M. Fromageot had suggested. Personally, he appreciated the full force of the arguments of M. Fromageot, but felt that the Committee could only resign itself to retaining the present system.

Sir Cecil Hurst had urged that the present system was the result of long discussion and reflection over a long period. There was one point, however, in which Sir Cecil Hurst had appeared to be mistaken on a question of fact. In 1907, after long discussion, it had been decided by the representatives at The Hague to exclude the reports of dissentient arbitrators, and the contrary thesis had only been restored during the discussions on the Statute of the Court.

Sir Cecil HURST apologised for having made an error in fact in his allusions to the discussions of 1907.

M. POLITIS said he had always been greatly impressed by the manner in which awards were rendered by arbitrators in the English-speaking countries. The influence of that system on the development of law had been greater than that of the continental system. In the interests of the building-up of an international jurisprudence there was no doubt that the publication of dissentient opinions was of immense value. When, nine years ago, the recommendations of the jurists at The Hague had been discussed by the Assembly during its first session, he had felt some hesitation in accepting the Anglo-Saxon system, and he had finally agreed to that system in a spirit of conciliation. Since then, however, he had watched the working of the Court, and he had noted the value and importance of dissentient opinions, so much so that if, by chance, representatives of the Anglo-Saxon countries were to ask for their suppression, he would feel obliged to oppose the suggestion, because, in his view, those opinions were of immense advantage to international law.

The value of a decision of the Court varied according as it was taken by a unanimous or majority vote, and it was essential that the public should know of this fact. The duty of the Court was not merely to settle disputes brought before it. It should establish a jurisprudence based only on the opinions of the judges. It was important to be in a position to know and to appreciate the motives which had influenced all the judges, those in the majority as well as those in the minority. The publication of these divergent opinions enabled observers to appreciate the scope and scientific value of the judgments.

There was another argument in favour of the publication of dissentient opinions. A Government which lost a case might find some consolation in knowing that the Court had been

divided and that dissentient opinions in accordance with its own views had been expressed. The publication of such opinions would show, at any rate, that the Government had not been quite wrong in bringing the case before the Court.

M. HUBER said that within the Court itself there had been a very distinct divergence of views on the subject. Arguments had been put forward both for and against the publication of dissentient opinions. In 1922 the Court had felt a certain reserve in dealing with this subject. In 1926, however, the Court had expressed itself as definitely in favour of developing the system of dissentient opinions. In the revised Rules of Court, it was not only laid down that the judgments and advisory opinions should state the reasons on which they were based, but should mention the number of judges constituting the majority. These provisions had been laid down in the conviction that it was necessary to inform the public of the truth and to avoid the appearance of unanimity or almost unanimity which did not exist. As the publication of dissentient opinions was optional, judges might hesitate, although not in agreement with the decision, to attach their dissentient opinions to the judgment. In these circumstances, the absence of dissentient opinions or a great reduction in their number might give rise to the erroneous idea that the judgment represented the opinion of all the judges or of the great majority. The authority of the Court could only be increased by the whole truth.

He was not revealing any secret in stating that M. Anzilotti and he himself had, during the discussions of this question in the Court, when it had drafted and revised its Rules, supported the publication of dissentient opinions. The Court had considered that the publication of such opinions not only had all the advantages to which M. Politis had referred, but that the possibility of the publication of those opinions made it necessary for the Court to examine very carefully the different points of view brought forward by the judges, and to state clearly the reasons for its awards. The Court had also felt that the possibility of publication was a guarantee against any subconscious intrusion of political considerations, and that judgments were more likely to be given in accordance with the real force of the arguments submitted. He felt that it was essential to retain the right of individual judges to publish their views, and he would urge that this right was an essential condition for the exercise of their liberty of conscience and their impartiality.

The CHAIRMAN said it was obvious from the discussion that had just taken place that the views of the various members were largely determined by the national and legal traditions in which they had been trained. There was on one side the Anglo-Saxon and, on the other side, the Latin tradition. He did not think the Committee should discuss this question at any length. It was not, in practice, possible to change the present system. Circumstances made it necessary to abide by the procedure in force, and the general tendency at the moment in all departments of public life was in the direction of greater publicity. The arguments put forward by M. Fromageot were theoretically excellent, but could not be taken as a basis for a constructive proposal.

M. FROMAGEOT said that for the reasons given by M. van Eysinga, he would not insist upon his proposal, if it might result in the withdrawal of Great Britain and make the accession of the United States more difficult.

NINTH MEETING.

Held on Friday, March 15th, 1929, at 10.30 a.m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

15. Question of the Revision of the Statute of the Permanent Court of International Justice (continuation).

Articles 26 and 27 (continuation).

M. URRUTIA, reporting on the amendments considered by the Committee at its previous meeting, read the following text of the amendments proposed to Articles 26 and 27 :

Article 26.

1. Replace the sentence " In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25 " by " *In the absence of any such demand, the Court shall sit in plenary session* ".

2. Omit paragraph 3.

3. Add the following paragraph at the end of Article 26 :

“ *Recourse may always be had to the summary procedure provided for in Article 29 in the cases referred to in the first paragraph of the present article, if the parties so request.* ”

Article 27.

This article is amended in the same way as Article 26.

Jonkheer VAN EYSINGA wondered whether these amendments, which also concerned the Organisation on Communications and Transit and the International Labour Organisation, might be submitted to those two organisations for approval. He thought that such a course would be specially convenient since the Advisory and Technical Committee on Communications and Transit was at present in session at Geneva. He therefore suggested that the Committee and the Director of the International Labour Office should be asked whether they agreed with the amendments which M. Urrutia had just read.

M. POLITIS supported M. van Eysinga's proposal, provided that a reply could be received within a very short time.

Article 31.

M. FROMAGEOT observed that the drafting of this article gave rise to certain difficulties by reason of the different hypotheses which had to be taken into account. The principle contained in paragraphs 2 and 3 of the article was to the effect that a party which had no judge on the Bench, while the other party was represented in the Court, could appoint a deputy-judge or a judge nominated *ad hoc* belonging to its own nationality, and that if the Court included on the Bench no judge of the nationality of either party, each party could nominate a judge. This principle must be maintained and the system might work normally in ordinary cases.

The question was somewhat more difficult in the following cases. In disputes concerning labour and in those relating to communications and transit special chambers were formed, the composition of which was determined in advance by Articles 26 and 27.

If both parties were represented in these special chambers, the principle of Article 31 was maintained and there was no difficulty. If only one of the parties was represented by a judge of its own nationality, it might be laid down that one of the other judges of the chamber should give up his seat to a deputy-judge or to a judge selected *ad hoc* of the nationality of the other party, and nominated by it in conformity with paragraph 2 of Article 31. It might, however, happen that there would be among the ordinary judges not composing the special chamber a national of the party not represented. In that case it would seem natural for the said ordinary judge to sit in the special chamber instead of a deputy-judge or a judge appointed *ad hoc*. These were the various hypothetical cases which must be taken into account, and which made the drafting of the article somewhat difficult. If the general principle laid down in Article 31 were to apply to Articles 26, 27 and 29, account must be taken of the different cases which might occur. Moreover, the question was not one of substance but purely one of wording.

M. POLITIS asked M. Fromageot if he could make a slight amendment in the wording of the proposal he had submitted yesterday. The proposal appeared to him to be excellent, but M. Fromageot might perhaps be able to take into account the difficulties to which he had just drawn attention.

M. FROMAGEOT explained that the most delicate point was to make it clear that each time that one of the parties was represented in the Court by one of its nationals that national should be convened to sit before recourse was had to a deputy-judge or a judge appointed *ad hoc*.

Mr. ROOT feared that, in giving effect to the considerations developed by M. Fromageot, the Committee would only be augmenting the specifications on points of detail in regard to the Court's work, with the result that the efficiency of the Court would be impaired.

M. FROMAGEOT thought that paragraphs 2 and 3 of Article 31 might be replaced by the following provisions :

“ If the Court includes upon the Bench no judge of the nationality of the parties, each of these may select one of its nationals to sit as a judge. That judge should be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

“ The present provision shall apply in the case of Articles 26, 27 and 29. In such cases the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the party concerned and, failing such, to national judges specially appointed by the parties.

M. FROMAGEOT explained that he used the term “ members of the Court ” in opposition to the term “ national judges ”, which signified judges appointed *ad hoc* in a particular case. Furthermore, the last two paragraphs of Article 31 would, of course, be maintained.

Mr. ROOT expressed certain apprehensions as to the expediency of M. Fromageot's suggestion, the result of which might be to deprive the Court, when sitting in full session, and according to the character of the differences brought before the special chambers, of the ordinary national judges who would be required to sit in one or other of the special chambers. He thought that

the interests of the Court sitting in full session were paramount and he would prefer that the Court itself should be able to decide whether in a particular case the national judge could sit in the special chamber or whether the business of the Court sitting in plenary session should not take precedence over the business of the special chambers. The decision on this point should be left to the discretion of the Court itself.

M. PILOTTI wished to put two definite questions to the President of the Court in connection with the observations submitted by Mr. Root.

He would be glad to know whether there was anything to prevent a national judge who was convened to take his seat in connection with a case before a special chamber, from sitting at the same time on the Court in plenary session. If there were, it would naturally be better not to remove a judge from the Court in order that he might sit in one of the special chambers. The Court would, in such cases, do better to invite the parties to nominate a judge *ad hoc* so as to obviate disturbing the regular working of the whole Court. If, however, no such obstacle existed, the decision regarding the question whether an ordinary judge should sit in one of the special chambers might be left to the discretion of the Court.

M. Pilotti, moreover, wondered whether, in taking account of what had been said regarding the disadvantages of appointments of judges *ad hoc*, it would not be possible to consider the appointment of judges according to the rules laid down for the nomination of the technical assessors who were selected, in conformity with the provisions of Article 27, from a list prepared in advance. That procedure would have the result of modifying the special character of the nominations which were made by the States at the time when the suit was already pending. Each Member of the League would have an opportunity of presenting a list of judges, and the Court would summon the judges *ad hoc* according to their order on that list, as was the case in regard to technical assessors to whom reference had been made. It was on these two points that M. Pilotti wished to consult the President of the Court.

In reply to the questions put to him, M. ANZILOTTI said that, legally, the fact that a judge sat in a special chamber did not constitute any obstacle to his participation in the work of the Court itself. The only obstacle that might exist would be due to the possibility that the sessions of the plenary Court might coincide with those of a special Chamber; but that was a hypothesis which would probably not occur in practice or at any rate very rarely, and the difficulty might easily be overcome by a suitable arrangement as to the hours of hearing. M. Anzilotti thought, therefore, that there was no need to feel any concern at such a possibility.

As to the second question, the President of the Court saw no objection to the appointment of judges *ad hoc* in accordance with the procedure suggested by M. Pilotti. He thought that the preparation in advance of a list of the national judges to be convened to sit on occasion would make the system somewhat less personal in character than it was at present. There were, moreover, of course certain political considerations on which M. Anzilotti did not wish to dwell but which might make the States unwilling to waive their right to appoint the judges *ad hoc* at the time when the case came and to agree instead to nominate them in advance.

M. RUNDSTEIN observed that if it were desired to enunciate a general principle in Article 31, the words: "for the purpose of the preceding provisions" in the fourth paragraph would have to be deleted in order to remove any doubt as to the scope of the provisions of the article.

Jonkheer VAN EYSINGA referred to the suggestion made by M. Pilotti, namely, that the same procedure as that existing for the choice of the technical assessors should be adopted for the appointment of the judges *ad hoc*. As the President of the Court had pointed out, the consequence of that would be to deprive the system of appointing judges *ad hoc* of its special character. M. van Eysinga, however, thought it his duty to draw the Committee's attention to the discussions of the Legal Committee of the Communications and Transit Organisation in which it had been observed that the system of technical assessors, to whom resort had never yet been had, did not afford the best guarantees of efficiency in a special case. The Legal Committee had considered that it would be better, in particular cases, to resort to the much more elastic procedure indicated in Article 50 which enabled the Court at any time to appoint experts to examine a question which required expert investigation or appreciation. It had been found that that procedure was better adapted to the needs of the Court than the system of technical assessors appointed in advance from a special list.

M. PILOTTI remarked that it had been his idea simply to bring to the attention of the Committee the possibility of having the judges *ad hoc* appointed in conformity with the provisions of Article 27 in respect of the technical assessors. He had thought that the procedure might give a better result than the present method of appointing judges *ad hoc*. He had not intended in any way to discuss the utility of the provisions of Articles 26 and 27 in substance.

M. Pilotti contemplated the following drafting for the first two paragraphs of Article 31:

"Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court.

"If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party has the right to require that a judge of its nationality be called to sit on the Bench. That judge shall be chosen in each case in accordance with the rules of procedure contemplated under Article 30, from a list of assessor judges composed of names of which two only would be submitted by each Member of the League of Nations."

Jonkheer VAN EYSINGA did not question the advantages of the proposal made by M. Pilotti, but he thought that the very personal character of the appointment of the judges *ad hoc* had a special purpose and was not allowed for in the procedure contemplated by M. Pilotti. Furthermore, M. van Eysinga thought, with M. Anzilotti, that the proposal to appoint in advance the judges *ad hoc* like the technical assessors might not perhaps, for political reasons, meet with the approval of the Governments.

M. van Eysinga would be glad to examine the proposal submitted by M. Fromageot in writing and he suggested that the discussion should be adjourned until it could be printed and distributed to the members of the Committee.

The Committee agreed.

M. HUBER considered that the system of nomination for the judges *ad hoc* suggested by M. Pilotti would certainly conduce to the efficiency of the Court, but he thought that M. Pilotti's suggestion was already carried out in principle by the provisions of paragraph 2 of Article 31 which laid down that, if there were no deputy-judges belonging to the nationality of a party not represented on the Court, the Court might choose a judge preferably from among persons who had been nominated in conformity with Articles 4 and 5. It would therefore be enough to delete the word "preferably" in order to attain M. Pilotti's object. The choice as judges *ad hoc* of persons nominated as candidates in conformity with the provisions of Articles 4 and 5 would, moreover, afford the necessary guarantees of their ability to discharge the duties of a judge, a point to the importance of which M. Fromageot had already drawn the Committee's attention. It might of course happen in the course of years that one or another of the candidates thus nominated might die, but that was an extremely rare event which should not be allowed to determine the adoption of the principle. The principle already laid down in Article 31 could therefore only be strengthened by the deletion of the word "preferably" in the last sentence of the second paragraph. This would remove the accidental and hazardous element in the appointment of the judges *ad hoc*.

Sir Cecil HURST feared that the deletion of the word "preferably" suggested by M. Huber would, in particular cases, prevent the application of the principle laid down in the provisions of Article 31. The candidates to judgeships in the Court were nominated not by the States, but by national groups, and some of the nominees were not nationals of their country. For example, supposing Siam had nominated as a candidate to a judgeship an English lawyer, the bizarre result might be that, if an Englishman had to be appointed as judge *ad hoc*, it would have to be the candidate nominated by the national group of Siam.

The CHAIRMAN observed that the discussion appeared to have shown that it would be unsafe to go further until the Committee had before it a definite text of M. Fromageot's proposed amendments.

M. ANZILOTTI hoped that it would be possible for the members of the Committee to have before them a complete list of all the amendments that had been adopted, so that they might devote at least half a day to considering them and satisfying themselves that they were consistent with one another and with those provisions of the Statute which had not been amended, before the Committee adopted its report to the Council.

Article 32.

M. POLITIS reminded the Committee that the original draft of this article had been prepared on the assumption that there would only be occasional meetings of the Court. The article provided for an annual indemnity for the judges, plus a grant in respect of the actual performance of their duties. Under the new system of organisation on which the Committee had agreed, all judges would be obliged to be present all the time at The Hague except during their periods of leave; the existing system of remuneration would, therefore, require reconsideration. According to the present wording of Article 32, the judges, under the new system, would logically be entitled to receive pay for every day of their attendance at The Hague, with the exception of leave periods. If, however, the Committee did not accept that interpretation of the article, it must say so specifically.

M. URRUTIA pointed out that Article 32 would, in any case, require amendment since it referred to the fees and travelling allowances of deputy-judges.

M. POLITIS agreed. The Committee had a choice of methods before it; it could either give an interpretation of Article 32 so as to cover the new system or it could introduce some definite new provision.

Jonkheer VAN EYSINGA agreed that the Committee could settle the question raised by M. Politis either by enunciating an interpretation of Article 32 as it stood, or by recommending an amendment to it. It would in any case be necessary to submit either an amendment or a proposal of some sort to the Council in order that the Council might know what to submit to the Assembly on the subject. The Assembly, again, would require to know the probable financial consequences of the modification made in the organisation of the Court as a result of the abolition of the deputy-judges, and the adoption of the principle of obligatory attendance on the part of the ordinary judges. The Committee must, he thought, come to a decision on the material aspect of the question and say quite frankly what remuneration they thought the judges should receive.

M. OSUSKÝ said that, unless it modified the system laid down in Article 32 of the Statute, the Committee would be under no obligation to change that article, since the financial consequences resulting from the adoption of the new system of organisation might be dealt with by means of a resolution, as had been done on previous occasions.

Sir Cecil HURST asked M. van Eysinga, who had on previous occasions acted as Chairman of the Fourth Committee of the Assembly, whether there was not something to be said in favour of a change in the system laid down in Article 32, and whether it would not be desirable, in order to avoid all friction, to give the judges a fixed sum per annum to cover everything.

M. FROMAGEOT thought, if he was not mistaken, that it was not necessary to modify Article 32, which was so drafted that it could be adapted to the system of consolidated pay such as had been suggested by Sir Cecil Hurst, and which M. Fromageot readily accepted. The only amendment to be made in the article appeared to be the omission of paragraph 3.

Jonkheer VAN EYSINGA observed that if the Committee could determine that each judge should receive an annual consolidated salary, the result would be greater certainty in the budget estimates of the Court. It was certain that precise budgetary estimates were always advantageous, so long as the figures were not too high. If the system suggested by Sir Cecil Hurst were adopted and if the judges of the Court were put on the same financial basis as all the other persons occupying permanent posts on the League, it would be necessary to amend the article by the deletion of the third paragraph.

M. van Eysinga thought that M. Politis would find it difficult to arrive at the desired result by an interpretation of the article as it stood and, accordingly, he considered that it would be much better to delete paragraph 3. He would be glad to hear the views of the Chairman of the Supervisory Commission on the question raised by Sir Cecil Hurst.

M. OSUSKÝ said that from the Minutes of the Committee of Jurists which had met at The Hague in 1919, and from those of the First Committee of the first Assembly in 1919, it would be seen that Article 32 had been based on the assumption that it was impossible, as early as 1919, to foresee the number of days on which the Court would sit each year. The system adopted, therefore, had been a very elastic one. If the Committee endorsed the various proposals which had been made for the modification of the Statute, they might have a rather important influence on the system adopted in 1919 in regard to the remuneration of the judges.

In the proposals which it had adopted the Committee had, in the first place, accentuated the disabilities of judges in that it had laid down that they were not to fulfil any other functions. It had originally been contemplated that the judges might fulfil other duties while they were not in attendance at The Hague. Secondly, the Committee had accentuated the necessity for real and effective attendance on the part of the judges at The Hague. In M. Osuský's view it followed that it was essential to establish some system of fixed salaries, and if the Committee intended to do that it would, he thought, be necessary to remodel Article 32 completely.

The CHAIRMAN requested M. Osuský to submit a text for the re-drafting of Article 32, especially taking into account the observations which M. Osuský had himself presented.

M. POLITIS observed that the Committee should first agree on some general principles before asking M. Osuský to draft a text. He would state his personal view on the question. Under the new organisation which the Committee had adopted, it was anticipated that the Court would have seven months' work a year and three months' vacation; there remained two other months, which would be covered by various public holidays, travelling and so forth. The average number of days, therefore, on which the Court might be expected to work would be about 210. That being so, it did not seem to M. Politis that the Committee would be making any great departure from the present system in consolidating the judges' salaries and, therefore, he thought that such a consolidation could be effected without making any amendment to Article 32. The President would, of course, continue to receive a special indemnity.

There were, however, two other observations to be made in this connection. First, some change must be made in the system of travelling allowances. Under the new organisation it would no longer be possible, as had hitherto been the case under paragraph 4, to give the judges travelling allowances to their homes and back to The Hague three times a year. With the new system the judges should receive travelling allowances only once a year. Travelling allowances could not be included in the consolidated pay, since the fares from the seat of the Court to the judges' homes varied according to the nationality of each judge.

Secondly, it had been agreed that judges were to be given special leave of six months every three years. M. Politis wondered whether judges should receive their full salaries or only a reduced salary for such periods of special leave.

The CHAIRMAN asked M. Osuský to take into account the observations submitted by M. Politis.

M. IRO agreed with M. Politis in regard to the principle of a consolidated annual salary for the judges. He thought, however, that M. Politis's second proposal with regard to a reduction in salary for judges during their period of six months' leave would give rise to many complications. He could not accept it.

M. POLITIS replied that that system was adopted in most Civil and other Government Services.

Article 33.

M. URRUTIA considered that the terms of Article 33 had been drafted too precipitately, and would need revision. Article 35 made provision for the case in which a State that was not a Member of the League, being party to a dispute, was to pay contributions towards the expenses of the Court. It followed that not all the expenses of the Court were borne by the League. He was prepared to submit a new text if the Committee agreed.

Sir Cecil HURST recalled that this question had been considered in 1926 at the time of the Conference which had been convened to consider the special conditions which the United States Government had laid down for its participation in the Court. One of those conditions was that the United States Government should contribute a fair share of the expenses of the Court. The Conference had accordingly considered whether or no the wording of Article 33 was consistent with the acceptance of contributions from the United States, and it had been found that such contributions would give rise to no difficulty under the existing practice of the League, since the United States would make its payment in respect of its contribution to the League, and such contributions would constitute what in English public finance were known as an appropriation-in-aid. The sum contributed by the United States would therefore be deducted from the total amount of the expenses of the Court within the wording of Article 33. It had consequently been held that no change was required in the wording of that article.

The CHAIRMAN agreed with M. Urrutia that the wording of Article 33 was dangerous. It was true that the United States Government had offered to pay its contribution to the expenses of the Court, but there might be other States which, being parties to disputes, might make Article 33 a pretext for making no contribution to the expenses at all. They would say that Article 33 sufficiently covered the question of the expenses of the Court. The Chairman thought that the article should therefore either be abolished or should be extended to meet the new circumstances.

M. URRUTIA added that there were certain States which were not Members of the League but which still contributed towards the expenses of the Court. It followed that the Court's expenses were not defrayed entirely by the League. The article might be amended to read that the Council and the Assembly should decide in regard to the payment of the expenses of the Court.

Jonkheer VAN EYSINGA pointed out that Article 32 of the League's Financial Regulations made provision for appropriations-in-aid. Hence the budgeting system of the League was entirely in conformity with this form of revenue, which, for example, figured largely in the budget of the Health Section.

In order to allay the scruples of M. Urrutia, which were apparently shared by the Chairman, M. van Eysinga would suggest that Article 33 of the Statute should be amended to the effect that the expenses of the Court should be borne by the budget of the League of Nations, since the budget would cover all sorts of appropriations-in-aid received from non-Member States. M. van Eysinga reminded the Committee that, in the draft Protocol of 1926, it had not been considered necessary to contemplate a contribution from the United States towards the expenses of the Court, although the Conference had expressed its gratification at the United States Government's offer.

M. OSUSKÝ observed that, from the point of view of the pure doctrine of finance, the case of a State which acceded to the Court was not covered either by Article 33 or by Article 35. Article 35 provided only for *ad hoc* cases and not for that of a State which adhered to the Court. As the present Committee was endeavouring to make a permanent settlement and to establish a sound doctrine, it would perhaps be well to remodel Article 35 as well as Article 33, so as to provide for the case of a State non-Member acceding to the Court.

Articles 34 and 35.

M. URRUTIA said that he had certain observations to offer on these articles, but before formulating any amendments he wished to hear the views of the other members of the Committee.

Article 34 had been drafted in a somewhat different way from Article 14 of the Treaty of Versailles, which was the basis of the article in the Statute. M. Urrutia did not wish to consider the juridical aspects of the question, but only certain practical aspects. The wording of Article 34 implied that the League could not itself be a party to a case before the Court. The League, however, was a juridical international association with a legal and moral personality, and hence M. Urrutia thought that provision should be made for the possibility that the League might have to plead before the Court. If that idea were accepted by his colleagues, he would suggest the addition after the words "Members of the League of Nations" of the words "or the League of Nations itself".

The CHAIRMAN pointed out that Article 35 began by contradicting the terms of Article 34.

M. POLITIS thought that the Committee should pay special attention to the very interesting and delicate question raised by M. Urrutia. It would be necessary to discover whether the

League as a collectivity, that was to say, as an association of States, could be a party to a suit. An illustration was to be found in the Minorities Treaties in which there was a provision by which one of the Principal Powers signatory to those treaties could submit a minorities case to the Hague Court. It was not clear, however, whether the minority State or the Council itself had authority to do this.

There were other cases in which the League might be involved in a suit. For instance, a contract was to be signed between the League and the Swiss Confederation for the exchange of certain lands for the building of the new Secretariat. The Secretary-General would sign that contract on behalf of the League. Though the assumption was a somewhat remote one, and though there was no likelihood of a dispute between the contracting parties, such a dispute might nevertheless arise, and it would have to be decided what Court would be competent to try the case. That hypothesis was not altogether impossible, although of course it was practically certain that any such dispute would be settled by friendly agreement or by resort to arbitration.

M. POLITIS therefore wondered whether it might not be necessary to make some small changes in Article 34, although such changes should be effected with all the discretion required by the delicacy of the question.

M. RAESTAD observed that, in 1920, the question whether the League or the Council could go before the Court had been discussed. The case which had been chiefly considered was that in which the League or the Council would appear before the Court side by side with the State concerned in the case.

The law was now in process of evolution ; the League of Nations or the Council concluded, as a contracting party, international agreements. It was for this reason that M. Raestad agreed with M. Urrutia that an addition was necessary to Article 34 to make provision for the appearance of the League or the Council before the Court, but only as a contracting party, and not at the side of an interested State.

Jonkheer VAN EYSINGA thought the discussion very interesting both from the theoretical point of view and from that of the evolution of international law. There were other cases which would require consideration — cases, for instance, in which the League had entered into an agreement which was not a purely civil contract but which was, in reality, in the nature of an international convention. Conventions existed between the League and certain States with regard to certain institutes, for instance, the agreement with the French Government concerning the Institute of Intellectual Co-operation and that with the Italian Government in regard to the International Institute of Private Law. If it were desired to accord to the League a *jus standi* before the Court, this would also be useful for the interpretation and application of conventions of the type just mentioned. If, as M. Raestad proposed, it was desired to limit the League's power to appear before the Court to cases in which it was a contracting party, it should be clearly stipulated that that power related not only to civil contracts, but also to contracts which had, in reality, a public character.

M. van Eysinga wondered, nevertheless, whether the question of any such amendment to the Statute of the Court, however valuable and necessary to the life of the League that amendment might be, did not fall outside the scope of the present Committee's work.

With regard to the use of the word " only " at the beginning of Article 34, M. van Eysinga recalled that at the Conference of 1927 in regard to the Prize Court, provision had been made by which individuals, as well as States, could plead before the Court. The term " only " therefore, as used in Article 34 of the Statute of the Court, meant that only States and not individuals could be parties to cases before the Court.

M. van Eysinga repeated that personally he thought that M. Urrutia's suggestion fell outside the scope of the Committee's work.

M. GAUS said that it was of course possible to foresee cases in which the League might come before the Court as a party to a case, for instance, the cases cited by M. Politis and M. van Eysinga. In all such cases, the two parties would be on an equal footing. He thought, however, that it would be very difficult to find a suitable wording, especially as it would be necessary to contemplate the possibility of a case being brought before the Court to which the parties were the League on the one hand and a Member of the League on the other hand, a case, for instance, in which there was a divergence between the Council and a State as to the duties and rights of a State as a Member of the League. That would be an altogether different category of dispute from those contemplated by M. Politis and M. van Eysinga, and the Committee would see how difficult it would be to make any exact distinction between these two categories of dispute.

M. POLITIS, in reply to M. Gaus, thought that it would be quite enough to say, in the present circumstances, that the League was entitled to appear before the Court, without determining the cases in which it could be a party. The only object was to ensure that the Court should not be bound by the text of Article 34, which would force it to say that it could not accept the League as a party to a case because the League was not a State. It was all the more necessary to make some mention of the League in Article 34, because of the possible effects of many arbitration treaties which provided for the obligatory competence of the Court in case of dispute. In such cases the Council could not be regarded as having no interest in the

dispute, and therefore it would be natural that it should be entitled to appear before the Court.

M. Politis thought that it would suffice if Article 34 were to read that the Court was open to all the Members of the League, to non-Members of the League, subject to the conditions of Article 35, and to the League itself.

M. RAESTAD, in reply to M. Gaus, said that the proposed alteration to the wording of Article 34 would not create any obligation on the part of the Council to appear before the Court, but would merely give it an opportunity to do so if it so wished. A dispute between a Member State and an organ of the League would not come under the heading of a contract, and he therefore adhered to his proposal that the League should be empowered to be a party only to cases in which it was concerned by virtue of a contract under international law.

M. ITO shared M. Gaus's doubts. It was necessary to consider two classes of case to which the League might be a party. In the first place, there were private cases, such as a dispute relating to the contract concluded on the occasion of the purchase of the necessary land for the construction of the new League buildings. It would hardly be necessary to take a dispute of that kind before the Permanent Court of International Justice. Secondly, there were public disputes, a dispute, for instance, between the Council and a State. M. Ito did not think that it would be prudent to admit, even in principle, that such a case could be brought before the Permanent Court, since many of the Council's actions were of a political nature and it would be dangerous to admit the principle that political cases could be brought before a court of law and could therefore be subject to the control of a judicial body.

The CHAIRMAN thought that the proposal to include the League among the possible parties to cases before the Court, under Article 34, was not related to the question of the competence of the Court. It was a fact that, at the present moment, the League had not the right to appear before the Court. But the criterion of the competence of the League to appear before the Court should be based not on a contract but on the interests of the League. The League obviously could not appear before the Court to defend the interests of one of its Members; that was to say, in a case in which the League was a party it could appear solely in order to defend its own interests and not those of anyone else. The Chairman did not for the moment see how this restriction could be drafted.

M. POLITIS thought that the only question was to determine who were the legal persons who could appear before the Court. As drafted at present the article said that only States could appear and therefore that individuals and associations of States could not appear. His object was to open the gates of the Court to such associations of States, in order that if, at any time, there arose a difference between the League and any State, the Court might not be obliged to say that the League was not competent to appear before it because it was not a State.

Jonkheer VAN EYSINGA agreed with M. Politis. The point raised by M. Politis might be strengthened if it were remembered that the Statute said nothing about the competence of the Court; even Article 36 referred only to disputes between States. M. Gaus's fears were therefore more apparent than real. The only object of the proposal was to open the Court to the League in cases in which the League and a State both desired to have recourse to it.

M. ANZILOTTI pointed out that in addition to the League there were, and there might be, other groups of States which constituted permanent organisations. It would perhaps be rather unsatisfactory to make a special exception in favour of the League. He therefore preferred to maintain the text as it stood, since it did not, in his view, prejudge the question whether an association of States could, in certain circumstances, appear before the Court.

Sir Cecil HURST had not been convinced by the arguments used in favour of the proposed change. The real purpose of the Committee's meeting was to consider what changes were necessary in the Statute. If it admitted that the League was a unit which was competent to come before the Permanent Court, the Committee would be making not merely an amendment in the Statute of the Court but a fundamental change in the constitution of the League. Sir Cecil Hurst doubted whether a change of that sort would commend itself to the generality of the Members of the League.

The purposes for which the League had been founded were in part political and such purposes were absent in respect of other foundations, such as the Institute of Intellectual Co-operation and even the International Labour Office. If the proposed change in the Statute were accepted, the Committee would inevitably be admitting the idea that the League constituted a political unit. Some States would have difficulty in accepting that idea. The League had been defined in England as a better method of conducting the foreign relations of States. If the idea that it was a political unit were accepted, the League would be exposed to the criticism that it was becoming not an association of States but a super-State.

M. Politis and others had cited instances in which it might be useful for the League to be able to appear before the Court. Sir Cecil Hurst was not convinced by these examples. Some of them, for instance, a dispute in regard to the new Secretariat buildings, could be

dealt with by the national tribunals, since a case of that kind would be decided in accordance with national law and not in accordance with international law.

It was of course possible that questions might arise in which what appeared to be a dispute between the League and a State called for a judicial solution. For such cases, however, the method which had been adopted hitherto, that of asking the Court for an advisory opinion, had been found sufficient. Such cases had arisen on three or four occasions and on each occasion the matter had been conveniently submitted to the Court by the method of asking for an advisory opinion. Sir Cecil Hurst could not help wondering whether that method did not provide all the machinery that was required.

On the previous day he had presented certain practical observations to the effect that there would be a very limited time in which to obtain the consent of all the Members of the League to the Protocol containing the changes recommended by the Committee. Would it be safe to present to the States changes which would effect so radical an amendment in the constitution of the League ?

TENTH MEETING,

Held on Friday, March 15th, 1929 at 4.30 p.m.

Chairman : M. SCIALOJA.

Present : All the members of the Committee.

16. Question of the Revision of the Statute of the Permanent Court of International Justice (continuation).

Article 34 (continuation).

M. ANZILOTTI saw no necessity to modify Article 34. Its provisions were in his view intended to exclude individuals and private organisations. The question whether organised groups of States and the League of Nations itself could be parties to a case before the Court was not settled by Article 34 ; it could, he thought, only be settled by the Court when it arose.

If the League possessed a collective personality in international law, Article 34 would not exclude it from appearing before the Court. To refer, however, only to the League in the article would give the idea of an exception, and the possibility for other groups of States to be parties to a case would be seriously prejudiced. Moreover, M. Anzilotti had been struck by the observations of Sir Cecil Hurst. Any mention in the article of the League and of the League alone might be regarded as due to political motives or as an attempt to make the League a super-State, which was legally and politically impossible. For those reasons, therefore, M. Anzilotti was not in favour of any change in Article 34.

Mr. Root thought that in trying to find a means of putting the League in the list of competent suitors, the Committee would be deciding a serious political question which involved placing a very grave construction on the meaning of the Covenant itself. The question had been much discussed during the long controversy concerning the League in the United States of America. Many ardent friends of the League had now taken up a position which would be negatived if the Committee took such action. In those circumstances, Mr. Root was unwilling to run such a risk without a far more thorough examination of the proposal than was at the moment possible. The Committee had not the necessary opportunity at the present juncture for deliberating the matter and for making a thorough study of the question. The problem was of essential importance, but it had only arisen casually. That being so, Mr. Root could not, with the evidence now before him, vote in favour of any change in Article 34. The reputations of all the members of the Committee would suffer if they came to an immediate decision. No pressure had been put upon them to do so. The Council had already approved the present position and the Committee had received no instructions to make so important a change. For those reasons he hoped that the matter would not be further discussed.

M. FROMAGEOT said that the French Government had been one of those which had proposed that the Statute of the Court should be examined in the light of the results of eight years' experience.

In this case no precedent existed and the Committee was therefore examining the question purely *in abstracto*. It had no experience to guide it in proposing a change. The amendment proposed was important. Some people seemed to regard the League as a sort of super-State ; others gave to it the character of an improved organisation for facilitating diplomatic negotiations. The Committee was not in a position to take a decision on this point. Such a discussion would lead to grave and useless controversies ; M. Fromageot felt obliged to oppose any change in Article 34.

Jonkheer VAN EYSINGA said that it was impossible for the Committee to put before the Council a report which had not been almost unanimously adopted. In those circumstances he thought it would be impossible for the Committee to include in its report the amendment proposed by M. Urrutia in view of the divergencies of opinion between the members. He thought, therefore, that no change should be made in Article 34.

He could not, however, altogether agree with the arguments of M. Fromageot, who had maintained that experience had not proved the usefulness of an amendment to Article 34. The League had concluded several contracts under private law and conventions under public law. The mere fact that the League had been able to conclude these agreements proved that it had already a moral entity, and to say that it possessed a *jus standi* before the Court would not, as Sir Cecil Hurst thought, alter the legal status of the League in the least.

M. Anzilotti had maintained that Article 34 only excluded individuals from appearing before the Court, but not States or groups of States. To follow out this argument, the fact of stating openly that the League could be a party in a case brought before the Court could not change the legal situation existing at present.

M. van Eysinga did not, however, consider it desirable to adopt such a course. The practical reasons against doing so were convincing, but the same could not be said of the legal reasons.

M. URRUTIA reminded the Committee that he had at the outset explained that he had had no intention of proposing a definite amendment. His proposal had been made primarily in order to provoke the very useful exchange of views which had now taken place, and which had been recorded in the Minutes. He had found, in the course of the eleven years during which he had worked in connection with the League, that ideas which had been regarded as very revolutionary at the outset were now, little by little, beginning to be accepted. The discussion which had taken place had been most profitable. It was not really a strong argument to say that it was inopportune to raise any particular question. He had had no intention of mentioning any political considerations, or of making any attempt to change the nature of the League. Further, no proposal made by the Committee could come as a surprise, for its report would be most carefully considered and discussed, both by the Council and by the Assembly, and by every State Member who would receive a copy of it. He would not, however, press his proposal.

His real desire had been that the question of the League's personality should be examined. Under Article 34 as now drafted the Permanent Court could not be used as the arbitrator between the League, on the one hand, and a State with which it had a dispute, on the other. The Court had no powers to settle such a dispute.

In conclusion, he would emphasise once more the fact that his proposal had had no political significance. It had been put forward simply in order to make it possible for the League to come before the Court.

M. RUNDSTEIN thought it inopportune to amend Article 34. If it were amended so as to make it possible for the League to come before the Court, Articles 62 and 63 providing for the intervention of States would also have to be amended, and paragraph 3 of Article 40 would have to be altered. He could not, however, agree to any such wide alterations of the Statute.

The CHAIRMAN agreed that no amendment should be made in Article 34. He would, however, take this opportunity to urge that merely because a proposal was new the Committee should not take the view that it must not be discussed. In his opinion, the particular question which had arisen was riper for treatment than some might imagine. This had been made clear by M. Anzilotti. The League had concluded several arbitration treaties, which meant that it had the power to set up an arbitrator; that arbitrator had so far been the Council. While the matter was, therefore, approaching maturity, it had not yet reached it, but, in a year this might prove to be the case.

With regard to the actual text of Article 34, he thought the English wording more accurate than the French, which contained the expression "se présenter", which might be applied not only to a party to a case but also to witnesses. He thought, therefore, that the French text should be made to conform more accurately to the English.

M. POLITIS agreed, but urged that the definite article "les" should be omitted from the first phrase: "Seuls, les Etats ou les Membres de la Société des Nations".

The CHAIRMAN disagreed. By the provisions of Article 35, the Court was open to Members of the League and also to States mentioned in the Annex to the Covenant.

M. FROMAGEOT agreed with the Chairman in thinking that the French text of Article 34 was not so accurate as the English. The phrase in question might, for example, read as follows: "Seuls, des Etats ou des Membres peuvent être parties en cause".

The Committee decided to entrust the revision of the French text of Article 34 to the Drafting Committee.

Article 35.

M. URRUTIA made certain general observations regarding the drafting of this article.

The CHAIRMAN, in reply to one point raised by M. Urrutia, said that all States were mentioned in the Annex of the Covenant, but they were not all Members of the League.

M. URRUTIA was satisfied with this explanation. With regard, however, to the conditions under which the Court should be open to other States and which, by the terms of Article 35, had to be laid down by the Council, he would point out that the Council had, in May 1922, fulfilled this task and drawn up the necessary regulations.

The CHAIRMAN thought there was no necessity to amend the text of this paragraph of the article. With reference, however, to the final paragraph, it would be desirable to say that States non-Members must contribute towards the expenses of the Court in the same proportion as States Members of the League.

Article 36.

M. POLITIS drew attention to the fact that in sub-paragraphs *c* and *d* of paragraph 2 of Article 36 the word "obligation" was used in the English text and the word "engagement" in the French text. Would it not be better to bring the French text into conformity with the English text in order to remove any possible doubt as to the character and extent of the obligation?

M. GAUS, though he agreed with M. Politis as to the desirability of bringing the texts into agreement, thought it would be dangerous to make any amendment. The words used were in each case those which had been embodied in the Covenant of the League. Article 36 of the Statute was referred to in many arbitration treaties and certain misunderstandings might arise if the text were amended.

Sir Cecil HURST asked whether M. Politis thought that the amendment which he proposed would in any way affect the contractual obligations of the States which had signed the Protocol.

M. POLITIS replied in the negative. The amendment which he suggested would, however, remove a possible ambiguity.

The CHAIRMAN pointed out that it was impossible to amend the text of the Covenant and that it was, therefore, hardly necessary to amend the text of Article 36. The words used in that article had, in a sense, become official.

The Committee decided to leave the text as it stood.

Article 37.

No observations.

Article 38.

Sir Cecil HURST pointed out that there was no equivalent expression in the French text of paragraph 4 of Article 38 for the words "of the various nations" in the English text.

M. ANZILOTTI said that in the Italian text there were words corresponding with the additional words in the English text.

The Committee decided to insert in the French text the words "des diverses nations" in order to bring it into literal conformity with the English text.

Article 39.

M. POLITIS suggested that in the last paragraph the expression "at the request of the parties" should be amended to read "at the request of any party" ("de toute partie").

M. ANZILOTTI said that the paragraph had been interpreted by the Court, in the sense of the amendment proposed by M. Politis. It was desirable, in his opinion, to amend the text.

M. RAESTAD drew attention to the fact that different words were used in paragraphs 1 and 2 to describe the awards of the Court. In paragraph 1 the word "judgment" ("jugement") was used, while in paragraph 2 the word "decision" ("arrêt") was employed. Why should not the same word be used in each case?

M. ANZILOTTI said that the word "decision" ("arrêt") was used by the Court itself.

M. FROMAGEOT wondered whether it was really necessary to make these amendments. It did not seem that any difficulty had arisen in such matters.

In French legal terminology the word "jugement" referred to the decision of a tribunal and the word "arrêt" to the decision of a Court. The word "arrêt" was undoubtedly more appropriate in the case of the Permanent Court of International Justice.

The CHAIRMAN did not think it necessary to make any amendment in order to cover this purely textual point.

The Committee agreed.

Article 40.

M. RAESTAD pointed out that there was a slight discrepancy between paragraph 2 of Article 40 of the Statute and Article 36 of the revised Rules of Court. Paragraph 2 of Article 40 referred only to the communication of an application, whereas Article 36 referred to the communication of special agreements or applications.

M. ANZILOTTI pointed out that in certain respects the Rules of Court were to be regarded as supplementing and completing the Statute. There were many cases in which additions such as that to which M. Raestad had referred would be discovered. It would be necessary to make a very considerable number of amendments and corrections if it were desired to bring the two documents into strict conformity.

The CHAIRMAN said that, in his opinion, the articles of the Statute which dealt with mere questions of procedure might be eliminated as being out of place in this document. He did not think any amendment of the present article was necessary.

Agreed.

Article 41.

The Committee agreed to add the words " of the League of Nations " (de la Société des Nations) after the word " Council ".

M. HUBER said that the provisional measures referred to in Article 41 had been, on two occasions, taken by the President of the Court, namely, in the Chinese-Belgian dispute and in the dispute between Poland and Germany regarding minorities. No difficulty had arisen in the application of those provisions and, in the opinion of the Court, the article in question was sufficiently elastic. Experience had not shown that any amendment was necessary and such amendment might lead to an extensive discussion.

M. POLITIS enquired whether there was any reference in the Statute to the powers of the President.

M. ANZILOTTI replied in the negative. The powers of the President were dealt with in Article 57 of the Rules of Court.

M. POLITIS asked whether it would not be better to insert the provisions of Article 57 of the Rules of Court in the Statute. The provisional measures which might be taken by the President when the Court was not sitting might be of considerable importance.

M. ANZILOTTI said that Article 57, like several other articles of the Rules, had been drafted to meet an actual necessity. At the time when the Rules had been drawn up in 1922 it had been necessary, in virtue, moreover, of Article 30 of the Statute, to give the President certain powers in the name of the Court, when the latter was not in session. Quite a number of the articles in the Rules carried out this idea.

M. FROMAGEOT said he thought that the question of the provisional measures to be taken by the President was too delicate a matter to be made the subject of an amendment.

The CHAIRMAN said that the application of such measures would not in any case be an obligation upon the President. The measures would be taken at his discretion.

M. FROMAGEOT objected that there were certain cases in which the President might with advantage consult his colleagues before deciding whether such measures should be taken. It was necessary to act in this matter with great prudence since many treaties made express provision for provisional measures. He thought it would be better to leave things as they were.

M. ANZILOTTI recalled once more the fact that Article 57 of the Rules of Court had been drawn up at a time when it had been thought that the Court would only sit for one month in the year. The need for action by the President would now become increasingly rare.

The CHAIRMAN noted that Article 41 provided that the Court and not the President should take provisional measures.

M. ANZILOTTI said that the Court had felt it necessary to provide in its Rules for action by the President in the intervals between the sessions of the Court.

M. FROMAGEOT begged to insist on this point: It was not desirable to make amendments regarding an important question if those amendments might be dangerous.

The CHAIRMAN pointed out that, in the present instance, the Committee had as a precedent for such an amendment the Rules of Court which had been successfully applied in practice.

M. GAUS said that Article 41 played an important role in many treaties already in force. The amendment of the article might therefore raise important questions and it would almost certainly give rise to misunderstandings.

Jonkheer VAN EYSINGA said he quite appreciated that the question under discussion was extremely important. He felt that there should be in the Statute itself some basis for the discretionary action of the President. He fully realised, however, the force of the arguments put forward by M. Fromageot. Would it not be possible to solve the difficulty by adding a provision to Article 30 authorising the Court to include in its Rules provisions to cover cases in which the Court was not in session?

M. POLITIS said he had not advocated the proposed amendment without due reflection. He had in mind a case in which provisional measures had actually been taken and he had been asked by his own Government whether it was bound to respect the orders of the President in such cases, in view of the fact that there was no reference to any such obligation in the Statute. Such a question gave cause for reflection. Should a case occur in which important

political issues were involved, and should a critical situation arise, the role of the President might be extremely difficult and delicate. He would not be fulfilling his duty if he did not venture to take provisional measures. The question arose whether the orders of the President, in such a case, had the force of a decision of the Court.

The Council of the League might be called upon to act in this matter under paragraph 4 of Article 13 of the Covenant and it might thereby be placed in a difficult position. One of the parties might plead that the action of the President, being based on the Rules of Procedure of the Court, had the same effect as a decision of the Court, whereas the validity of the action of the President might be questioned by the other party on the ground that it was not covered by the Statute. If, in such circumstances, one of the parties asked for an execution of the orders of the President, the Council might be embarrassed both in practice and from the legal point of view. Was it preferable, in view of these difficulties, to leave the matter in doubt or to remove any possible ambiguity by an amendment of Article 41? He would suggest that the attention of the Council might be drawn to the matter.

M. ANZILOTTI said that he himself had certain doubts as to the constitutional character of the powers attributed to the President. It seemed to him, however, that, if the Court were to be a permanent institution although it was not always in session, it must always be able to take the necessary measures to ensure its uninterrupted working; from this point of view, the powers given to the President by the provisions of the rules might be inferred from the very nature and constitution of the Court. For the last seven years the existing rules had worked without difficulty. Was not that fact in itself a sufficient justification for their further application? He would again point out that the question had lost some of its previous importance, owing to the fact that the Court was now more continuously in session.

M. FROMAGEOT again represented that Article 41 was closely bound up with existing treaties. Its amendment would undoubtedly affect those treaties, and might lead to a discussion regarding them. He thought that it might be left to the rules of procedure of the Court to regulate such matters, and that it would be unwise to modify the Statute. Such provisional measures as were taken would be taken on the responsibility of the Court, acting in accordance with such rules as the Court considered it desirable to establish.

Jonkheer VAN EYSINGA pointed out that the taking of provisional measures was not the only case in which the President might be called upon to take action in the intervals between the sessions of the Court. Quite a number of duties devolved upon him when the Court was not sitting. He quite appreciated the scruples of M. Politis, but he would again suggest that the difficulty might be overcome by referring in Article 30 to such duties as the President might be called upon to perform between the sessions of the Court. Such a reference would afford a legal justification for the provisions laid down in the Rules of Court.

M. POLITIS insisted that it was essential to know what was the exact validity of such provisions, particularly in cases where the Statute and the Rules of Court did not exactly correspond.

M. RAESTAD urged that Article 41 and Article 30 of the Statute should be read together. If a sufficiently wide interpretation were given to Article 30, that article might be regarded as conferring upon the Court the necessary legal authority to make such rules as were necessary for the discharge of its duties.

Mr. ROOR agreed with M. Raestad. In his opinion, measures taken by the President differed from a judgment or order. The parties to a case, when they submitted their controversy to the Court, might be regarded as having come under an obligation not to destroy the subject matter of the controversy or in any way to anticipate the judgment of the Court by action of their own. Such an obligation was implied in their acceptance of the jurisdiction of the Court.

Under Article 41 of the Statute, the Court would merely indicate what the duty of the parties required and what action was necessary if the parties conformed with the obligations involved by their submission to the Court. The indication of such obligations was not to be regarded as a judgment to be enforced. The Court, or its President, merely indicated what was required, and a refusal to comply with such a requirement would naturally be placed upon record. The Court in its final judgment would have to consider whether the indications given by the President had been a correct expression of the obligations of the parties. It was the duty of the President to indicate the obligations of the parties, but it was left to the will of the parties to act upon such indication. The President merely intimated what, as President of the Court, he considered to be their duty.

The CHAIRMAN concluded from the discussion that it was undesirable to amend Article 41. It should, however, be recognised that Article 30 empowered the Court to decide what action the President might take, and those indications were given in the Rules of Court. The Rules of Court thus acquired a legal basis under Article 30.

The Committee agreed.

Article 42.

M. ANZILOTTI said that the Court had frequently noted a tendency to confuse the duties of agents and of counsel in cases brought before the Court, a fact which might well give rise to certain inconveniences.

Sir Cecil HURST asked whether this meant that the same person should not fulfil both duties.

M. ANZILOTTI said there was no objection to an agent and a counsel being the same person, but the Governments should be reminded that the duties of the agent and those of counsel were different.

Article 43.

No observations.

Article 44.

No observations.

Article 45.

M. RUNDSTEIN drew attention to a divergence between the French and English texts. The English expression "if both were absent" did not correspond to the French expression "en cas d'empêchement".

The CHAIRMAN said he thought the French text was more in conformity with the intention of the article.

M. ANZILOTTI agreed. The Court had adopted the rule that its President might not sit as President if he were a national of one of the parties to the dispute. He might, however, sit as judge, and, hence, he would be present although he would be unable to be President.

Sir Cecil HURST said he would find an English expression to correspond with the French text.

Articles 46 to 50.

No observations.

Article 51.

The CHAIRMAN asked whether the French word "utiles" was correctly translated by the English word "relevant".

M. FROMAGEOT said there was a slight discrepancy, but, in practice, the two texts were identical in meaning.

Articles 52 to 54.

No observations.

Article 55.

M. Politis asked whether, in accordance with this article, there existed an obligation on the part of a judge to vote upon a decision of the Court. If no such obligation existed, was it not desirable to intimate that it was the duty of a judge to vote and not to abstain from voting, when the Court took its decision?

M. ANZILOTTI said that this question had been discussed on several occasions by the Court. In general, it had been admitted that a judge, while he might abstain from voting on secondary questions, could only do so if he expressed his opinion regarding these questions which the Court was called upon to decide. In his view, abstention was hardly compatible with the duties of a judge.

M. HUBER said he thought it was self-evident that abstention in such cases was not consistent with the duty of a judge.

M. FROMAGEOT agreed. It was not correct for a judge to abstain from voting. Was it necessary, however, definitely to say so? Could it be said in the Statute that a judge should conscientiously fulfil his duties?

Articles 56 and 57.

Sir Cecil HURST said that he had a proposal to make on Articles 56 and 57. It might be thought that his proposal touched upon questions which affected the internal working of the Court. If the President and Vice-President of the Court took that view, he would withdraw his proposal, as it was not his intention to introduce into the Statute amendments which might affect the internal procedure of the Court.

He did not, in making his proposal, intend to raise again the question of dissentient opinions which had been discussed at the previous meeting, though his proposal had some connection with that question.

Under Articles 56 and 57 it was laid down that dissentient judges were entitled to deliver a separate opinion. The inference from the text was that a judge who concurred in the views of the majority had no right to deliver a separate opinion. Was that arrangement altogether satisfactory? From a long experience and careful reading over many years of the judgments of the Court of Arbitration at The Hague, he had come to the conclusion that these judgments were excessively long, owing to the fact that they had necessarily to embody the opinions of all the judges who concurred in the opinion. The result was a certain weakness in the judgments. They tended to take the form of a compromise, and to combine the views of judges who might

have reached the same conclusions upon entirely different grounds. Was it not desirable to give to the judges who agreed with the majority decision the right to express their individual opinions? Such an arrangement would make it possible to publish more concise and more effective judgments, and would, incidentally, help to build up rules of international law. This end would be secured by following the practice adopted in Great Britain. The decision of the Court and its reasons would be given in one document, and the views of the judges who participated in it would be embodied in another document.

The articles, if amended in accordance with his proposal, would read, as follows :

“ 56. The judgment shall state the decision of the Court. It shall be accompanied by a statement of the reasons on which it is based.

“ 57. If the judgment does not represent in whole or in part a unanimous opinion of the judges, it shall be open to any judge or judges not in agreement with the statement of reasons or dissenting from the decision to frame a statement embodying their view as to the correct decision and the reasons therefor.

M. ANZILOTTI said that the Court already followed in practice the procedure described by Sir Cecil Hurst. In many cases so-called dissentient opinions really tended towards the conclusion which had been reached by the Court. The Statute had been interpreted very widely in this respect, and the judges who took part in a majority decision were allowed to express their views. The Court would not, therefore, have any difficulty in accepting the proposal of Sir Cecil Hurst. Did Sir Cecil Hurst, however, suggest that the decision should first be announced, and that it should be followed by a statement of reasons? This system certainly had advantages. M. Anzilotti thought, however, that it should be left to the rules of Court to determine the way in which the decision of the Court would be presented.

M. FROMAGEOT also thought that the judgments of the Court were too long, but he did not think that the proposal of Sir Cecil Hurst would tend to abbreviate or lighten them. Certain judges might desire to add what had been said and written on a question and to give their own line of reasoning. It did not seem that this should be encouraged. The object to be achieved was a concise and synthetic judgment, and not a scientific dissertation. The decision should be brief, and contain only the logical series of reasons on which it was based.

He was prepared to vote for the text as it stood, although, as had been seen, he was not personally in favour of the system of dissentient opinions at present in force under the existing Statute. It would be difficult, moreover, for him to encourage them.

Sir Cecil HURST said that the observations of M. Fromageot were arguments in favour of the proposal which he had himself put forward. He desired that the judgments of the Court should be concise and clear, and, in order to secure that object, he desired to dissociate them from the individual views and arguments of the judges. A judgment under the present system had frequently to embody several views, and this arrangement gave to the judgments an appearance of weakness and made them unnecessarily long.

The Committee decided that no amendment should be made to Articles 56 and 57

Articles 58 to 63.

No observations.

ELEVENTH MEETING.

Held on Saturday, March 16th, 1929 at 10 a.m.

Charman : M. SCIALOJA.

Present : All the Members of the Committee.

17. Procedure for Advisory Opinions and Question of the Transfer to the Statute of Certain Provisions of the Rules of Court.

Jonkheer VAN EYSINGA wished to draw the Committee's attention to a question which had not yet been examined, because it had no direct connection with any of the articles of the Statute, but which was, nevertheless, of direct interest to the work of the Committee.

The business of the Court consisted of two quite separate operations : first, the settlement by judgment of disputes brought before it and, second, the framing of any advisory opinions for which it might be asked.

In its present form the Statute of the Court referred to only one of these operations, that was to say, decisions rendered in the form of a judgment. Nothing was said in the Statute in regard to the method of pronouncing advisory opinions.

Some months previously M. Hammarskjöld had recalled in a very interesting article published in the *Revue de droit international et de législation comparée* the reasons for which the Statute of 1920 made no mention of advisory opinions. The Committee of Jurists for the preparation of a draft Statute had made provision for certain clauses concerning advisory opinions, but in consequence of the discussions in the Assembly the articles in the draft relative to advisory opinions had been omitted. That line of action had presented the advantage of leaving the Court entirely free itself to fix the rules to be applied in regard to advisory opinions.

It was true that the 1926 draft Protocol contained a provision, the object of which was to confer upon an article in the Rules of Court, in regard to advisory opinions, the same force as it would have had if it had been embodied in the Statute itself. The article in question was No. 3 of the Protocol, which prescribed that the Court should deliver its advisory opinions in open court, as had been requested by the United States in the fifth reservation of the United States Senate.

Apart, however, from that isolated provision in the 1926 draft Protocol, the procedure in respect of advisory opinions was regulated solely by the provisions of the Rules of Court, and M. van Eysinga thought that three or four of those provisions would be better placed, and should legally be placed, in the Statute itself. He did not fail to recognise that in the past it had been necessary for the Court itself to prepare a form of procedure in this matter, and he had no intention whatever of criticising what had been done up to the present.

M. van Eysinga's only desire was to examine now the legal situation, and he wondered whether many of the provisions contained in the Rules should not be transferred to the Statute. He referred as an example to paragraph 2 of Article 71, which provided for an extensive application of Article 31 of the Statute, and which accordingly should appear in the Statute and not in the Rules. There was ground even for asking whether the *de facto* obligation to prescribe this provision had not led the Court to legislate *ultra vires*. Article 72 of the Rules gave the details as to the procedure to be observed by the Council and the Assembly when applying for an advisory opinion, and on this point, again, it might be asked whether it would not be wise to insert in the Statute itself a provision similar to that contained in Article 40 relative to the introduction of contentious cases before the Court.

M. van Eysinga thought, therefore, that if the Committee agreed with him on the principle which he had just, enunciated, it would be advisible to review Articles 71 to 74 of the Rules with a view to deciding which, if any, of their provisions should be transferred to the Statute.

M. van Eysinga repeated that one of these provisions would in any case be inserted in the Protocol in consequence of the United States reservations, and would thus receive the same force as if it appeared in the text of the Statute. He thought, furthermore, that the need to safeguard the Court's liberty, which, perhaps had been felt in 1920, had ceased to exist at the present time when, as a result of several years' activity, it was possible to form an accurate idea of the working of the procedure in respect of advisory opinions. As only certain provisions would be included in the text of the Statute, the liberty of the Court as regards the rest of its procedure would remain intact.

M. van Eysinga would be glad if the Committee would make a pronouncement on this question.

The CHAIRMAN requested M. Anzilotti, President of the Court, to give the Committee the opinion of the Court on the suggestion submitted by M. van Eysinga.

M. ANZILOTTI did not think that the Court would have any objection to make to the transfer of certain provisions in the Rules to the text of the Statute. Although he had not as yet formed any very definite opinion on the necessity for such a modification, he could say on behalf of M. Huber and of himself, at any rate, that they had no objection to make. He would merely remind the Committee that the Court had been obliged itself to regulate this question, since the Statute with which it had been presented contained no provision on the matter.

M. FROMAGEOT felt that although the Court had itself quite justifiably regulated the procedure in respect of advisory opinions, because the Statute itself made no mention of the question, it would, nevertheless, now be desirable, as M. van Eysinga had proposed, to insert the essential provisions relative to that procedure in the Statute, which was their legal place.

M. GAUS supported M. van Eysinga and M. Fromageot's view. He thought it quite essential to incorporate certain articles of the Rules in the Statute. He was thinking in particular of Article 72 of the Rules relative to the procedure for making an application for an advisory opinion. That provision implied a decision as to the competence of the Council of the League and of the Assembly, and should consequently be dealt with in the Statute itself.

M. RAESTAD had no objection in principle to the suggestions which had been put forward, but he thought that the provisions of the Rules went into far greater detail than was required in the articles to be introduced into the Statute. He mentioned, for instance, the disproportion in the articles to be introduced into the Statute and the text of Article 73 of the Rules, dealing with the notification of applications for an advisory opinion. He had therefore no objection to make on the point of substance, but thought that the Committee should consider whether it was really necessary to include in the Statute everything that was contained in the Rules.

Jonkheer VAN EYSINGA explained that he had had no intention of proposing any amendment to the Rules. He merely suggested that the Drafting Committee, which would, no doubt, be appointed that day, should examine in principle which were the provisions in the Rules that might be transferred to the Statute without in any way handicapping the freedom of the Court as regards the remainder of the Rules. The Committee would, he thought, be going too far if it began to discuss the text of the Rules, and for that reason he suggested that the whole question should be submitted to a Drafting Committee for examination.

M. IRO, before giving an opinion on the proposal which had been made, wished to know whether any of those members of the Committee who had been members of the Committee which had been instructed to prepare the draft Statute could indicate the reasons for which the articles in the draft Statute relative to advisory opinions had been deleted by the 1920 Assembly. If those reasons were good and sound, the Committee was bound to take them into account.

M. HUBER said that he had been a member of the Third Committee of the first Assembly, and he recollected that the reasons for which it had been decided to delete the articles in the draft Statute relative to advisory opinions had been of a general nature. There was at that time no experience of the question, and it had been desired not to hamper the future business of the Court by provisions the full scope of which it was impossible to foresee.

Now that the Court had acquired an experience covering several years, and now that a sort of procedure had been established by the Court, there was no obstacle to what he might call a "codification" of that experience.

M. FROMAGEOT pointed out that the hope that the United States would accede to the Protocol of the Court was a special reason for inserting in the text of the Statute the provisions in the Rules relative to procedure in respect of advisory opinions. In this respect, also the situation differed from that existing eight years previously. As the United States had made one of the provisions relative to advisory opinions a condition for its accession to the Protocol, it was desirable, when meeting the wishes of the United States, to insert in the Statute the important provisions bearing on this point.

The CHAIRMAN, though he had not been a member of the Committee appointed to draft the original Statute, thought nevertheless that he should point out that in 1920 the institution of advisory opinions had been considered solely as a right held by the Council and the Assembly, but had not been examined as part of the business of the Court.

Jonkheer VAN EYSINGA thought that there was a slight misunderstanding. Article 3 of the 1926 Protocol relative to the publicity of hearings in regard to advisory opinions would have the effect, once the Protocol was adopted, of giving part of the Rules the same force as a provision of the Statute. That had no connection with the procedure itself, but it would be well to insert in the text of the Statute all the important provisions bearing on this point, a suggestion which M. Fromageot also had made.

M. PILOTTI pointed out that it was not only the principle of the publicity of the audiences but that of the discussion in open court which should be introduced into the Statute of the Court in conformity with the 1926 Protocol.

Furthermore, it was probable that Mr. Root would ask that the principle that all the parties concerned should be heard should also be laid down in a clause in the Statute.

M. URRUTIA called the Committee's attention to the desirability of giving the Drafting Committee instructions to see whether any other provisions in the Rules of the Court, in addition to those which had been mentioned in regard to advisory opinions, might not also be embodied in the Statute. For instance, the passage in Article 64 of the Rules indicating the time from which an award was considered as having binding force contained a materially legal provision which would be more appropriately placed in the Statute itself. Furthermore, Article 58 of the Statute referred to the signature of the judgment by the President and by the Registrar. That was a provision which should rather be included in the Rules. Again, the provision laid down in Article 74 of the Rules to the effect that an advisory opinion must be heard in open Court, was certainly one of those which should be transferred to the Statute.

All these various questions might be referred, as he had proposed, to the Drafting Committee.

Agreed.

18. Appointment of Rapporteurs and of a Drafting Committee.

The CHAIRMAN requested the Committee to nominate the members of the Drafting Committee.

Jonkheer VAN EYSINGA, after expressing his regret that the Chairman of the Committee would be obliged to leave for Italy before the Committee had finished its work, thought that, in nominating the members of the Drafting Committee account should be taken of the two principal questions which had been discussed by the Committee.

The two main subjects which the Committee had considered had been :

- (1) The examination of Mr. Kellogg's letter and of Mr. Root's proposal with the object of submitting to the Council a report containing a revised draft of the 1926 Protocol together with a final amendment of Article 4 of the Protocol :

(2) The preparation of a list of all amendments to the various articles of the Statute and of the recommendations to be proposed.

M. van Eysinga thought that it would be most appropriate if a Rapporteur were appointed for each of these questions. He therefore proposed :

(1) To ask Sir Cecil Hurst to prepare, in close collaboration with Mr. Root, a report to be submitted to the Council and the revised draft of the 1926 Protocol ;

(2) To appoint Mr. Fromageot and M. Politis Rapporteurs for the second question.

Furthermore it would be necessary to appoint a small Committee to revise all the articles adopted hitherto as well as the provisions in the Rules which might be transferred to the Statute. He suggested that this small Committee should consist of M. Raestad, M. Urrutia, M. Gaus and Sir Cecil Hurst, and he further requested the President of the Court and Mr. Jessup to take part in the work of the Committee. He particularly regretted that he could not propose the excellent Rapporteur of 1926, M. Pilotti, since the latter, being obliged to leave, could not guarantee his collaboration until the close of the work of the Committee.

M. URRUTIA assumed that M. van Eysinga, as Vice-Chairman of the Committee, would of course take part in the work of the small Committee.

The Committee adopted the proposals of M. van Eysinga and M. Urrutia.

19. Question of the Revision of the Statute of the Permanent Court of International Justice (continuation).

Articles 26 and 27 : Observations of the International Labour Office and of the Advisory and Technical Committee for Communications and Transit.

The CHAIRMAN put before the Committee the communications which had reached the Secretariat regarding the amendments proposed to Articles 26 and 27 of the Statute.

1. The Director of the International Labour Office had stated verbally that the competent department of the Office had no objection to make to the adoption of the amendments proposed by the Committee to the text of Articles 26 and 27 of the Statute.

2. The Advisory and Technical Committee on Communications and Transit had forwarded the following resolution to the Secretariat :

“ The Advisory and Technical Committee for Communications and Transit, having been informed that work is at present proceeding in connection with a possible revision of the Statute of the Permanent Court of International Justice, considers it necessary to draw attention to the following point :

“ Article 27 of the Statute of the Permanent Court of International Justice lays down that the Court shall hear and determine cases relating to transit and communications under the special conditions described in that article. This article makes provision for the hearing of cases by a special chamber, and for the assistance of technical assessors.

“ The Advisory and Technical Committee feels that, in the interests of the satisfactory settlement of communications disputes, it would be desirable purely and simply for the ordinary procedure of the Court to be applied in the case of such disputes.

“ Although the Court has had laid before it a number of cases coming within the scope of Article 27, it has hitherto never resorted to the special chamber provided for in that article. Moreover, no similar arrangement exists for the settlement of any disputes of an economic character which may be laid before the Court under the Conventions relating to the Simplification of Customs Formalities, Import and Export Prohibitions, etc. It may, moreover, be very difficult to decide what precisely are the categories of disputes that come under Article 27, as distinct from disputes of an economic character, or disputes the settlement of which involves consideration of general juridical questions outside the domain of communications.

“ Nor has any use been made of the other option allowed under Article 27, namely, the addition of technical assessors to the Court. The considerations set out in the preceding paragraph also apply to this provision of Article 27.

“ In so far as disputes regarding communications call for the solution of juridical questions, it is desirable that, except in urgent cases necessitating the application of the summary procedure, the authority called upon to render a decision should be the Court hearing and determining such disputes *in pleno*, since juridical questions relating to communications raise problems which it is difficult to isolate from the law as a whole. When these disputes require an examination of technical questions, the latter are always of so highly specialised a character that any resort to assessors, whose names appear on a short list prepared in advance, is not at all likely to afford the Court any real assistance. In such cases the Court can obtain, in each instance, the necessary technical assistance only through the much more elastic procedure indicated in Article 50 of the Statute.

“ If the questions raised in Article 27 could be regarded merely as questions affecting the internal organisation of the Court, the Advisory and Technical Committee would naturally think it unnecessary to give any opinion whatever on this matter ; but seeing that, apart from labour disputes, no special procedure has been provided except in the case of disputes relating to communications and transit, it would appear obvious that the

intention was to lay stress on the special character of these disputes. As an advisory organ of the League of Nations on questions of communications and transit, the Advisory and Technical Committee accordingly thinks it desirable to put forward the present observations.

“ Alternatively, it would at all events be desirable, if the special chamber provided for in Article 27 is retained, to remove certain difficulties which may arise in connection with this article, particularly as regards the summary procedure and to allow the parties, without the possibility of opposition, to choose, should they so desire, the procedure before the Chamber of Summary Procedure even for disputes covered by Article 27. ”

Interpretation of Articles 5 and 31 of the Statute, and proposed Amendment to Article 23.

Sir Cecil Hurst wished, before the general discussion on the revision of the Statute closed, to draw attention to three questions which he thought should be examined by the Committee. Only one would necessitate a possible amendment. The others concerned the interpretation to be given to two articles of the Statute.

1. Sir Cecil Hurst would refer first to Article 5 of the Statute, and desired to know what interpretation should be put upon this provision in cases when, as had recently occurred, several members of the Court had to be replaced before the expiration of their term of office. Although Article 14 referred back to Article 5, the text of this article, more particularly of paragraph 2, had been drafted rather with a view to securing the complete renewal of the Court than isolated appointments.

It might well be asked what would be the number of candidates to be submitted by the national groups if a vacancy was followed by another before the submission of the names in accordance with Article 5 had taken place? If two vacancies occurred, would each group submit four candidates, that was to say, double the number of posts to be filled, as had occurred in a recent case, or should not each vacancy be dealt with independently of the other?

If ever the regrettable case occurred of three members of the Court leaving it at short intervals, would the national groups then be in order in submitting six candidates, or would they be bound by the maximum of four candidates laid down in paragraph 2 of Article 5?

Sir Cecil Hurst wished to express no opinion as to the usefulness or necessity of making a possible amendment to the text of the Statute. He desired simply that the Committee should at any rate achieve a unanimous interpretation of this provision in order that the procedure to be followed in the future should be clearly defined.

Personally, Sir Cecil Hurst took the view that it would be preferable to deal with each vacancy as an isolated case to which the provisions of Article 5 would be applied independently of any vacancy which might subsequently occur. If the Committee called to mind the possibility that those members of the Court who might have to be replaced might belong to nations or civilisations entirely different in character, they should also note that it would be incorrect to draw up a list of the candidates to replace them according to the same procedure as that followed with regard to the complete renewal of the Court, i.e., a maximum of four candidates per national group.

2. Sir Cecil Hurst wished to know the opinion of the Committee on the interpretation to be given to the text of paragraph 2 of Article 31 in so far as the British Empire was concerned.

The British Empire was a political unit of an exceptional kind. One of the consequences of its peculiar legal structure was the fact that some British subjects lawfully possessed two nationalities — general nationality of the British Empire and also the citizenship of a particular self-governing member of the Empire to which they belonged.

It was true that Great Britain and the Dominions were separate Members of the League of Nations, and Sir Cecil Hurst wished to know whether everyone was agreed to recognise that Article 31, in using the word “nationality”, used it in the same sense as “ressortissant” in Article 27. Canada, for example, would probably not agree to consider that she was represented on the Court by a judge of her own nationality, owing to the sole fact that the Court comprised an English judge among its members.

Sir Cecil Hurst did not think it necessary to make an actual amendment to the text of Article 31, but he wished to know what interpretation would be given to this provision.

All that was really necessary, he thought, was to co-ordinate the practice of the Court and that of the Council of the League. On the Council the Dominions were represented as separate Members of the League. India, for example, had the right to be represented on the Council during the discussion of a question affecting India despite the fact that a British member sat upon it.

3. So far as the amendment adopted by the Committee to the text of Article 23 of the Statute was concerned, Sir Cecil Hurst thought the number of fifteen judges to be called upon to sit in a full meeting was too high. The work of the Court would be hindered by such a considerable number of judges.

In agreement with Mr. Root and M. Fromageot, Sir Cecil Hurst proposed that the Court should be granted the right to reduce the number of judges called upon to sit in plenary meeting at any time to eleven, while the quorum of nine judges provided by Article 25 would be maintained. It would thus be possible for the Court to grant special leave to those members who did not possess the right to take six months leave every three years as laid down in the new provisions of Article 23, but who nevertheless required a longer holiday for similar reasons. Some judges might be intrusted with special work during which they should not be required

to attend the plenary meetings of the Court. This procedure would make it in certain cases easier to accelerate the work of the Court.

Sir Cecil Hurst would refer particularly to the fact that Mr. Root, who had been responsible in earlier years for re-organising the Courts in New York when they were very overworked, had achieved the best possible result with a similar system. The Court at The Hague should be given the opportunity of applying the advantages of such a system without being compelled to do so.

M. RAESTAD thought that the views put forward by Sir Cecil Hurst, in so far as the nationality of the members of the British Empire was concerned, were the logical consequence of the provisions of Article 10, paragraph 2, of the Statute which, said that two judges could not be nationals of the same "Member of the League of Nations". Originally, it had been proposed to say that the judges should be nationals of the different "States", but the term "Members of the League of Nations" had been substituted precisely in order to cover the case of the British Dominions. If two or three persons belonging to different parts of the British Empire could simultaneously be ordinary members of the Court in virtue of Article 10 of the Statute, it was good logic to interpret the provisions of Article 31 in the same sense, as Sir Cecil Hurst had done.

M. POLITIS did not regard the question of the nationality of British subjects to be a mere matter of interpretation. In his view, it was a problem of the greatest importance. No one could ignore the special and peculiar character of the structure of the British Empire. Account had been taken of this in the organisation of the League in which the members of the British Empire were independent Members of the League side by side with Great Britain.

M. Politis wondered, however, whether the text and the spirit of Article 31 of the Statute made it possible to invest the definition of nationality, in so far as the provisions of paragraph 2 of Article 10 were concerned, with the meaning contemplated by Sir Cecil Hurst.

The object of the provisions of Article 31 was to guarantee to every country not represented on the Court the power to nominate, if necessary, a judge of its own nationality with an intimate knowledge of the jurisprudence and peculiarities of his country's institutions.

M. Politis wondered whether, in the case of disputes which might break out between one or other member of the British Empire and another State, an English judge, for example, would not be just as capable of fulfilling the task of the national judge in the sense which he had just indicated.

M. Politis thought, on the other hand, that the interpretation of Article 31 contemplated by Sir Cecil Hurst might lead, in a special case, to a position which it would be difficult for the other nations to accept. If, for example, the Court counted among its members a judge who was a native of Canada, in addition perhaps to an English judge, what would be the position, if, in a dispute between the United States and Australia, Australia demanded her right to appoint a judge *ad hoc* in conformity with Article 31 on the ground that the Court did not possess a judge of Australian nationality? Would not the parties appearing before the Court be placed on a footing of inequality? It was impossible to ignore the economic and political bonds uniting the various members of the British Empire.

M. Politis did not think it possible to regard this question merely as one of interpretation. The problem was so important that it would be desirable for Sir Cecil Hurst to submit a proposal in the form of a possible draft amendment.

Sir Cecil HURST said that as an Englishman he was, perhaps, more conversant with the present position of the Dominions than was M. Politis. The impression that the legal and legislative system in force in Great Britain and that in force in the Dominions were the same was incorrect. M. Politis had quoted Australia. It was true that the Australian legal system was perhaps the most akin to that of Great Britain but, generally speaking, the divergencies between the legal systems of Great Britain and the Dominions were numerous and profound; for example, the legal system in South Africa, which was the old Roman Dutch law, was far more akin to the legal system of M. van Eysinga's country than to that of Great Britain. French Canadian law was similarly far more closely allied to French law than to the British law. There was a welter of different legal systems in India, mainly Mohammedan, also Brahmanic, with a veneer of Western law. The system differed completely from the English system as had been proved time and again by the appeals to the English Supreme Court coming from India.

Therefore, in actual fact it was quite a delusion to imagine that the English member of the Permanent Court would be qualified to represent in the same manner as would a national judge, the appreciation of the local system as provided for in Article 31.

Sir Cecil Hurst could assure M. Politis that the autonomy of the Dominions was developing fast and that no close union in legal matters existed between them and the mother-country. The most obvious proof of this, he thought, lay in the fact that the Council had recognised this to be the case, as indeed had the Assembly, for there was a Canadian representative at present sitting on the Council together with the permanent British representative.

M. RAESTAD asked whether the Constitution of the British Empire prevented a dispute between Great Britain and a Dominion or between two Dominions from being brought before the Court.

Sir Cecil HURST replied that this matter had been discussed in London where the view was that no question arising between Great Britain and a Dominion could be brought before the Permanent Court owing to the provisions of Article 14 of the Covenant which laid down that

the Court possessed jurisdiction only in regard to international disputes. This provision excluded the submission to the Court of disputes between two of the units composing the British Empire, because the relations between them were different from the relations between two foreign States, and for this reason the relations between them were not international. Although the Dominions were autonomous, a dispute between two of them or between a Dominion and Great Britain was not an international matter and could not technically be brought before the Court.

Articles 32, 33 and 35.

M. OSUSKÝ submitted the following new draft for Articles 32 and 35 :

Article 32.

“ The Members of the Court shall receive an annual salary to be determined by the Assembly of the League of Nations upon the proposal of the Council. This salary must not be decreased during the period of their appointment.

“ The President shall further receive a special grant for his period of office, to be fixed in the same way.

“ The Vice-President shall receive a special allowance for each day on which he performs the duties of President, to be fixed in the same way.

“ The judges selected or chosen as provided in Article 31 shall receive a grant for each day on which they perform their duties, to be fixed in the same way.

“ The salary of the Registrar shall be decided by the Assembly upon the proposal of the Court.

“ A regulation, adopted by the Assembly of the League of Nations, shall fix the conditions under which retiring pensions are given to the members and Registrar of the Court.

“ Members of the Court shall be refunded the expenses of one return journey each year to their homes, with the exception of members whose homes are situated at a distance from the Court exceeding five days' normal travelling ; such members shall be refunded the expenses of a return journey every three years.

“ In addition, members of the Court and the judges referred to in Article 31 shall be refunded travelling expenses when on mission. ”

The adoption of these changes would make it necessary to amend the resolution which the Assembly would adopt fixing the salaries of the President, Vice-President and members of the Court. He would accordingly propose the following draft :

“ The Assembly of the League of Nations, in conformity with the provisions of Article 32 of the Statute, fixes the salaries, grants and allowances of the members and judges of the Permanent Court of International Justice, as follows :

“ <i>President</i> :	Dutch florins
“ Annual salary.	45,000
“ Special grant	15,000
“ <i>Vice-President</i> :	
“ Annual salary.	45,000
“ Allowance per day of duty (100 × 100)	10,000 (max.)
“ <i>Members</i> :	
“ Annual salary	45,000
“ <i>Judges referred to in Article 31 of the Statute</i> :	
“ Grant per day of duty	100
“ Daily subsistence allowance	50
“ The salaries, grants and allowances are free of all tax. ”	

He had suggested the figure 45,000 florins as the salary of a judge, after consulting the Registrar of the Court whose views had been based on the experience of the last eight years.

M. POLITIS thought the proposal of M. Osuský to be the most practical solution possible.

With regard to the special allowance granted to the judges appointed under Article 31 of the Statute, he presumed that this allowance would not be paid to a member of a Court sitting in a special chamber.

M. OSUSKÝ agreed.

M. POLITIS also presumed that a judge appointed *ad hoc* would be paid his travelling expenses and also a special allowance when travelling on the business of the Court.

M. OSUSKÝ agreed.

With regard to pensions, M. Osuský submitted the following proposal :

“ Proposed redraft of paragraph 5 of the Regulations regarding the granting of retiring pensions to the Judges and Registrar of the Court :

“ The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. Nevertheless, in cases when the person concerned has, before this age, completed a period of duty without being re-elected, the pension may be paid to him as from the date on which his duties terminate. The Court shall decide. ”

Two possibilities had, he thought, been open to him. He could either have suggested that the age-limit should be abolished or else that the Court should be given greater freedom to decide whether a member should be entitled or not to receive a pension. After reflection, he had thought it best to propose the latter solution. If a judge, after leaving the Court, returned to his own country and there exercised his profession or gained his living by other means, he would not be granted a pension. Supposing, however, he did not do so, and possessed no private means, then a pension would be granted.

The CHAIRMAN doubted if the Court should decide whether or not to grant a pension; nor did the Assembly seem to be a suitable body. He thought that the Supervisory Commission was the proper body to deal with this point.

M. OSUSKÝ pointed out that the Supervisory Commission was a technical organisation

Jonkheer VAN EYSINGA suggested that the decision in regard to the grant of a pension should be taken by the Council on a report by the Supervisory Commission.

20. Departure of the Chairman.

The CHAIRMAN thanked the members of the Committee for their assistance and regretted his inability to stay at Geneva until the conclusion of the session. He yielded the Chair to M. van Eysinga as Vice-Chairman.

Mr. ROOT proposed that the Committee should express its thanks to the Chairman and its grateful appreciation and admiration for the charming and effective manner in which he had directed its deliberations. Among a considerable body of men agreements and decisions depended chiefly on their state of mind. That kindly consideration for the opinion of others and the sincere attempt to understand the interests of others, not to speak of the delightful manner in which M. Scialoja had presided over the Committee, had enabled members to achieve the only spirit in which international affairs could be properly conducted.

The vote of thanks proposed by Mr. Root was unanimously adopted.

The CHAIRMAN in thanking Mr. Root said that one of his greatest pleasures and one of the greatest honours which had fallen to him was to have had an opportunity of meeting Mr. Root. Mr. Root was a splendid example of a statesman and of a man of science. He combined the qualifications of both with a modesty, rare among men, especially among statesmen. M. Scialoja would never forget the time which he had spent in his company.

(The Chairman withdrew and the Vice-Chairman, Jonkheer van Eysinga, took the Chair.)

21. Question of the Revision of the Statute of the Permanent Court of International Justice (continuation).

Articles 32, 33 and 35 (continuation).

The VICE-CHAIRMAN, after mentioning the difficulties of his task as successor to so distinguished a Chairman as M. Scialoja, called on the Committee to resume its discussion on Articles 32, 33 and 35.

M. POLITIS thought, with regard to the pensions scheme, that a certain degree of elasticity was necessary. The proposals put forward by M. Osuský were too rigid.

The VICE-CHAIRMAN agreed.

The case in which neither the President nor the Vice-President took the Chair must also be considered in connection with the special allowances to be paid.

It was decided to refer the proposals of M. Osuský to the Drafting Committee.

M. OSUSKÝ thought that it would be impossible to amend Article 33. To touch it would be to upset the entire financial system of the League which had now been in force for nine years. States paid contributions to a single fund out of which the expenses of the Secretariat, of the International Labour Office and of the Permanent Court were met. A common fund for all three organisations was preferable to three separate funds.

With regard to the last paragraph of Article 35, he would propose the following amendment:

“ In the case of States which are parties to a dispute but which have not acceded to the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16th, 1920, or which are not Members of the League of Nations, their contributions towards the expenses of the Court shall be fixed by the Court itself. ”

The case of the United States of America must be specifically provided for in the Final Act or the Protocol.

The VICE-CHAIRMAN, in summing up M. Osuský's proposals, pointed out that no change was proposed for Article 33 and but small change for Article 35. That would not give rise to any difficulty, for the United States Government had signified its willingness to bear a share of the expenses of the Court when it was necessary to do so.

M. RAESTAD enquired what would be the position of States which, without being Members of the League, had signed the Protocol of the Court. How would they support their share of the expenses?

M. OSUSKY replied that this would be settled by the conclusion of individual contracts with the States concerned.

It was decided to refer the proposals of M. Osuský to the Drafting Committee.

Article 27.

The VICE-CHAIRMAN referred the Committee to the proposal made by the Committee on Communications and Transit in regard to which account had already been taken in the revised draft. The Transit Committee apparently would prefer the whole article to be deleted. The Vice-Chairman, however, wondered whether such a step was necessary. As amended, the article could stand.

M. POLITIS agreed. How would the summary procedure, however, work in practice, and what would be the composition of the Court in transit cases dealt with under that procedure? Presumably the assessors would not sit.

The VICE-CHAIRMAN said there were three possibilities. Either such cases would be dealt with by the full Court or by the special chamber or by the summary procedure under the terms of which five judges and no assessors would sit. The summary procedure could only be followed if the parties agreed.

It was decided to ask the Drafting Committee to consider the final text of Article 27.

Article 23.

The VICE-CHAIRMAN submitted the new text of paragraph 4 to be added to Article 23 as proposed by Sir Cecil Hurst :

“ Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges to be dispensed from time to time from sitting in the Court.”

He added that he fully agreed with this proposal.

M. POLITIS also agreed.

Mr. ROOT felt strongly that in all the Committee had done it had lost an element of adjustment arising from the *ad hoc* employment of supplementary judges. The rigid rule which before applied only to eleven judges was now to be applied to the whole fifteen. The rule thus established would bar the Court from making the necessary adjustments. He felt sure that this had not been the Committee's intention. The presence of the full number of fifteen judges was not only unnecessary, it was even a disadvantage. The Court would be too large, which meant that the length of time occupied by each case would be increased and greater difficulties would be met with in reaching a conclusion. Further, some judges might feel a sense of superfluity if their presence was invariably required in every case coming before the Court. Too many idlers in any organisation were fatal to its efficiency.

The Court must therefore be provided with means to make the necessary adjustment. The following method was one which he thought would prove successful. Hitherto, all judges had sat day after day in Court listening to the same cases, which had meant that they went on to consider another case before they had finished the previous one. So long as this system prevailed delays were inevitable. Would it not be possible for the superfluous judges to perform the necessary judicial work on the unfinished cases? Such a system would increase the efficiency of the Court.

Thirty-five years previously a law had been adopted in New York prohibiting all judges from sitting on any one case. Its object had been to prevent unnecessary delay. For example, in the Court of first instance only seven out of nine judges could sit, and in the Supreme Court for a city as large as New York with seven million people transacting a vast volume of business, only five out of seven judges sat. The result had been that those Courts were to-day conducting an amazing amount of business, because the two judges not sitting were engaged in finishing the previous cases. The work was done by men coming fresh to it. The application of that law had more than doubled the capacity of the Courts of New York and had always given entire satisfaction. The great advantages thus obtained could, Mr. Root thought, be also obtained by the Permanent Court if it followed the same system. For that reason he would support the amendment proposed by Sir Cecil Hurst.

M. GAUS understood the motives for the proposal of Sir Cecil Hurst as supported by Mr. Root. It might, however, possibly have unfortunate consequences. Everything depended on the manner in which the Rules of the Court were followed in practice. The Committee must use every endeavour not to give the impression that the Permanent Court was an *ad hoc* body. An international tribunal of its eminence must be constant in character. It was necessary, therefore, that in drafting its Rules the Court must be entirely objective and must carefully consider the effects of a method of rotation in practice. Would it be possible in these circumstances to delete the phrase “ from time to time ”.

Sir Cecil HURST said that the Committee must be equally careful not to fall into another difficulty. While he appreciated the force of the arguments put forward by M. Gaus, he would remind the Committee that the feelings of individual judges must also be considered. If the words "from time to time" were omitted, some judges might possibly think that the intention was that the Court should, if it so desired, be able to exclude them entirely from its sittings.

It was decided to submit the proposal of Sir Cecil Hurst to the Drafting Committee.

TWELFTH MEETING.

Held on Monday, March 18th, 1929, at 11 a.m.

Jonkheer VAN EYSINGA (VICE-CHAIRMAN), in the Chair.

Present : All the members of the Committee, with the exception of M. Scialoja and M. Osuský.

22. Question of the extension of the Jurisdiction of the Permanent Court of International Justice as a Court of Appeal : Considerations brought forward by M. Rundstein.

M. RUNDSTEIN said that, in submitting his considerations to the Committee (Annex 6), he in no way wished to add to its work. His sole desire had been to draw its attention to the possibility of widening the competence of the Permanent Court as a court of appeal. This competence should be enlarged not in respect of *personæ* nor of *materiæ* but solely in respect of *ordinis*.

The fundamental principle underlying his considerations was not new. It had been discussed many times and had even found expression in the text of a treaty of arbitration signed between the United States of America and Great Britain at Washington on January 11th, 1897, but which had never been ratified.

In making these suggestions regarding the establishment of a Court of Appeal, he did not think that he was exceeding his powers. He did not propose that the details should be examined or that a draft resolution should be drawn up. In his view, it would be enough if the Committee, without expressing any opinion either for or against the principles contained in his considerations, should draw the Council's attention to the usefulness and desirability of submitting to a close examination problems connected with the question of appeal to the Court.

The VICE-CHAIRMAN proposed that the very interesting considerations submitted by M. Rundstein should be annexed to the covering letter which the Vice-Chairman would send to the Council, forwarding the Committee's report.

This proposal was adopted.

23. Method of seeking Advisory Opinions on Labour Questions from the Permanent Court of International Justice : Memorandum by the International Labour Office.

The VICE-CHAIRMAN said that the very interesting memorandum submitted by the International Labour Office (Annex 5) concerned the manner in which advisory opinions on labour questions were to be sought from the Court. The Labour Office had drawn attention to a certain lack of co-ordination in this respect between Article 14 of the Covenant and Article 423 of the Treaty of Versailles. The International Labour Office was convinced that the object at which it aimed could not be achieved by any amendment of the Statute of the Court and, therefore, the matter went somewhat beyond the Committee's terms of reference. What, in fact, the International Labour Office appeared to desire was a decision on the question whether recourse to the Court must be agreed to by a majority or by a unanimous vote. The Vice-President did not think it was for the Committee to take the initiative regarding such a decision. Nevertheless, he proposed that the memorandum from the International Labour Office should be submitted to the Council.

M. MORELLET (International Labour Office) explained that the point raised by the Labour Office related not so much to the question whether an advisory opinion should be sought by a majority or by a unanimous vote, but to the exact legal nature of the act by which the Council transmitted a request for an advisory opinion, based on Article 423 of the Treaty of Versailles. He was quite ready to accept the Vice-Chairman's suggestion.

M. PILOTTI agreed with the Vice-Chairman's suggestion. The matter should certainly be brought to the Council's attention in the manner proposed. In his view, however, the memorandum from the International Labour Office did not really concern the question whether recourse to the Court must be adopted by a majority or by a unanimous vote. What the Inter-

national Labour Office desired was the adoption of rules governing the Council's action when it performed the office of organ of transmission for requests for an advisory opinion arising out of Article 423 of the Treaty of Versailles.

It was conceivable that the interpretation of the fifth reservation of the United States of America included in the Protocol of which the object was to secure the adhesion of the United States to the Court might be effected by the question raised by the International Labour Office.

Sir Cecil HURST could not accept M. Pilotti's view that when the Council acted as a bureau of transmission in the case of a request from the International Labour Office for an advisory opinion it merely played the part of a post-office. The Council, in his view, always retained its full liberty of action.

M. PILOTTI said that he had not given his own views in the matter but had only sought to interpret the memorandum from the International Labour Office. In any case, he had never regarded the Council as a mere bureau of transmission but as an organ of transmission. He would urge that the matter should be brought to the notice of the Council.

The proposal of the Vice-Chairman was adopted.

24. Interpretation of Articles 73 and 74 of the Rules of Court.

M. URRUTIA asked the President of the Court whether the latter interpreted the second paragraph of Article 73 and the first paragraph of Article 74 of the Rules of Court to mean that, in principle, international organisations could appear as parties before the Court.

M. ANZILOTTI replied that international organisations of the kind referred to in Articles 73 and 74 could only be admitted in order to give information to the Court, but not to plead. The cases of this kind which had so far arisen concerned a certain number of employers' and workers' organisations.

25. Question of the Adhesion of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice (continuation): Examination of the Revised Draft of the Preliminary Protocol of 1926.

Sir Cecil HURST urged that the objections of M. Raestad should be discussed before the report and the protocol (Annex 7) were considered.

M. POLITIS did not think that any discussion of principle could be held at that stage. That discussion had been finished some days previously and M. Raestad's objections had been noted. The whole matter had been referred to a Drafting Committee, of which the main task had been to co-ordinate the proposals of Sir Cecil Hurst and M. van Eysinga in regard to Article 4. The new draft represented the results of the Drafting Committee's work and he did not think that the general discussion could be re-opened.

The VICE-CHAIRMAN pointed out that Sir Cecil Hurst had been asked in drawing up his report and the new draft Protocol to consult Mr. Root on all points.

M. POLITIS agreed. All he desired to make clear was that, as the questions of principle had been dealt with, the forthcoming discussion could only concern matters of detail.

M. RAESTAD said that he had no intention of raising serious objections to the new revised draft which differed considerably from the first draft that had been discussed. The new draft was of such a nature that it was not necessary for him to make any important reservation. He thought, however, that he would be in order in making a general declaration at the moment of withdrawing his objections.

The CHAIRMAN said that the proposal of M. Raestad was in order, and called upon him to make his general statement.

M. RAESTAD said that the group of nations to which his country, Norway, belonged attached the greatest importance to the adhesion of the United States of America to the Court. Those countries, however, regarded the maintenance and even the development of the system of advisory opinions as of equal importance. The view had been expressed that the new arrangement to be concluded with the United States of America might result in the abolition of the system of advisory opinions. If this were so, or even if the new arrangement seriously diminished the efficiency of that system, the countries to which he had referred would be faced by an insoluble difficulty. Personally, M. Raestad was now convinced that the adoption of the new draft would not have this effect.

It might be said that, approximately, there were two classes of advisory opinions. There were, first of all, advisory opinions given regarding matters which might be described as political in character. In cases of this kind a special Committee of jurists might quite well be the organ best adapted to settle any doubtful legal points which might arise. His own view was, nevertheless, that in such cases also the Court would probably often be the best organ for the purpose. The second class of advisory opinions dealt with the position of a Member of the League *vis-à-vis* the other Members, within the terms of the Covenant, and with the position of the Members of the League *vis-à-vis* the organisations and institutions of the League and with the working of these organs and institutions. As regards these questions, a special Committee of jurists

could never replace the Court ; the Court was an essential feature of the League and must be used to interpret what might be described as the " law " of the League.

In proportion as the League developed and extended its activities these problems would become more numerous, more important and more complex. The importance of the system of advisory opinions would therefore tend to increase, if not in other respects, at least as regarded this last category of questions. It was essential, from the point of view of the efficiency and development of the League and the mutual confidence of its Members, that these questions should be dealt with by the Court as a matter of course. The whole League was based on the principle that the questions relating to the internal affairs of the League — questions which were of interest exclusively to the League — should be dealt with by the Court as an institution of the League.

He would remind the Committee of the proposal made by M. Motta at the last session of the Assembly to the effect that it was essential to extend and strengthen the use of the system of advisory opinions. M. Raestad fully subscribed to this view.

He was well aware that the United States of America had no intention to destroy the system of advisory opinions nor even to diminish its efficiency. Similarly, the United States was not interested in the domestic affairs of the League. Nevertheless, it might happen that, contrary to the intentions of the parties, an arrangement concluded with the United States might result in a restriction of the use of the procedure of advisory opinions. It was for this reason that the nations interested in the maintenance and development of that system were obliged to study very carefully the provisions of the new arrangement with the United States. As he had said, however, he was sure that the proposed arrangement was not prejudicial to the system of advisory opinions.

The new draft was a very great improvement on previous texts. While no change of principle could now be made, it was the duty of each member of the Committee to elucidate any legal point which was obscure. He did not wish, therefore, to express his doubts regarding the draft as a whole, for he quite realised that it was impossible to split up what was intended to be an indivisible whole. He would, however, ask for explanations of detail. In the first place, he asked whether the sentence in Article 5 :

" The Secretary-General shall . . . inform the United States of any proposal before the Council or the Assembly of the League for obtaining an advisory opinion from the Court "

meant that, each time any member of the Council or the Assembly proposed that recourse should be had to the Court, the Secretary-General should be invited to inform the United States of America of this proposal, or did it not simply mean that each time that the Council or the Assembly had had before it a report proposing that the Court should be asked for an advisory opinion the Secretary-General should notify the United States accordingly.

The VICE-CHAIRMAN invited M. Raestad to formulate the amendments which he might desire to suggest.

M. RAESTAD asked whether the reference to an exchange of views between the Council and the United States in Article 5 should not be followed by the words " if desired ". The omission of those words changed the whole aspect of the procedure.

Sir Cecil HURST said that the words had been omitted by error.

M. RAESTAD noted that different expressions were used in describing the parties or signatories referred to in the Preamble, and in various articles of the draft. In the Preamble there was a reference to the States signatories of the new Protocol. In Article 3 there was a reference to the contracting States. The reference in Article 7 was to States which had ratified the Protocol of 1920. Were these expressions correctly employed in every case ?

He noted also that in Article 9 it was said that the new Protocol would be open for signature to the States which " may in the future sign the Protocol of 1920 ". He did not think that the provision to the effect that the new Protocol should remain open for signature by such States was in accordance with the real position. In his view, the States which would sign later the Protocol of 1920 would be obliged to sign at the same time the present Protocol ; the two documents must be regarded as an interdependent whole.

The second paragraph of Article 7 laid down that the present Protocol should come into force as soon as all the States which had ratified the Protocol of 1920, and also the United States, had deposited their ratifications. At the time when the United States adhered to the present Protocol must it not also adhere to and ratify the Protocol of 1920 ? The Protocol of 1920 was in effect the principal object of the present Protocol, and the ratification of one implied the ratification of the other.

He would say, in conclusion, that, though he was calling attention to these points of drafting, and while he still felt some hesitation regarding the draft as a whole, he desired to express the greatest admiration for the work of Mr. Root and Sir Cecil Hurst.

Sir Cecil HURST, replying to the various points which had been raised, stated that the words " before the Council or the Assembly of the League " in the first paragraph of Article 5 had been inserted in order to make it clear that the provisions of the article would not apply when the request for an advisory opinion came from an outside body and when it was not likely to be seriously entertained by the Council or the Assembly.

If, however, there was any likelihood of a request being seriously considered by the Council or Assembly of the League, the United States would, of course, be consulted in conformity with

the stipulations of the article. He would urge that the references to this matter should be expressed in language as elastic as possible, and that the question of informing the United States should be left to the good sense and discretion of the Secretary-General and the Council.

The various expressions used in referring to States which had signed or ratified the Protocol had been carefully considered, and were, in his view, correct in each case. The Preamble referred to the States signatories of the Protocol of 1920. There were some eleven States which had signed the Protocol of 1920, but had not yet ratified it. Any one of those States might at any moment deposit its ratification, and would then be included among the States whose rights were defined in the Protocol of 1920. If the reference in the Preamble were confined to States which had ratified the Protocol of 1920, the States which had signed that Protocol, but had not yet ratified it, would be left out of account.

The reference to contracting States in Article 3 was to States which had both signed and ratified the 1920 Protocol. Only such States had the right to claim that no amendment of the Statute of the Court should be made without their consent.

He would draw attention, incidentally, to a mistake in the wording of the article, which should refer to "amendment of the Statute of the Court" and not to "amendment of the Statute annexed to the Protocol of 1920".

He did not think that M. Raestad was right in his contention regarding Article 9. He could not agree that the present Protocol was compulsory upon the signatories of the Protocol of 1920, and it was, in his view, impossible, by the present instrument, to take away from States which had signed the Protocol of 1920 the rights which they enjoyed under that Protocol. When the United States accepted the present Protocol, it would be open for them to become parties to the Protocol of 1920. He did not think it was possible for the stipulations of the present text to go any further than that.

He would like to say, in conclusion, that he was glad that M. Raestad had raised the points under discussion. He desired, and he felt sure his colleagues desired, that the present text should be unanimously and cordially approved by the whole Committee.

Two slight textual modifications were necessary. In the second paragraph of Article 5 it was necessary to add the word "such" before the words "exchange of views" to indicate that the contemplated exchange of views was that to which previous allusion had been made. It was also necessary in the last paragraph of that article to insert the words "of this article" after the words "paragraphs 1 and 2".

M. POLITIS said he also desired to request certain explanations in regard to the present text. He did not think the reply of Sir Cecil Hurst on the point which had been raised concerning Article 9 was altogether satisfactory. What would be the position of States which had ratified the Protocol of 1920, but which did not ratify the present Protocol? Such States would not have accepted the United States reservations and their position would have to be considered. Was it right to regard the present Protocol as forming a whole with the Protocol of 1920?

The second question he desired to raise was more important. In several paragraphs of the present text, reference was made to the reservations of the United States. Those who read the document might not know exactly what was contained in those reservations, or in what order the reservations had been made. Was it not necessary either to explain the purport of the reservations in the text, or to annex to the Protocol the reservations themselves?

Another point arose in connection with paragraph 3 of Article 8 which provided for the case in which a contracting State might desire to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of 1920. He quite understood that this power of withdrawal should be accorded in respect of the fifth reservation. States not accepting that reservation, which had been granted as a concession to the United States, might be entitled to withdraw. The same reasoning, however, did not seem to apply to the second part of the fourth reservation to which reference was also made in the paragraph. The fourth reservation was to the effect that the Statute of the Court should not be changed without the consent of the United States. Such a stipulation could not be regarded as a special concession to the United States, but was a guarantee based upon the common law of nations. Obviously, the Statute of the Court could not be modified without the consent of all the contracting parties. He did not, therefore, see why the power of withdrawal should be referred to in connection with the second part of the fourth reservation, and he considered that this reference should be suppressed.

M. RAESTAD agreed with Sir Cecil Hurst that the text of the Protocol should be as elastic as possible. He would, however, draw attention to the fact that the text of Article 5 seemed precisely not to be elastic enough since it gave very little discretion to the Secretary-General of the League. It was laid down that the United States should be informed of any proposal before the Council or the Assembly. Would it not render the text more elastic if some term conveying the meaning of the word "serious" used by Sir Cecil Hurst were inserted before the word "proposal"? This would allow a considerably wider discretion in the application of the article.

Sir Cecil HURST said he was under the impression that the English text which referred to "any proposal before the Council or the Assembly of the League" was sufficiently elastic. A proposal which was before the Council or the Assembly would of necessity be a serious proposal. He wondered whether the French text "*soumise au Conseil ou l'Assemblée*" was satisfactory. A proposal might be submitted to the Council or the Assembly without being in effect before those bodies in the sense of the English expression.

After an exchange of views as to the precise significance of the French and English expressions, *it was decided* to maintain the text as it stood, on the understanding that the French text correctly conveyed the meaning of the English text.

Sir Cecil HURST, continuing his observations on Article 5, said he would hesitate to introduce the word "serious", which might have a limiting effect and might to some extent narrow the discretion of the Secretary-General and the Council. He thought the text as it stood ensured that, if there was any real question of the Council or the Assembly being asked to consider a request for an advisory opinion which might touch the interests of the United States, the provisions of the article would apply. He felt that the application of the provision might safely be left in practice to the Secretary-General and the Council, interpreting the article as it stood.

M. RAESTAD said he was quite willing to withdraw his suggestion that a term conveying the idea "serious" should be inserted before the word "proposal", especially in view of the fact that Sir Cecil Hurst admitted that, in accordance with the present draft, a proposal which would justify a consultation with the United States would of necessity be sufficiently serious in character.

The point raised by M. Politis in respect of Article 9 was more important. He could not agree that it was impossible to impose on future signatories an obligation to sign the present Protocol and the Protocol of 1920 at the same time. There seemed to be a tendency to lay too much emphasis, as regards the Protocol of 1920, on its character of an agreement between the signatories. The Protocol must also be regarded as an element of the Constitution, so to speak, of the League of Nations, and he did not think that, in this matter, the acquired rights of third parties existed. The two Protocols, in his opinion, formed an inseparable whole, and he did not see that there was any legal objection to recognising that fact. He desired to state clearly that it seemed to him inconceivable that a State could accept one Protocol and not the other, and that he considered it to be within the competence of the Assembly to pass a resolution to the effect that the two documents should be regarded as forming a whole.

M. PILOTTI said he desired to support the original proposal of M. Raestad, which had been developed by M. Politis. He wished it to be laid down quite definitely in Article 9 that the present Protocol should be signed by States which had signed the Protocol of 1920. States were free to sign both documents or neither.

The reference in Article 8 to the second part of the fourth reservation of the United States was, he thought, explicable in the light of the discussions which had taken place in 1926. Such a reference had seemed necessary in 1926, owing to the fact that, in the Protocol of 1920, no provision had been made for withdrawal. The United States had asked for the right of withdrawal to be recognised, and it had accordingly been necessary to insert a specific reference to the point, in order to ensure equality of treatment between the United States and any other State which might ask for a similar privilege. He would ask M. Politis to leave Article 8 as it stood, since it contained an answer to scruples and difficulties which had been discussed in reference to the previous Protocol of 1926.

M. RUNDSTEIN referred to the proposal that the reservations of the United States should be embodied in the Preamble or annexed to the Protocol. If the present Protocol were accepted there would be no necessity for a Final Act, and the only place for a suitable summary of the reservations would seem to be the Preamble.

The VICE-CHAIRMAN said that perhaps Sir Cecil Hurst would consider whether any summary of the reservations should be made, or whether these reservations should be annexed to the Protocol.

Sir Cecil HURST said his only objection was that the reservations of the United States were longer than the Protocol itself. He thought that the present reference in the Preamble was sufficiently explicit. It referred to the reservations in a way which would enable them to be easily identified.

The VICE-CHAIRMAN asked whether there was any objection to annexing the reservations.

Sir Cecil HURST said he would prefer to leave that question to Mr. Root. The important point was that the document should be issued in a form which would render it acceptable to the United States.

M. POLITIS again urged that the reservations should be annexed. Otherwise readers of the Protocol in the near future would have some difficulty in understanding the document without first obtaining the text of the reservations.

Mr. ROOT said he would consider the matter. He felt it was important that the Protocol should be understood by a public which was not accustomed to reading legal documents. He felt that it was extremely desirable to reduce to a minimum any recitals in the Preamble or any protracted statement preceding the substance of the document. He would discuss the matter with Sir Cecil Hurst.

The VICE-CHAIRMAN said there remained the question of Article 9, and the question of the reference to the fourth reservation in Article 8. Those matters would have to be discussed at the next meeting of the Committee.

THIRTEENTH MEETING,

Held at Geneva on Monday, March 18th, 1929 at 4.30 p.m.

Jonkheer VAN EYSINGA (Vice-Chairman) in the Chair.

Present: All the members of the Committee, with the exception of M. Scialoja and M. Osuský.

26. Question of the Accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice : Examination of the Revised Draft of the Preliminary Protocol of 1926 (continuation).

The Vice-CHAIRMAN reminded the Committee that there remained over from the morning's discussion three points which had been put forward by M. Politis.

He would ask M. Politis if he wished to press his suggestion that the original five United States reservations should be included in an annex to the draft Protocol. He thought that M. Politis might be satisfied if, in his covering letter to the Council, the Vice-Chairman were to request the Secretary-General to circulate the text of the five reservations to the Members of the League.

M. POLITIS assented to the Vice-Chairman's proposal.

The VICE-CHAIRMAN reminded the Committee that M. Politis' second point referred to the words occurring in the third paragraph of Article 8, which conferred on the contracting States, other than the United States, the right to withdraw their acceptance of the special conditions made by the United States as regards its adherence to the Protocol, "in the second part of its fourth reservation and in its fifth reservation". The Vice-Chairman thought that M. Politis' wishes would be met if the words in brackets were omitted.

Mr. ROOT intimated that he had no objection to the omission of the words indicated.

Sir Cecil HURST said that he had expressly enclosed the words referred to by the Vice-Chairman in brackets in the hope that they would be omitted by the Committee in the final draft.

He would point out that the text of the articles had been copied from that of the 1926 draft and that the word "other" had been omitted in the English text (first line of the third paragraph) before the words "Contracting States".

M. POLITIS agreed to the omission proposed by the Vice-Chairman.

The VICE-CHAIRMAN observed that the third question left over was that of Article 9. Several objections had been made to that article at the morning meeting, at the end of which Mr. Root had made a suggestion which would probably meet the wishes of all the members of the Committee. The suggestion was to omit Article 9 altogether and to add at the end of Article 6 the following words: "and any future signature of the Protocol of December 16th, 1920, shall be deemed to be an acceptance of the provisions of the present Protocol".

Mr. ROOT thought that his suggestion came under the general necessary rule that it was impossible to have a dozen different conditions attached to the signatures of the various contracting parties to an international treaty, some signing only one part and others another. The effect of his proposal would be that, when the Protocol had been amended, all future signatories must accept it in its amended form.

M. GAUS considered Mr. Root's proposal very simple and practical and said that he personally would have no objection to it. From the theoretical point of view, however, it might be necessary to take into consideration all possible contingencies that might arise. It might therefore be preferable to leave Article 9 as it stood, since questions similar to those that had arisen in connection with the 1920 Protocol might arise again in connection with the amendments to the Statute adopted by the Committee. There were three matters to be considered, the revised draft Protocol of 1926 now before the Committee, the Protocol of 1920 and the Protocol containing the amendments to the Statute. Would it not be possible for the Assembly to pass a resolution to cover all possible cases which might arise out of these three instruments?

The VICE-CHAIRMAN thought it would be difficult to find a formula to cover all possible theoretical cases and that it would be better perhaps for the Committee to confine itself at the moment to adopting Mr. Root's proposal.

M. GAUS thought it might be possible for the Assembly to pass a resolution laying down that in future no State could sign the 1920 Protocol in its original form, but only subject to any amendments which might have been made in it.

M. ANZILOTTI saw no difficulty, from the legal point of view, in the adoption of Mr. Root's proposal, which was very clear and precise. The new Protocol would only come into force

when it had been signed and ratified by the Contracting Parties to the 1920 Protocol. It was only natural that the Contracting Parties to the 1920 Protocol should say that those States which had signed but had not yet ratified that Protocol had no right to expect the other contracting Parties to wait indefinitely for their ratification nor the right to hold up for this purpose any amendments which they might think necessary to make in the Statute. It was true that the 1920 Protocol did not mention any time limit for signature and ratification; it would, however, be scarcely reasonable to interpret the invitation to sign and ratify as entailing a right for the aforesaid States that the invitation should be neither withdrawn nor modified. It followed that such States would be at liberty to ratify the Protocol if they had signed it or might sign it first if they had not yet done so, upon the new conditions offered them by those Contracting Parties which had signed and ratified it.

M. ITO thought the difficulties contemplated by M. POLITIS in regard to Article 9 would occur only rarely in actual fact. In view of those difficulties, M. ITO preferred Mr. ROOT's proposal by which the Committee would establish a connection between the present Protocol and the Protocol of 1920. But the same difficulties in a more serious form would arise as between the 1920 Protocol and the Protocol to be established with any amendments that might be adopted. To meet this case an appropriate solution should be found on the lines proposed by M. ANZILOTTI, with such modifications as might be necessary. In M. ITO's opinion, the difficulties should be solved as and when they occurred, and it was unnecessary to have any instrument to solve them collectively.

M. URRUTIA thought Mr. ROOT's solution so clear that the Committee could agree to it without further discussion. It corresponded, indeed, to the present situation, that was to say, the new juridical situation created by the adoption of the new Statute. Legally, indeed, the old Statute would disappear as the result of the agreement of the Contracting Parties to accept the amended Statute. That being so it was, in point of fact, unnecessary to do anything at all. There was only one possible eventuality which might arise (and that being so it was not worth while providing for), namely, that a State which had signed but had not yet ratified the 1920 Protocol might desire to ratify it after all the other Contracting Parties had accepted the new Protocol. Such ratification would not be legally valid since the old Protocol would have disappeared.

Mr. ROOT observed that he had not intended to present a hard and fast proposal but rather a suggestion, and he enquired whether M. GAUS would be satisfied if, in his proposal, the word "ratification" were substituted for the word "signature".

M. GAUS said that he was prepared to accept Mr. ROOT's first proposal. He had only been contemplating possible cases that might arise and he agreed that there would be practical difficulties in finding a formula to cover all cases.

The VICE-CHAIRMAN noted that M. GAUS accepted Mr. ROOT's proposal in its original form.

M. RAESTAD preferred the term "ratification" to the term "signature", since he did not think that in this case "signature" could be taken to mean acceptance. In the case of treaties subject to ratification, signature was only the starting-point for acceptance and acceptance itself only followed when ratification had taken place. He enquired whether the Committee considered that the term "signature" implied acceptance.

The VICE-CHAIRMAN and M. POLITIS thought that it did.

The VICE-CHAIRMAN noted that the Committee agreed to the term "signature".

The amendment proposed by Mr. Root was adopted.

On the suggestion of the VICE-CHAIRMAN, the draft Protocol was then read article by article with a view to ensuring the exact concordance of the two texts.

Article 4.

M. FROMAGEOT observed that the proper method of rendering the word "substantially" in the French text would be to omit the words "quant au fond" and to insert after the word "dispositions" the word "essentielles".

In reply to a question of M. GAUS, M. FROMAGEOT said that the words "dispositions essentielles" in the phrase as drafted would mean that the "dispositions" formed the essential part of the articles in question.

Article 8.

M. RUNDSTEIN observed that it was clear that denunciation of the Protocol could not have retroactive effect, but he thought that it would be wise to say so definitely. A provision to that effect was included in the arbitration conventions, for instance, in that between Germany and Switzerland and also in the Council's resolution of May 17th, 1922. He suggested, therefore, that provision should be made that denunciation should not affect disputes of which the Court had already been seized.

M. POLITIS considered that M. RUNDSTEIN's point was a purely theoretical one and that there was no need to make any special provision to meet this case.

The VICE-PRESIDENT agreed with M. POLITIS.

M. RAESTAD said that the fact that the United States did or did not adhere to the Statute could not affect cases actually before the Court. It was a matter of indifference, in respect of such cases, whether a country adhered or no to the Statute. The analogy mentioned by M. Rundstein did not apply, for jurisdiction existed independently of accession, whereas, in the case of arbitration treaties those treaties themselves created the jurisdiction.

M. RUNDSTEIN said that he would not press his point.

The VICE-CHAIRMAN noted then that the Committee agreed to adopt the draft Protocol in the following amended form :

“ The States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16th, 1920, and the United States of America, through the undersigned duly authorised representatives, have mutually agreed upon the following provisions regarding the adherence of the United States of America to the said Protocol subject to the five reservations formulated by the United States in the resolution adopted by the Senate on January 27th, 1926.

“ Article 1.

“ The States signatories of the said Protocol accept the special conditions attached by the United States in the five reservations mentioned above to its adherence to the said Protocol upon the terms and conditions set out in the following articles.

“ Article 2.

“ The United States shall be admitted to participate, through representatives designated for the purpose and upon an equality with the signatory States, Members of the League of Nations, represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, provided for in the Statute of the Court. The vote of the United States shall be counted in determining the absolute majority of votes required by the Statute.

“ Article 3.

“ No amendment of the Statute of the Court may be made without the consent of all the contracting States.

“ Article 4.

“ The Court shall render advisory opinions in public session after notice and opportunity for hearing substantially as provided in the now existing Articles 73 and 74 of the Rules of Court.

“ Article 5.

“ With a view to ensuring that the Court shall not without the consent of the United States entertain any request for an advisory opinion touching any dispute or question in which the United States had or claims an interest, the Secretary-General of the League of Nations shall, through any channel designated for that purpose by the United States, inform the United States of any proposal before the Council or the Assembly of the League for obtaining an advisory opinion from the Court, and thereupon, if desired, an exchange of views as to whether an interest of the United States is affected shall proceed with all convenient speed between the Council or Assembly of the League and the United States.

“ Whenever a request for an advisory opinion comes to the Court the Registrar shall notify the United States thereof among other States mentioned in the now existing Article 73 of the Rules of Court stating a reasonable time limit fixed by the President within which a written statement by the United States concerning the request will be received. If for any reason no sufficient opportunity for an exchange of views upon such request should have been afforded, and the United States advises the Court that the question upon which the opinion of the Court is asked is one that affects the interests of the United States, proceedings shall be stayed for a period sufficient to enable such an exchange of views between the Council or the Assembly and the United States to take place.

“ With regard to requesting an advisory opinion of the Court in any case covered by the preceding paragraphs, there shall be attributed to an objection of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations in the Council or in the Assembly.

“ If, after the exchange of views provided for in paragraphs 1 and 2 of this article, it shall appear that no agreement can be reached, and the United States is not prepared to forego its objection, the exercise of the powers of withdrawal provided for in Article 8 hereof will follow naturally without any imputation of unfriendliness or unwillingness to co-operate generally for peace and goodwill.

“ Article 6.

“ Subject to the provisions of Article 8 below, the provisions of the present Protocol shall have the same force and effect as the provisions of the Statute of the Court and any future signature of the Protocol of December 16th, 1920, shall be deemed to be an acceptance of the provisions of the present Protocol.

“ Article 7.

“ The present Protocol shall be ratified. Each State shall forward the instrument of ratification to the Secretary-General of the League of Nations, who shall inform all the other signatory States. The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

“ The present Protocol shall come into force as soon as all States which have ratified the Protocol of December 16th, 1920, and also the United States, have deposited their ratifications.

“ Article 18.

“ The United States may at any time notify the Secretary-General of the League of Nations that it withdraws its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately communicate this notification to all the other States signatories of the Protocol.

“ In such case the present Protocol shall cease to be in force as from the receipt by the Secretary-General of the notification by the United States.

“ On their part, each of the other Contracting States may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately give communication of this notification to each of the States signatories of the present Protocol. The present Protocol shall be considered as ceasing to be in force if and when, within one year from the date of receipt of the said notification, not less than two-thirds of the contracting States other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance.

“ Done at, the day of 19....., in a single copy, of which the French and English texts shall both be authoritative. ”

27. Question of the Accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice (continuation): Examination of the Draft Report submitted by Sir Cecil Hurst.

Sir Cecil HURST read his draft report (Annex 8) on the accession of the United States to the Protocol of Signature of the Statute of the Court.

In the course of the discussion on the report, M. ANZILOTTI pointed out that the Protocol, the text of which had been revised by the Committee, would be concluded not between the States signatories of the 1920 Protocol and the United States of America, but between the States which had ratified, or might ratify, the 1920 Protocol and the United States.

The VICE-CHAIRMAN and other members of the Committee observed that, whereas the accession of the States which had ratified, or might hereafter ratify, the 1920 Protocol was indispensable, nothing prevented other States, even those which had only signed the 1920 Protocol, from also signing the new Protocol. The term “ signatory States ” appeared, moreover, in the text of the revised draft of the Protocol of 1926, and the use made of that term in Sir Cecil Hurst’s report, was in accordance with current practice.

M. PILOTTI said that in 1926 it had been necessary to make use of the term “ signatory States ” because some States which had not ratified the 1920 Protocol had been represented at the Conference (Dominican Republic, Liberia, Luxemburg, Panama, Persia). There was no reason why the Committee should adopt the same procedure, which in M. Pilotti’s view, was incorrect.

Sir Cecil Hurst’s report was adopted with certain amendments on points of detail.

28. Communication to the Press of the Revised Draft of the 1926 Protocol.

On the proposal of the VICE-CHAIRMAN, the Committee decided to communicate to the Press the revised draft of the 1926 Protocol, in order to obviate any possibility of the publication of an incorrect text.

29. Printing of the Minutes of the Committee.

On the proposal of the VICE-CHAIRMAN, the Committee decided, in virtue of the Assembly resolution of September 26th, 1928, to request the Council of the League to authorise the printing of the Committee’s Minutes.

30. Question of holding a Public Meeting at the close of the Session.

On the proposal of the VICE-CHAIRMAN, the Committee decided that it should close its proceedings without holding a public meeting.

FOURTEENTH MEETING.

Held on Tuesday, March 19th, 1929, at 10.30 a.m.

Jonkheer VAN EYSINGA (Vice-Chairman) in the Chair.

Present: All the members of the Committee, with the exception of M. Scialoja and M. Osuský.

31. Interpretation of the Word "Nationality" in Article 31 of the Statute of the Permanent Court of International Justice: Point raised by Sir Cecil Hurst.

Sir Cecil HURST asked that mention should be made in the report of the Committee to the Council on the question of the revision of the Statute of a point of special interest to the British Empire. It concerned the interpretation of the word "nationality" in the first line of Article 31 of the Statute. He desired, on behalf of the British Dominions, that this article should be interpreted to mean that it did not exclude the right of a Dominion to appoint to the Court a judge *ad hoc* even though an English judge should also be a member. He had originally intended to propose an amendment to this effect, but a close study of the Statute had convinced him that such a course was no longer necessary and that the interpretation which he put upon the Statute, without being the only possible interpretation, was the one which was, in fact, correct.

The point which he desired to make perfectly clear was that the word "nationality" in Article 31 should bear the same meaning as the word "national" (*ressortissant*) in the third paragraph of Articles 26 and 27 which were to the following effect:

"Article 26. If there is a national of one only of the parties sitting as a judge in the Chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31."

"Article 27. If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31."

It seemed perfectly clear to him that the word "nationality" in Article 31 should be interpreted in the sense given to the word "national" in the foregoing passages.

There were other articles in the Statute which corroborated his view. Article 4, paragraph 2, laid down the conditions under which lists of candidates for election to the Court should be submitted. They were to be drawn up by national groups appointed for this purpose by their Governments "under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907". At that date the British Government had acted for all the Dominions which had consequently possessed no national groups. The procedure in Article 4 had been applied in the British Empire since 1920, which showed once more that, in the matter of nationality as understood for the purposes of the Court, the British Dominions were distinct from the mother-country.

The second paragraph of Article 5 was to the following effect:

"No group may nominate more than four persons, not more than two of whom shall be of their own nationality . . ."

Here, again, it was clear that the word "nationality" was used in the sense of the word "national" in Articles 26 and 27.

Again, the second paragraph of Article 10 stipulated that:

"In the event of more than one national of the same Member of the League being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected."

This paragraph meant that there was nothing to prevent the election of, for example, an English and a Canadian judge at the same time, because the Englishman did not possess Canadian nationality and *vice versa*. Great Britain and Canada were separate Members of the League.

Finally, Rule 71 of the Court stipulated that:

"On a question relating to an existing dispute between two or more States or Members of the League of Nations, Article 31 of the Statute shall apply."

This showed that the mere presence of an English judge would not prevent the appointment of a Canadian judge *ad hoc*.

In view of these considerations, Sir Cecil Hurst thought that any amendment was superfluous and, further, that it would be bad policy, because the meaning of the word "nationality" in Article 31 was quite clear.

When he had first raised the matter, he had encountered the opposition of M. Politis. No other member of the Committee except M. Raestad had expressed his views, and M. Raestad had agreed with Sir Cecil Hurst. Sir Cecil had therefore been under the impression that, with the exception of M. Politis, the Committee agreed with his view. It now appeared, however, that M. Politis was equally convinced that with the exception of Sir Cecil Hurst and M. Raestad the Committee supported the opposite contention. It was therefore with the object of settling the matter that he had raised the question. All that Sir Cecil Hurst now asked for was that this interpretation should be mentioned in the Committee's report. To do so would satisfy the British Dominions.

M. POLITIS agreed with the view of Sir Cecil Hurst as to what had taken place in the Committee when the point had been originally raised. M. Politis himself had had exactly the contrary impression to that of Sir Cecil Hurst. For that reason he was grateful to his British colleague for having raised the matter again, in order that the views of the Committee should be definitely ascertained.

Sir Cecil Hurst had originally proposed that Article 31 should be amended. He now wished his interpretation to be mentioned in the Minutes and in the report. If the Committee agreed to this procedure, and if it accepted the interpretation of Article 31 proposed by Sir Cecil Hurst, M. Politis would ask that those members, including himself, who disagreed with this interpretation should also be allowed to say so in the Committee's report.

To pass from matters of procedure to a discussion of the substance of the question, M. Politis would raise the following objections to the interpretation of Sir Cecil Hurst.

In the first place, the least that the Committee would have to fear was that small countries not belonging to a combination of States such as the British Empire would hesitate and perhaps refuse to accede to Article 36 of the Statute (the optional clause). For example, his own country Greece was on the point of acceding to that clause, but would certainly not do so if the Committee accepted Sir Cecil Hurst's interpretation of Article 31. In fact, M. Politis would formally advise his Government against taking any such step. The reason was fairly obvious. Under Sir Cecil Hurst's interpretation Greece, if she had a dispute with a British Dominion, might find herself in a position of inferiority. For example, it was quite possible that after the elections in 1930 both an English and a Canadian judge would be appointed to the Court, in which case if Greece had a dispute with Australia and if Australia insisted upon her right to appoint a judge *ad hoc*, Greece would find herself faced with three judges bound together by certain ties the nature of which it was difficult to define, whereas she herself would have the right to be represented only by one judge.

Despite what Sir Cecil Hurst had said at a previous meeting in regard to the great differences existing between the legal systems and constitutions of the Dominions and Great Britain, he had not replied in any way to the main objection which M. Politis had raised. It was a fundamental rule applying to all courts that, between the judge and the party to the case, there should be no kind of bond or connection, whether private or public. If this were the case in an ordinary national court, *a fortiori* it should be the case in the highest court in the world. Such a rule was, indeed, of vital importance, for any suspicion, however ill-founded it might be, that a judge might be biassed because of his connection with a party to a case must at all costs be avoided.

For these reasons it seemed logical to M. Politis that the Committee should adopt his own interpretation of Article 31. If it did not do so, the only other course, in his view, would be to complete Article 17 of the Statute and make it possible for the parties to a case to object to the presence of, for example, an English or a Canadian judge when they were in dispute with a Dominion.

M. Politis would strongly urge the Committee to reflect on the gravity of the situation which might arise were it to adopt the interpretation of Sir Cecil Hurst without, at the same time, providing any form of palliative.

To return, in conclusion, to the question of procedure, M. Politis asked that, if the Committee inserted Sir Cecil Hurst's interpretation of Article 31 in its report, it should also insert the formal reservations which he had made to such an interpretation.

M. FROMAGEOT considered that Sir Cecil Hurst, as well as M. Politis, had shown much wisdom and, at the same time, a good deal of ingenuity. A preliminary question should, however, be settled. Was it within the terms of reference of the Committee to give its opinion in regard to the interpretation of any article of the Statute? M. Fromageot doubted it. Many other articles besides Article 31 might give rise to different interpretations, and if the Committee proposed to intervene it might well embarrass the Court.

To refer to the merits of the question, M. Fromageot considered that if the interpretation of Sir Cecil Hurst were adopted, the Committee would be going too far and there would be a risk of serious abuses. On the other hand, if it followed M. Politis entirely, some injustice might result for the British Dominions.

In the view of M. Fromageot a compromise might be reached from the practical point of view and from that alone. What was desired was that the Court should work easily and effectively. If a Dominion had a special point in dispute, of a nature peculiar to itself, a judge *ad hoc* belonging to that Dominion could help the Court, since it was admitted that the Court should be in a position to be helped by national judges. In this special case the presence of a judge *ad hoc* would be justified, not only from the point of view of the Dominion in question, but also from that of the Court. If, on the contrary, the question under dispute was of a more general kind and did not affect solely the interest of the Dominion in question, there was no reason why several judges belonging to the British Empire should sit upon the Court.

For example, suppose that South Africa became involved in a dispute regarding the question of the freedom of the seas. That was certainly a general question. South Africa might, however, also be a party to a dispute regarding a question which particularly concerned it, a Customs question, for example, in which case the presence of a South African judge *ad hoc* would be indicated, as much from the point of view of the Dominion as from that of the Court.

The compromise to be contemplated, therefore, would be that the solution to be adopted should depend on the circumstances. However that might be, it did not seem that the Committee was in a position to interpret the Statute regarding this matter.

M. RAESTAD agreed with M. Fromageot that the Committee was going beyond its terms of reference in seeking to interpret the Statute, all the more so as the amendments which it had made in Articles 26, 27 and 31 did not concern the point raised by Sir Cecil Hurst.

With regard to the merits of the question, however, M. Raestad thought that M. Fromageot had expressed a dangerous view, and he could not agree with him. It must be admitted in principle that, according to the Statute, all the Members of the League of Nations were placed on an equal footing. If it had been desired to make any difference between the various Members as regarded this question it should have been done in Article 10 of which the text originally proposed read as follows :

“ In the event of more than one national of the same State being elected. . . . ”

The word “ State ” had subsequently been changed to “ Member ”. Perhaps it was unwise to place all the Members on an equal footing, but as this had been done, it was impossible to escape from its logical consequences. This meant, amongst other things, that a Dominion should be in the same position as any other Member of the League, as regards its right to appoint a national judge.

The Court could not decide each case on its merits. Such a procedure would involve a change in Article 31. The most that could be done would be to apply the provisions of Article 24 which stipulated that :

“ If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly. ”

“ If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court. ”

M. Raestad's conclusion was that the Committee would be exceeding its competence if it adopted either the interpretation of Sir Cecil Hurst or that of M. Politis. As far as he was concerned, however, he fully subscribed to the interpretation of Sir Cecil Hurst.

M. Iro had been much embarrassed by the question raised by Sir Cecil Hurst, for matters connected with the British Empire were invariably complex. There was not sufficient information regarding the legal status of the Dominions to make it possible to express any opinion, especially in so delicate a question, involving political consequences. He would, however, point out that no actual case of the kind which Sir Cecil Hurst desired to cover had as yet arisen. That being so, there seemed no reason why reference should be made at the present juncture to the problem. Moreover, the word “ nationality ” had a definite meaning in international life. In international relations Australians and Canadians possessed only British nationality. His conclusion was, therefore, that it would be dangerous to adopt the views of Sir Cecil Hurst and that the Committee should make no mention of the matter in its report.

M. GAUS would express no opinion on the substance of the question. From a purely legal standpoint, however, he could not agree with the interpretation put upon the Statute by Sir Cecil Hurst. M. Gaus considered that the opposite interpretation was quite possible. That being so, he did not think the Committee could settle the question by a mere interpretation, but that it would be necessary to insert a new provision deciding the point one way or another. In the view of M. Gaus, however, the Committee was not competent to do so for two reasons. In the first place, it could not interfere with the constitution of the British Empire ; in the second place, it could equally not interfere with the constitution of the League itself.

The VICE-CHAIRMAN thought it was clear that the interpretation proposed by Sir Cecil Hurst would not be unanimously adopted. In these circumstances the Committee should, he thought, close the discussion, which would be recorded in the Minutes. That record would certainly be of great interest if the problem arose.

M. POLITIS said that he had no objection in principle to the proposal of the Vice-Chairman, which would have the effect of closing the discussion on the question raised by Sir Cecil Hurst, provided that it was recorded in the Minutes. He wondered, however, whether the President or Vice-President of the Court should not first be asked whether they had ever contemplated, in any particular case, the application of the provisions of Article 24 of the Statute.

Sir Cecil HURST said he desired to make a declaration before the Committee complied with the suggestion of M. Politis.

In his opinion, the moment it appeared that there were differences of opinion within the Committee, the solution of the problem would have to be found outside the Committee. It did not seem to him that the Committee had the necessary competence to declare an opinion on the question, unless there was unanimous agreement. The only competent authority to settle the question would be the Court itself, and it did not seem to him desirable to ask the

President and Vice-President of the Court for their views on a problem which the Court might itself perhaps be called upon to settle in the ordinary course of its duties.

He was quite prepared to withdraw his request that an interpretation of Article 31 should be given in the report, but in that case he thought it would be better not to mention the subject at all in the report, in order that the position of his Government and of the Governments of the Dominions would not be in any way prejudiced by the discussions which had taken place in the Committee.

The VICE-CHAIRMAN asked whether the President of the Court was prepared to say whether Article 24 had ever been applied in practice.

M. ANZILOTTI said that Article 24 had never been formally applied.

M. POLITIS said he did not desire to press his proposal. He would add that it had never been his intention in any way to infringe upon the rights of the Dominions. He was merely anxious to preserve for the Court the high reputation of impartiality which was necessary for its efficiency and success.

Mr. ROOT said he had no wish to revive the discussion. He would like, however, to place on record the fact that the United States had recognised the separate international personality of the Dominions by exchanging Ministers with Canada and the Irish Free State.

32. Question of the Revision of the Statute of the Permanent Court of International Justice (continuation): Examination of the Report submitted by M. Fromageot and M. Politis.

The VICE-CHAIRMAN said the Committee would now take the report on the revision of the Statute of the Court which had been prepared by M. Fromageot and M. Politis (Annex 9).

Introduction.

M. FROMAGEOT pointed out that the order of the names of the members of the Committee was not quite correct. The order would be revised in the final version.

The VICE-CHAIRMAN referred to the statement in the sixth paragraph of the Introduction to the effect that the Permanent Court created by the League was a "real judicial body". Might it not be implied from this assertion that the Court was always to be regarded as a judge, even when it was issuing an advisory opinion? That question had not been discussed by the Committee, and no opinion should be expressed on the subject one way or the other.

M. POLITIS said that the phrase in question had not been used in the sense attributed to it by the Vice-Chairman. The sentence was only a reflection of the whole discussion which had taken place in the Committee, during which emphasis had been laid on the fact that every endeavour should be made to assert the judicial character of the Court as a tribunal. The paragraph to which the Vice-Chairman referred was intended to emphasise the fact that the Court was a real judicial body in the sense explained in the paragraph; in other words, that it had the necessary qualities of permanence and competence to act as a Court.

The VICE-CHAIRMAN said that M. Politis' interpretation of the paragraph gave him complete satisfaction.

Sir Cecil HURST drew attention to the fact that in the next paragraph the English text was not quite in accordance with the French text. The paragraph should read:

"It would appear that effect can be given to some of the Committee's proposals...".

The Committee agreed.

Mr. ROOT drew attention to the wording of the recommendation which figured as a conclusion to the Introduction. In that recommendation it was laid down that persons nominated by the national groups should have an adequate knowledge of the French and English languages. Those words might, perhaps, have a wider significance than was intended. He understood that the Committee had merely desired that judges should be able to read both languages, and that they need not necessarily be able to speak them. There were large regions of the world where men of considerable learning and experience of affairs, with a knowledge of French and English literature, had never had an opportunity of speaking one or other of those languages. It would be unfortunate if a severer language test were imposed than the Committee had intended.

Was it implied by the text as it stood that a judge, in order to become a candidate, must be able to follow the oral pleadings in the Court? He would suggest that such an interpretation would require a greater degree of proficiency than it was desirable to impose. He would suggest that some other form of expression should be used, such as "adequate reading knowledge".

Sir Cecil HURST represented that the reason for requiring the linguistic qualifications described in the recommendation was that judges should be able to read legal works in both languages.

M. POLITIS said he did not think that the Committee had understood in that sense the reason for the language qualification. A knowledge of the official languages was especially necessary to enable the judges to follow the discussions of the Court. A judge who could not follow the pleadings or discuss the findings of the Court with his colleagues was necessarily in a position of inferiority. He thought it was indispensable that a judge should be able to understand the two official languages, though he need not be able to speak them correctly.

Sir Cecil HURST wondered whether M. Politis had quite correctly stated the position. He had assumed that the recommendation was justified by the necessity for members of the Court being able to acquaint themselves with works of law written in both languages, so that they might be familiar with the two important schools of international law based on the Continental and the Anglo-Saxon systems respectively.

M. GAUS agreed with M. Politis as to the interpretation of the motives underlying the recommendation. The recommendation could not be based on the argument that it was necessary for the judges to have studied particularly legal works in the two official languages. Important works on international law had been written in other languages, and he could not approve a draft which might leave the impression that a preponderance had been given to the legal works of any particular nation.

M. IRO said he had understood that, in requiring an adequate knowledge of the French and English languages, the Committee had desired to ensure that the judges should be able to read legal works in those languages. It would be difficult to require more than that. Otherwise it would be difficult, or even impossible, to find suitable candidates in countries where neither French nor English was spoken, and those countries must, obviously, not be excluded.

M. POLITIS said he was quite aware of the motives which had induced Sir Cecil Hurst to support the present text. He had understood, however, that the members of the Committee had agreed that it would be difficult to justify the recommendation merely on the ground that the judges should be able to read legal works in French and English. There were important legal works in other languages, and if the motives referred to by Sir Cecil Hurst were admitted, it would be necessary to include five or six languages. The justification for requiring a knowledge of the two official languages was that they were the languages in which the correspondence, pleadings and discussions of the Court took place. In order to follow the proceedings of the Court a really adequate knowledge of the two languages was necessary.

M. RUNDSTEIN suggested that the recommendation should read to the effect that the judges should "understand" both official languages.

The VICE-CHAIRMAN thought that the report quite rightly insisted on the importance of the two official languages, and, in his view, the question should be left there. The only real justification for requiring an adequate knowledge of the two languages was that the judges should be able to follow the pleadings of the Court. As the doctrines of international law were not exclusively embodied in the two official languages, the recommendation would not be justified on the ground that it was necessary for the judges to have studied the French and English literature on the subject. He would submit that the formula suggested by Mr. Root would meet the case.

Mr. ROOT, emphasising his previous arguments, enquired why it was necessary for the present Committee to have interpreters. The present Committee and the original Committee of Jurists had been appointed for their competence to advise the Council upon matters of international law, and not for their linguistic attainments. The recommendation, as it stood, set up a linguistic standard for the judges which the present Committee did not attain, and which the Council of the League itself might find it difficult to achieve.

The question of the linguistic test to be applied was a practical one. If the qualification were defined according to the terms of the present text it might prevent many candidates from presenting themselves if they conscientiously applied a standard which appeared to be more severe than that which had really been intended, and it would thus become more difficult to find suitable candidates. He would emphasise that it was more important for the Court to obtain good judges than for the judges to obtain a seat upon the Court. A judge who came to the Court was required to surrender a good many advantages and to perform arduous duties for the public good.

M. ANZILOTTI said that the principal reason for the constitution of the present Committee was to amend the Statute with a view to rendering the work of the Court easier and more rapid. From that point of view the question of language was technically of great importance, and had already caused considerable embarrassment. The absence of adequate knowledge of the official languages by the judges had undoubtedly caused loss of time. If only one judge was unable to follow the proceedings in one of the languages, the time taken in hearing the case was virtually doubled, and any rapid exchange of views between the judges themselves became difficult. Judges unacquainted with the official languages were reduced to putting forward elaborate statements which had to be translated.

Personally, he would like it to be laid down that a judge should be able to read and understand the two official languages of the Court and to be able to speak at least one, so that he would be able to follow the pleadings and discussions. Such a stipulation would undoubtedly facilitate the work of the Court.

On the other hand, no one could fail to be strongly impressed by the arguments of Mr. Root, or fail to recognise that undue severity in applying the language test would make it difficult to find suitable judges for the Court. He was extremely reluctant to create such difficulties, but felt, nevertheless, that more than a reading knowledge of the two languages was required. He would point out, however, that an adequate reading knowledge of the two languages would constitute an improvement on the present state of affairs.

He did not think that the language qualification was justified by the argument that it was necessary for the judges to have studied the legal literature in the two official languages, but that its importance should be emphasised from the point of view of the proceedings of the Court. It was essential that the judges should be able to follow the pleadings and to take part easily in the discussions in the private meetings.

Sir Cecil HURST said that, after the observations of the President of the Court and Mr. Root, it was obvious that the solution would have to be a compromise. The fundamental object of the present Committee was to secure a good and efficient Court. It was necessary to have a Court of qualified judges, and not a Court of qualified linguists. He fully realised the difficulties to which the President of the Court had referred, but felt that it was more important, from the point of view of the Court itself, to reach right decisions than to reach decisions rapidly. There should, of course, be required a minimum knowledge of languages, and he thought that that minimum was represented by ability to read them.

He would propose the following form of words :

“ And that they are at least able to read the official languages of the Court. ”

M. FROMAGEOT said that the corresponding French text would be :

“ ... et qu'ils sont en mesure de lire au moins les deux langues officielles de la cour. ”

M. ANZILOTTI again asked that the judges should be required to speak one language and read the other.

M. URRUTIA said he could not accept the formula of Sir Cecil Hurst and M. Fromageot without a reservation. The question would be discussed again by the Assembly, and he did not know what attitude certain delegations might take on the subject. The technical ideal, as M. Anzilotti had pointed out, would be that the judges should be able to speak at least one of the official languages. It was necessary, however, to recognise the facts. It would be difficult for the national groups, in putting forward the candidature of a distinguished jurist, to verify whether he was really able to read the two official languages.

M. Urrutia felt that the whole matter might safely be left to the discretion of the national groups. The national groups realised that a knowledge of the two languages was an advantage, but they should not be precluded from putting forward a distinguished candidate, who might not have the necessary language qualifications. He would urge that a certain latitude should be left within the limits of the formula adopted in the recommendation. Otherwise, the recommendation might not be accepted by the Assembly.

M. HUBER said he appreciated the force of the arguments put forward by Mr. Root. His own view was, first, that a reading knowledge of the two languages was an absolutely necessary qualification. The documents placed before the judges were extremely voluminous. In the Danube case, for example, there had been 4,000 printed pages in the dossier. Translation into other languages on such a scale as that was practically impossible. Secondly, he felt that, though it was impossible to require that a judge should be able to speak, or even follow a discussion, in both languages, it must at least be required of him that he should be able to express himself intelligibly and to follow a discussion in one of them. A judge could not have any real influence on the discussions and decisions of the Court and could not accept the responsibility incumbent upon him unless he possessed this qualification.

M. RUNDSTEIN thought that all reference to the language qualification might be suppressed. It was already laid down in the recommendation that the persons nominated by the national groups should possess recognised practical experience in international law. Was it possible for persons to have acquired such practical experience if they could not understand and read works in French and English ?

The VICE-CHAIRMAN agreed that the solution of the problem would necessarily be a compromise. He would suggest that the qualifications required should be a reading knowledge of both languages, and an ability to speak one of them. He would point out that it was only a question of a recommendation.

Mr. ROOT said he was prepared to accept the suggestion of the Vice-Chairman.

The Committee accordingly decided to adopt the following formula :

“ And that they are at least able to read both official languages of the Court and speak one of them. ”

M. RUNDSTEIN asked what were the “ required qualifications ” referred to in paragraph 9 of the introduction. Were they the qualifications referred to in Article 2 of the Statute, or did they include the qualifications which had just been discussed ?

M. FROMAGEOT explained that it was naturally impossible to require that the statement of qualifications referred to in the paragraph in question should include a knowledge of languages.

M. POLITIS agreed. The qualifications referred to related to the general experience and career of the candidate. He observed that, in this connection, it would be necessary to amend the following paragraph, in order to bring it into conformity with the amended text of the recommendation :

The Committee decided to amend the paragraph as follows :

“ Further, as the official languages of the Court are French and English, it would appear essential that judges should at least be able to read both of them, and to speak one of them.”

1. *Composition of the Court.*

Adopted.

2. *Election of Judges.*

Adopted.

3. *Resignation of a Judge.*

M. ANZILOTTI pointed out that the words “ if desirable ” should be inserted after the words “ that he may ” in the last sentence of the first paragraph of this section.

The Committee agreed.

4. *Filling of occasional vacancies.*

Sir Cecil HURST pointed out that it would be necessary to insert the word “ even ” after the word “ filling ” in the first sentence of the second paragraph of this section.

The Committee agreed.

5. *New Article 15.*

Adopted.

6. *Functions and Occupations Incompatible with Membership of the Court.*

M. HUBER suggested that the words at the end of paragraph 1, following the word “ conciliators ”, should be deleted, and replaced by a provision to the effect that the judges should not accept any duties which might make it impossible for them to sit on the Court at a subsequent date, owing to the fact that they had already been implicated in the case. A judge by agreeing to act as conciliator in a given case might find himself unable to sit on the Court, in the event of that case coming before the Court at a subsequent stage of the proceedings. He would suggest a formula to the effect that any duties which a judge might agree to perform as conciliator should not be such as might make it impossible for him to sit later as a judge of the Court in accordance with Article 17.

M. GAUS enquired whether this proposal did not go too far. There was always a possibility that a case which came before a conciliator might subsequently come before the Court. The question to be decided was whether there was a reasonable expectation of such a case coming before the Court.

He thought it undesirable to make the rule too severe, as experience showed how difficult it was to find suitable men to act as arbitrators or conciliators or to sit as members of an arbitration committee. A judge should be excluded from performing those duties only if he had every reason to believe that the case which he was invited to decide would, under a treaty or some other arrangement, come before the Court at a later stage.

The VICE-CHAIRMAN said that a judge could always act as arbitrator in such cases, on the understanding that he would not sit on the Court if the case were brought before the Court.

M. ITO asked whether there were not cases of conciliation which might have political consequences, and in which the agreement of a judge to sit as conciliator would be incompatible with his duties as a member of the Court.

M. FROMAGEOT suggested the following formula :

“ . . . on condition, however, that the instrument under which they were appointed did not provide for a reference to the Court following upon the arbitration or upon the failure of the conciliation proceedings ”.

Agreed.

M. RUNDSTEIN asked whether the expression “ arbitrator or conciliator ” immediately preceding the formula which had just been adopted was sufficiently wide. Did this description include any member of an international tribunal ?

M. POLITIS said that the word “ arbitrator ” interpreted in its widest sense might be taken to cover any member of an international tribunal.

FIFTEENTH MEETING.

Held on Tuesday, March 19th, 1929 at 3.30 p.m.

Jonkheer VAN EYSINGA (Vice-Chairman) in the Chair.

Present : All the members of the Committee, with the exception of M. Scialoja and M. Osuský.

33. Question of the Revision of the Statute of the Permanent Court of International Justice : Examination of the Report submitted by M. Fromageot and M. Politis (continuation).

7. Article 17.

At the request of M. ANZILOTTI and M. HUBER, who considered that the original text of paragraph 2 (Annex 9) implied criticism of the practice of the judges of the Court hitherto, the Committee agreed to delete the last sentence of the paragraph reading : " This seemed too obvious..., and to replace the words " it would not be possible to infer *a contrario* " by the words " it will not henceforth, in view of the new Article 16, be possible to infer *a contrario* ".

Section 7 was adopted with the foregoing and certain other textual amendments.

8. Permanent Functioning of the Court.

M. RAESTAD drew attention to the wording of the sixth paragraph in which it was said,

" It will be for the Court, when fixing the length of the vacation, to provide for the possibility of convening at The Hague in an urgent case such a number of judges as would be necessary to allow it to discharge its duties. "

M. Raestad considered that if the Court had to meet, all the members should be convened and not merely a quorum of the Court, since it had been agreed by the Committee that all members were always to be at the disposal of the President.

M. ANZILOTTI pointed out that this provision might in certain cases refer to the convening of certain members who made up the special chambers.

M. FROMAGEOT considered that the case mentioned by M. Raestad was met by the words " to discharge its duties ".

M. ANZILOTTI observed that, according to the last paragraph, it would be the Court's duty to provide in its rules for the constitution of a vacation chamber. He did not think that, according to the terms of the present Statute, the Court was competent to constitute a vacation chamber and therefore suggested that the passage should be modified to read : " It would also be for the Court to regulate the manner in which it will carry out its duties during the vacations. "

M. FROMAGEOT proposed the following wording :

" It would also be for the Court to provide in its Rules for the organisation of a vacations procedure for the cases in which... "

Section 8 was adopted with the amendment proposed by M. Fromageot and certain other textual modifications.

9. Manner of forming the Court.

Section 9 was adopted with an amendment to the English text proposed by Mr. Root.

Sections 10 (Article 26) and 11 (Article 27) were adopted with certain textual modifications.

12. Chamber for Summary Procedure.

The Committee decided to add the following sentence at the end of the first paragraph :

" Provision must also be made, as in the case of the other special Chambers (Articles 26 and 27), for the selection of two judges to replace a judge who finds it impossible to sit. "

Article 29 was drafted to read as follows :

" With a view to the speedy dispatch of business, the Court shall form annually a Chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. "

13. National Judges.

M. FROMAGEOT proposed that the last paragraph of the new Article 31 should be amended to read :

“ Judges selected as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (para. 2), 20 and 24 of this Statute... ”

The reason for which he proposed to omit the reference to Article 16 was that it seemed to him to be difficult to exclude a judge appointed *ad hoc* from “ exercising any political or administrative function or engaging in any other occupation of a professional nature”, except, of course, while he was serving as a judge appointed *ad hoc*.

M. RAESTAD thought that it would perhaps have been possible to retain something of what had been stipulated in Articles 16 and 17 paragraph 1, in regard to the deputy judges, and regretted that the question had not been raised sooner.

Section 13 was adopted with the amendment proposed by M. Fromageot.

Section 14 (Article 32) and the draft resolutions attached were adopted, with certain amendments proposed by M. Hammarskjöld, (Registrar of the Court.)

Sections 15-20 were adopted with minor amendments.

The VICE-PRESIDENT wondered whether the report of M. Fromageot and M. Politis on the revision of the Statute of the Court should not be completed by a statement concerning the formalities required for the adoption and putting into force of the revised Statute, as Sir Cecil Hurst had done at the end of his report on the adhesion of the United States to the Protocol of Signature of the Statute of the Court. He urged the importance of causing both documents — the revised Protocol of 1926 and the new Statute of the Court — to come into force at the same time.

Mr. ROOT, while hoping that, as the Vice-Chairman had just said, the two Conventions would come into force at the same time, thought it, however, preferable to say nothing in the report. It was impossible to know in advance whether all the amendments proposed by the Committee would be accepted. It would be better to submit the two instruments separately.

M. ANZILOTTI referred to the report on the revision of the Statute of the Court adopted by the Council at its meeting on December 13th, 1928, in which it was laid down that it would be for the Committee to obtain the advice of the Permanent Court of International Justice in regard to the manner in which it performed its duties.

As M. Huber and he had not taken part in the work of the Committee as official representatives of the Court, he thought that it would perhaps be in order to submit the draft revised Statute and the corresponding report to the Court in May, since the Court would meet during that month, while the Council would not meet until June.

Sir Cecil HURST took the view that the Council alone could decide whether the draft of the revised Statute should be submitted to the Court after it had been approved by the Council.

M. POLITIS considered that the Council resolution did not in any way bind the Committee to submit the revised draft to the Court. It was left to the discretion of the Committee to obtain the views of the Court in one way or another.

The VICE-PRESIDENT thought that it was impossible to ask for the formal views of the Court at the time when the Committee, with the valuable collaboration of M. Anzilotti, M. Huber and M. Hammarskjöld, had finished its work and was about to break up. If the Council wished to submit the draft report to the Court when it had approved it, it was free to do so.

Sir Cecil HURST thought it would be useful to draw the attention of the Council to two other points :

1. If the Council approved the drafts submitted by the Committee, it would be its duty to take urgent measures to endeavour to ensure that they would enter into force before the session of the Assembly of 1930.

2. If, on the other hand, it proved impossible to obtain a sufficient number of ratifications before that date, it would be necessary for the Council, owing to the difficulties to which Sir Cecil Hurst had referred during the general discussion, to take steps to secure that the entry into force of the revised Statute of the Court should only take place at the moment when the membership of the Court would be renewed, that was to say, in 1939.

If the new Statute entered into force two or three years after the election of the judges in 1930, the amendments concerning incompatibilities and the number of judges might create an impossible position.

M. IRO thought it might perhaps be useful to propose that the Council should recommend the various States to send to the Assembly of 1930 delegates with full powers not only to accept the revised drafts of the Statute and the Protocol, but to sign the diplomatic instrument if that should be drawn up.

The VICE-PRESIDENT wondered whether it would not be a bad policy to contemplate in the report even the possibility that the two drafts might not be accepted in 1930.

M. POLITIS proposed that a recommendation should be made to the Council to the effect that it should be stipulated that the drafts, if they were to enter into force only after 1930, should not be actually applied until the time came to renew the Court.

To take account of the various observations made, M. FROMAGEOT proposed to add the following passage to his report :

“ Finally, the Committee has considered what would be the appropriate procedure for bringing into force the amendments proposed in the present report.

“ On this subject the Committee ventures to make the following suggestions :

“ If the Council approves the conclusions of the report, it will no doubt find it convenient to communicate them to the Members of the League of Nations and the States mentioned in the Annex to the Covenant and to transmit them to the Assembly ; it would be desirable that, if the amendments secure general approval, the Protocol accepting them which must be concluded between the Parties which have ratified the 1920 Statute should be made in the course of the next Assembly.

“ On this point the Committee must call the attention of the Council to the necessity of taking appropriate measures to secure the entry into force of the amendments a sufficient time before the election of the members of the Court in September 1930, on account, more particularly, of the changes which are made in regard to the number of the members of the Court and the rules as to the occupations which are incompatible with membership. ”

The Committee adopted the report with the various amendments proposed and the final passage submitted by M. Fromageot.

The VICE-PRESIDENT proposed that the Committee should communicate the draft revised Statute to the Press and the reports on that draft and on the draft revised Protocol for 1926, which had already been communicated.

This proposal was adopted.

34. Death of Lord Phillimore.

Mr. ROOT spoke as follows :

“ Mr Chairman, I beg your indulgence for a few words of respect and regret upon the death of Lord Phillimore who has come to the end of his long and useful life during our session — while we have been reviewing the work done by him in the Committee which framed the Statute of the Court. In that Committee he represented the system of jurisprudence built up on the common law of England. His services were invaluable. His serene and lovable character created in the Committee room an atmosphere of kindly consideration favourable to agreement. His superior intelligence trained by long judicial experience at once informed and clarified our thought. He was a very noble gentleman. His death is a great loss to a world in which he was always earnest and active for every good cause. ”

Sir Cecil HURST asked that he might be allowed to forward to his Government the moving words spoken by Mr. Root and those of M. Anzilotti spoken at the beginning of the session in regard to Lord Finlay.

35. Close of the Session.

M. ANZILOTTI, as President of the Court and in the name of M. Huber, made the following declaration :

“ Mr. Chairman, the Permanent Court of International Justice has formed the subject of your discussions for the period of some ten days that has just elapsed. You have sought for the means to enhance its efficacy as an international judicature and its scope as a “ Judicial Association of civilised nations ”, if I may use the words of our old master, Léon Bourgeois. It will therefore not be out of place if the President and Vice-President of the Court, whom the Council courteously invited to take part in your proceedings, express in a few words the impression left upon them by the results at which you have arrived.

“ May I first say how happy my colleague M. Huber and myself have been, one of us to make the acquaintance of Mr. Elihu Root, whom the Court regards as its spiritual father, and the other to strengthen the ties which he has had with Mr. Root ever since 1920 when the Statute which we have been considering first saw the light of day. On learning that Mr. Root had consented to make this long journey and to come to Europe to take part in the revision of the Statute ordered by the Assembly, we felt hopeful that his genius, thanks to which in 1920 he succeeded in overcoming the difficulties which formerly made the foundation of an international court impossible, would in 1929 enable us to find the right method for solving those difficulties which had hitherto prevented the United States from taking their full part in the “ judicial association ” of the States which afford the Court their moral and material support.

“ We have not been disappointed in our hope. The text which the Committee has just drawn up on the basis of the ideas contributed by Mr. Root, ideas which in their magnificent simplicity recall those which previously resulted in the foundation of the Court, does beyond all question open a way which may lead to the accession of the United States of America to the international agreement to which the Court owes its independent existence. The Court can only welcome with the keenest satisfaction that event as well as the great increase in moral authority implied in the accession of the United States, especially since that increase in authority, speaking humanly, will not have been bought at the price of the abandonment, either in law or in fact, of one of the branches of the Court's work, and a branch that is destined to bear many fruits for the better advancement of the realisation throughout the world of the idea of peace by law, of which the Court is the supreme guardian.

"The second part of your proceedings was also devoted to perfecting the Court as an instrument of international justice, but from a different point of view. To what degree your endeavours in this domain have been crowned by success experience alone can show. It would in any case be premature to hazard an opinion on this subject at a time when the analysis and synthesis which you have undertaken in the past few days are scarcely concluded, when consequently we are not yet sufficiently far removed to be able to estimate the results; but it is at any rate possible to say now that, if the will to do good work, a sincere desire to reach results and an atmosphere of sympathy are powerful factors in success, there is every ground for thinking that you will have been successful. I wish, therefore, on M. Huber's behalf and on my own, merely to pay a tribute to the great ability with which you have devoted yourselves to the achievement of your task and to thank you for the warm welcome which you have given to the part we have taken in your discussions.

"I must, however, say one thing more. Anything we have said here, as I stated at the beginning of your proceedings, represents nothing but our own personal opinion and must in no way be held to express the views of the Court."

The VICE-CHAIRMAN spoke as follows :

"I much regret that the person who so ably presided over the Committee during the first part of its work, M. Scialoja, has been prevented from remaining to the end of the session. Apart from that, however, my feelings are those of joy and satisfaction.

"The greatest satisfaction lies in the fact that the work of this Committee makes it possible that the United States of America will be able to take a new step to bring it once more into what is called world international organisation. From the first moment when the United States became an independent State, the world has become so accustomed to see that great Republic in the forefront of the development of international organisation, that it was regarded as a great misfortune when, in 1920, the United States seemed to stand somewhat aloof. It was not easy to link together again, after the events of 1920, the United States of Northern America and the peoples which may be described as the United States of the League of Nations. Much good-will has been shown on both sides in all attempts to re-establish a closer co-operation. After the United States Senate had adopted its resolution in January, 1926, a draft Protocol was drawn up at Geneva in September of that year. On both sides the difficulty consisted in the fear that there might be possible interference in the internal affairs either of the United States or of the League of Nations, and in 1926 we were still inclined to regard the second part of the fifth of the United States reservations as something which amounted to a right to veto important affairs of the League.

"After these two attempts and after more than two years' silence, it was clear that in order to find a solution a *deus ex machina* was needed; that *deus ex machina* arose; by immediately shifting the problem from the abstract to the concrete, Mr. Root brought us what is called in German 'das erlösende Wort'.

"May I, Mr. Root, express to you in the name of the whole Committee the feelings of the profoundest and deepest admiration and gratitude we have towards you. Long before 1914 you were considered all over the world as one of those exceptional statesmen and lawyers whom the world needs so much, and who use all their gifts and influence for the greater good of the organisation of humanity. After having played the principal part in solving in 1920 the difficult puzzle of the composition of a permanent world-court, you have now brought us the one link in the chain which was missing. When you return to your country, not only can you feel satisfied with the manner in which you have accomplished your task, but everyone will say of you that you have deserved well not only of your fatherland but also of the whole world.

"We must not forget that the fact that the Committee has been able to accomplish the second part of its task is in great part due to the efforts made by M. Fromageot to induce the Assembly, at its last session, to establish this Committee, with the object of re-examining the Statute of the Court, and to the proposals he has laid before our Committee. On these grounds I thank M. Fromageot most cordially, and I also thank him as well as Sir Cecil Hurst and M. Politis for the very considerable work as Rapporteurs which they have so competently performed in so short a time.

"On behalf of the Committee I equally express our warmest thanks to the President, the Vice-President and the Registrar of the Permanent Court of International Justice, and to M. Osuský, who has been a sure guide in all financial questions, for their extremely valuable co-operation. I also thank the members of the Legal Section of the Secretariat as well as all the officials of the Secretariat who have worked so hard to facilitate our task, and I wish to repeat our regrets that we were obliged to ask them to continue their work even on Sunday. May I also thank all the members of this Committee for the manner in which they have contributed to the accomplishment of its work.

"I declare the session of the Committee to be at an end."

ANNEX 1.

C.R.S.C.1.

NOTE REGARDING THE APPOINTMENT AND COMPOSITION OF THE COMMITTEE.

The circumstances in which the Committee has been appointed appear from the report of M. Scialoja, adopted by the Council on December 13th, 1928, the terms of which were as follows :

“ On September 20th, 1928, the Assembly of the League of Nations adopted the following resolution :

“The Assembly,

”Considering the ever-increasing number of matters referred to the Permanent Court of International Justice :

”Deeming it advisable that, before the renewal of the term 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 ;

”Draws the Council’s attention to the advisability of proceeding, before the renewal of the term 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. ’

“ In order to enable it to formulate the proposals to be submitted by it to the Assembly in accordance with the above resolution, it would seem that the Council might with advantage appoint a small Committee of Jurists to make a preliminary study of the subject.

“ Having regard to the terms of the Assembly’s decision, the Committee should have wide terms of reference ; namely, to report what amendments appear desirable in the various provisions of the Court’s Statute.

“ The Committee would, of course, be competent to examine such suggestions as may reach it during its work from authoritative sources. Further, it would fall to the Committee to ascertain the opinion of the Permanent Court of International Justice in respect of the working of the Court.

“ If the preceding suggestions are accepted by my colleagues, I will venture at a subsequent meeting to submit to them a resolution which will deal also with the composition of the Committee which I propose. ”

The Council accepted the suggestion that the Rapporteur should submit a draft resolution on this question at a later meeting.

At a subsequent meeting, on December 14th, the Council adopted the following resolution :

“ Referring to the report of the representative of Italy adopted on December 13th, 1928, the Council entrusts the study contemplated by this report to a Committee to be composed as follows : M. FROMAGEOT, M. GAUS, Sir Cecil HURST, M. ITO, M. POLITIS, M. RAESTAD, M. RUNDSTEIN, M. SCIALOJA, M. URRUTIA, Jonkheer VAN EYSINGA.

“ The Committee will, in addition to the above members, contain a jurist of the United States of America, to be appointed by the President of the Council and the Rapporteur.

“ The Council further invites the President and Vice-President of the Court, M. ANZILOTTI and M. HUBER, to participate in the work of the Committee.

“ If unable to attend, a member of the Committee may appoint a substitute to take his place.

“ The Council further decides that, up to the amount of 30,000 francs, the expenses occasioned by the work of the Committee shall be charged to Item 3, Chapter I, of the budget : ‘ Unforeseen expenditure (subject to a special decision of the Council).’ ”

As a result of the above resolution, Mr. Elihu Root has accepted membership of the Committee. The invitation addressed to M. Anzilotti and M. Huber by the Council was accepted by them. The Chairman of the Supervisory Commission has also been asked on behalf of the Council and has agreed to give his assistance in the work of the Committee.

By a resolution of March 9th, 1929, the Council appointed M. Massimo Pilotti as a member of this Committee.

* * *

In addition, the Council adopted on March 9th, 1929, the following proposal and draft resolution submitted by the representative of the British Empire :

“ My Government received a few days ago a note from the Secretary of State of the United States of America relating to the accession of the United States to the Protocol of Signature of the Statute of the Permanent Court of International Justice. I understand that similar notes have been received by the Governments of the other signatories.

“ The Secretary of State’s communication relates more particularly to the reply made to the communication of 1926 by twenty-four Governments as a result of the Conference which was held at the end of that year at Geneva.

“ My Government has observed with satisfaction that the United States Government feels that a further informal exchange of views, such as was contemplated by the Conference, ought to lead to an agreement which would be satisfactory to all parties.

“ The Secretary of State’s note has reached the Governments at the moment at which the Committee of Jurists appointed under the Council’s resolution of December 14th, 1928, is about to commence its study of the question of eventual amendment of the Statute of the Court. The task with which this Committee has been entrusted makes it, in my opinion, possible that it might be able to furnish valuable assistance towards reaching the agreement which is contemplated in the Secretary of State’s note, and which I am sure is greatly desired by all the present signatories of the Protocol of Signature of the Court’s Statute.

“ I venture, therefore, to suggest that the Council should invite the Committee to examine this question and to offer any advice upon it which it feels it can usefully give.

“ *Resolution.*

“ The Council requests the Committee appointed by its resolution of December 14th, 1928, to consider the present situation as regards accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice and to make any suggestions which it feels able to offer with a view to facilitating such accession on conditions satisfactory to all the interests concerned. ”

ANNEX 2.

C.114.M.40.1929.V.

ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL
OF SIGNATURE OF THE STATUTE OF THE PERMANENT COURT OF
INTERNATIONAL JUSTICE.

LETTER FROM THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO THE
SECRETARY-GENERAL OF THE LEAGUE.

Washington, February 19th, 1929.

I have the honour to refer to the communication of this Department dated March 2nd, 1926, informing you of the resolution of the Senate of the United States setting forth the conditions and understandings on which this Government might become a signatory to the Protocol of Signature of the Statute of the Permanent Court of International Justice, and to inform you that I am to-day transmitting to each of the signatories of the Protocol a communication which, after referring to my previous communication on the subject, reads as follows :

“ Five Governments unconditionally accepted the Senate reservations and understandings ; three indicated that they would accept but have not formally notified my Government of their acceptance ; fifteen simply acknowledged the receipt of my Government’s note of February 12th, 1926 ; while twenty-four have communicated to my Government replies as hereinafter indicated.

“ At a Conference held in Geneva in September 1926 by a large number of the States signatories to the Protocol of Signature of the Statute of the Permanent Court of International Justice, a Final Act was adopted in which were set forth certain conclusions and recommendations regarding the proposal of the United States, together with a preliminary draft of a Protocol regarding the adherence of the United States, which the Conference recommended that all the signatories of the Protocol of Signature of December 16th, 1920, should adopt in replying to the proposal of the United States. Twenty-four of the Governments adopted the recommendations of the Conference of 1926 and communicated to the Government of the United States in the manner suggested by the Conference. By these replies and the proposed Protocol attached thereto, the first four reservations adopted by the Senate of the United States were accepted. The fifth reservation was not accepted in full, but so much of the first part thereof as required the Court to render advisory opinions in public session was accepted, and the attention of my Government was called to the amended Rules of the Court requiring notice and an opportunity to be heard.

“ The second part of the fifth reservation therefore raised the only question on which there is any substantial difference of opinion. That part of the reservation reads as follows :

“ . . . Nor shall it (the Court) without the consent of the United States entertain any request for any advisory opinion touching any dispute or question in which the United States has or claims an interest.”

“ It was observed in the Final Act of the Conference that, as regards disputes to which the United States is a party, the Court had already pronounced upon the matter of disputes between a Member of the League of Nations and a State not a Member, and reference was made to Advisory Opinion No. 5 in the Eastern Carelia case in which the Court held that it would not pass on such a dispute without the consent of the non-Member of the League. The view was expressed that this would meet the desire of the United States.

“ As regards disputes to which the United States is not a party but in which it claims an interest, the view was expressed in the Final Act that this part of the fifth reservation rests upon the presumption that the adoption of a request for an advisory opinion by the Council or the Assembly requires a unanimous vote. It was stated that, since this has not been decided to be the case, it cannot be said with certainty whether in some or all cases a decision by a majority may not be sufficient but that, in any case where a State represented on the Council or in the Assembly would have a right to prevent by opposition in either of these bodies the adoption of a proposal to request an advisory opinion from the Court, the United States should enjoy an equal right. Article 4 of the draft Protocol states that, ‘ should the United States offer objection to an advisory opinion being given by the Court, at the request of the Council or the Assembly, concerning a dispute to which the United States is not a party or concerning a question other than a dispute between States, the Court will attribute to such objection the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations either in the Assembly or in the Council ’, and that ‘ the manner in which the consent provided for in the second part of the fifth reservation is to be given ’ should be the subject of an understanding to be reached by the Government of the United States with the Council of the League of Nations.

“ The Government of the United States desires to avoid, in so far as may be possible, any proposal which would interfere with or embarrass the work of the Council of the League of Nations, doubtless often perplexing and difficult, and it would be glad if it could dispose of the subject by a simple acceptance of the suggestions embodied in the Final Act and draft Protocol adopted at Geneva on September 23rd, 1926. There are, however, some elements of uncertainty in the bases of these suggestions which seem to require further discussion. The powers of the Council and its modes of procedure depend upon the Covenant of the League of Nations, which may be amended at any time. The ruling of the Court in the Eastern Carelia case and the Rules of the Court are also subject to change at any time. For these reasons, without further enquiry into the practicability of the suggestions, it appears that the Protocol submitted by the twenty-four Governments in relation to the fifth reservation of the United States Senate would not furnish adequate protection to the United States. It is gratifying to learn from the proceedings of the Conference at Geneva that the considerations inducing the adoption of that part of Reservation 5 giving rise to differences of opinion are appreciated by the Powers participating in that Conference. Possibly the interest of the United States thus attempted to be safeguarded may be fully protected in some other way or by some other formula. The Government of the United States feels that such an informal exchange of views as is contemplated by the twenty-four Governments should, as herein suggested, lead to agreement upon some provision which in unobjectionable form would protect the rights and interests of the United States as an adherent to the Court Statute, and this expectation is strongly supported by the fact that there seems to be but little difference regarding the substance of these rights and interests.”

(Signed) Frank B. KELLOGG.

ANNEX 3.

RESOLUTION ADOPTED BY THE UNITED STATES SENATE ON JANUARY 27TH, 1926.

LETTER FROM THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA
TO THE SECRETARY-GENERAL OF THE LEAGUE.

Washington, March 2nd, 1926.

I have the honour to refer to the communication of this Department, dated August 15th, 1921, acknowledging the receipt of a certified copy of the Protocol of Signature relating to the Statute of the Permanent Court of International Justice, and take pleasure in informing you that the Senate of the United States of America, on January 27th, 1926, gave its advice and consent to the adherence on the part of the United States to the Protocol of

Signature of the Statute for the Permanent Court of International Justice, dated December 16th, 1920, and the adjoined Statute for the Permanent Court of International Justice, without accepting or agreeing to the Optional Clause for Compulsory Jurisdiction contained in the said Statute, on the condition of the acceptance by the Powers signatory to the Protocol of the conditions, reservations and understandings contained in the Senate resolution, which reads as follows :

“ Whereas the President, under date of February 24th, 1923, transmitted a message to the Senate, accompanied by a letter from the Secretary of State, dated February 17th, 1923, asking the favourable advice and consent of the Senate to the adherence on the part of the United States to the Protocol of December 16th, 1920, of Signature of the Statute for the Permanent Court of International Justice, set out in the said message of the President (without accepting or agreeing to the Optional Clause for Compulsory Jurisdiction contained therein), upon the conditions and understandings hereafter stated, to be made a part of the instrument of adherence :

“ Therefore be it

“ Resolved (two-thirds of the Senators present concurring), That the Senate advise and consent to the adherence on the part of the United States to the said Protocol of December 16th, 1920, and the adjoined Statute for the Permanent Court of International Justice (without accepting or agreeing to the Optional Clause for Compulsory Jurisdiction contained in said Statute), and that the signature of the United States be affixed to the said Protocol, subject to the following reservations and understandings, which are hereby made a part and condition of this resolution, namely :

“ 1. That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Treaty of Versailles.

“ 2. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other States, Members respectively of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy judges of the Permanent Court of International Justice or for the filling of vacancies.

“ 3. That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

“ 4. That the United States may at any time withdraw its adherence to the said Protocol and that the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

“ 5. That the Court shall not render any advisory opinion except publicly after due notice to all States adhering to the Court and to all interested States and after public hearing or opportunity for hearing given to any State concerned ; nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest.

“ The signature of the United States to the said Protocol shall not be affixed until the Powers signatory to such Protocol shall have indicated, through an exchange of notes, their acceptance of the foregoing reservations and understandings as a part and a condition of adherence by the United States to the said Protocol.

“ Resolved further, As a part of this act of ratification, that the United States approve the Protocol and Statute hereinabove mentioned, with the understanding that recourse to the Permanent Court of International Justice for the settlement of differences between the United States and any other State or States can be had only by agreement thereto through general or special treaties concluded between the parties in dispute ; and

“ Resolved further, That adherence to the said Protocol and Statute hereby approved shall not be so construed as to require the United States to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign State ; nor shall adherence to the said Protocol and Statute be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions.

“ Agreed to, January 16th (Calendar day, January 27th), 1926. ”

I have the honour, therefore, to inform you that the signature of the United States will not be affixed to the said Protocol until the Governments of the Powers signatory thereto shall have signified in writing to the Government of the United States their acceptance of the foregoing conditions, reservations and understandings as a part and a condition to the adherence of the United States to the said Protocol and Statute.

I have addressed a communication to the representative of each of the Governments of the Powers signatories of the Protocol asking these several Governments to be good enough to ascertain and to inform me in writing whether they will accept the conditions, reservations and understandings contained in the resolution as a part and condition of the adherence of the United States to the said Protocol and Statute.

(Signed) Frank B. KELLOGG.

ANNEX 4.

CONFERENCE OF STATES SIGNATORIES OF THE PROTOCOL OF SIGNATURE OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

FINAL ACT.

1. The Conference of States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice (Protocol of December 16th, 1920) met at the International Labour Office in Geneva on September 1st, 1926.

2. The occasion of this Conference was the letter of March 2nd, 1926, by which the Secretary of State of the United States of America informed the Secretary-General of the League of Nations that the United States was disposed to adhere to the Protocol of Signature of December 16th, 1920, on condition that each of the States signatories of the said Protocol should previously accept five reservations and conditions as follows :

“ I. That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Treaty of Versailles.

“ II. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other States, Members, respectively, of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice or for the filling of vacancies.

“ III. That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

“ IV. That the United States may at any time withdraw its adherence to the said Protocol and that the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

“ V. That the Court shall not render any advisory opinion except publicly after due notice to all States adhering to the Court and to all interested States and after public hearing or opportunity for hearing given to any State concerned ; nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest. ”

This letter gave rise to the resolution of the Council of the League of Nations of March 18th, 1926, suggesting that a Conference of the delegates of the States signatories of the Protocol should be convened at Geneva, in which the Government of the United States was also invited to participate. The Conference was charged with the task of studying the way in which the Governments of the signatories of the Protocol above mentioned might satisfy the five reservations and conditions proposed by the Government of the United States of America.

3. The Government of the United States, for the reasons set forth in a letter of April 17th, 1926, addressed by the Secretary of State of the United States to the Secretary-General of the League of Nations, declined the invitation to take part in the Conference. The signatory States enumerated below designated as their delegates to the Conference :

[Here follows the list of Delegates.]

In the course of its first meeting on September 1st, 1926, the Conference elected as President, Jonkheer W. J. M. VAN EYSINGA, delegate of the Netherlands, and as Vice-Presidents, His Excellency M. César ZUMETA, delegate of Venezuela, and the Right Honourable Sir Francis Henry Dillon BELL, delegate of New Zealand.

4. In the course of its sessions, continued from September 1st, 1926, to September 23rd, 1926, the delegates named above, while regretting that they have not had the assistance of a representative of the Government of the United States, have studied the reservations and conditions of the United States with a strong desire to satisfy them in the largest possible measure. The Conference has unanimously welcomed the proposal of the United States to collaborate in the maintenance of the Permanent Court of International Justice ; such collaboration has been awaited with confidence by the States which have accepted the Statute of the Court. The Conference has taken full account of the great moral effect which the participation of the United States in the maintenance of this institution of peace and justice would have on the development of international law and on the progressive organisation of world society on the basis of a respect for law and the solidarity of nations. Nor has it been unmindful of the valuable American contributions to the progress of international justice in the course of the 19th and 20th centuries, notably in the fruitful participation of the delegates of the United States in the two Hague Peace Conferences and more recently in the large part taken by an eminent American jurist in the preparation of the Statute of the Court.

5. The Conference has recognised that adherence to the Protocol of Signature of December 16th, 1920, by the United States under special conditions necessitates an agreement between the United States and the signatories of the Protocol.

6. The Conference has formulated the following conclusions as the basis of the replies to the letter addressed by the Secretary of State of the United States to each of the States signatories of the Protocol of December 16th, 1920, by which the signatory States would declare their views as to the acceptance of the reservations and conditions proposed by the United States:

Reservation I.

It may be agreed that the adherence of the United States to the Protocol of December 16th, 1920, and the Statute of the Permanent Court of International Justice annexed thereto shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Treaty of Peace of Versailles of June 28th, 1919.

Reservation II.

It may be agreed that the United States may participate, through representatives designated for the purpose and upon an equality with the other States, Members of the League of Nations, represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, or for the filling of vacancies.

Reservation III.

It may be agreed that the United States pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

Reservation IV.

A. It may be agreed that the United States may at any time withdraw its adherence to the Protocol of December 16th, 1920.

In order to assure equality of treatment, it seems natural that the signatory States, acting together and by not less than a majority of two-thirds, should possess the corresponding right to withdraw their acceptance of the special conditions attached by the United States to its adherence to the said Protocol in the second part of the fourth reservation and in the fifth reservation. In this way the *status quo ante* could be re-established if it were found that the arrangement agreed upon was not yielding satisfactory results.

It is to be hoped, nevertheless, that no such withdrawal will be made without an attempt by a previous exchange of views to solve any difficulties which may arise.

B. It may be agreed that the Statute of the Permanent Court of International Justice annexed to the Protocol of December 16th, 1920, shall not be amended without the consent of the United States.

Reservation V.

A. In the matter of advisory opinions, and in the first place as regards the first part of the fifth reservation, the Government of the United States will, no doubt, have become aware, since the despatch of its letters to the various Governments, of the provisions of Articles 73 and 74 of the Rules of Court as amended by the Court on July 31st, 1926. It is believed that these provisions are such as to give satisfaction to the United States, having been made by the Court in exercise of its powers under Article 30 of its Statute. Moreover, the signatory States might study with the United States the possible incorporation of certain stipulations of principle on this subject in a protocol of execution such as is set forth hereafter, notably as regards the rendering of advisory opinions in public.

B. The second part of the fifth reservation makes it convenient to distinguish between advisory opinions asked for in the case of a dispute to which the United States is a party and that of advisory opinions asked for in the case of a dispute to which the United States is not a party but in which it claims an interest, or in the case of a question, other than a dispute, in which the United States claims an interest.

As regards disputes to which the United States is a party, it seems sufficient to refer to the jurisprudence of the Court, which has already had occasion to pronounce upon the matter of disputes between a Member of the League of Nations and a State not belonging to the League. This jurisprudence, as formulated in Advisory Opinion No. 5 (Eastern Carelia), given on July 23rd, 1923, seems to meet the desire of the United States.

As regards disputes to which the United States is not a party but in which it claims an interest, and as regards questions, other than disputes, in which the United States claims an interest, the Conference understands the object of the United States to be to assure to itself a position of equality with States represented either on the Council or in the Assembly of the League of Nations. This principle should be agreed to. But the fifth reservation appears to rest upon the presumption that the adoption of a request for an

advisory opinion by the Council or Assembly requires a unanimous vote. No such presumption, however, has so far been established. It is therefore impossible to say with certainty whether in some cases, or possibly in all cases, a decision by a majority is not sufficient. In any event the United States should be guaranteed a position of equality in this respect ; that is to say, in any case where a State represented on the Council or in the Assembly would possess the right of preventing, by opposition in either of these bodies, the adoption of a proposal to request an advisory opinion from the Court, the United States shall enjoy an equivalent right.

Great importance is attached by the Members of the League of Nations to the value of the advisory opinions which the Court may give as provided for in the Covenant. The Conference is confident that the Government of the United States entertains no desire to diminish the value of such opinions in connection with the functioning of the League of Nations. Yet the terms employed in the fifth reservation are of such a nature as to lend themselves to a possible interpretation which might have that effect. The Members of the League of Nations would exercise their rights in the Council and in the Assembly with full knowledge of the details of the situation which has necessitated a request for an advisory opinion, as well as with full appreciation of the responsibilities which a failure to reach a solution would involve for them under the Covenant of the League of Nations. A State which is exempt from the obligations and responsibilities of the Covenant would occupy a different position. It is for this reason that the procedure to be followed by a non-member State in connection with requests for advisory opinions is a matter of importance and in consequence it is desirable that the manner in which the consent provided for in the second part of the fifth reservation will be given should form the object of a supplementary agreement which would ensure that the peaceful settlement of future differences between Members of the League of Nations would not be made more difficult.

The Conference ventures to anticipate that the above conclusions will meet with acceptance by the United States. It observes that the application of some of the reservations of the United States would involve the conclusion of an appropriate agreement between the United States and the other States signatories of the Protocol of December 16th, 1920, as was indeed envisaged by the Secretary of State of the United States in his reply to the Secretary-General of the League of Nations dated April 17th, 1926. To this end, it is desirable that the States signatories of the Protocol of December 16th, 1920, should conclude with the United States a protocol of execution which, subject to such further exchange of views as the Government of the United States may think useful, might be in the form set out below.

PRELIMINARY DRAFT OF A PROTOCOL.

The States signatories of the Protocol of Signature of the Permanent Court of International Justice, dated December 16th, 1920, and the United States of America, through the undersigned duly authorised representatives, have agreed upon the following provisions regarding the adherence by the United States of America to the said Protocol, subject to the five reservations formulated by the United States.

Article 1.

The United States shall be admitted to participate, through representatives designated for the purpose and upon an equality with the signatory States, Members of the League of Nations, represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, provided for in the Statute of the Court. The vote of the United States shall be counted in determining the absolute majority of votes required by the Statute.

Article 2.

No amendment of the Statute annexed to the Protocol of December 16th, 1920^a may be made without the consent of all the Contracting States.

Article 3.

The Court shall render advisory opinions in public session.

Article 4.

The manner in which the consent provided for in the second part of the fifth reservation is to be given, will be the subject of an understanding to be reached by the Government of the United States with the Council of the League of Nations.

The States signatories of the Protocol of December 16th, 1920, will be informed as soon as the understanding contemplated by the preceding paragraph has been reached.

Should the United States offer objection to an advisory opinion being given by the Court, at the request of the Council or the Assembly, concerning a dispute to which the United States is not a party or concerning a question other than a dispute between States, the Court will attribute to such objection the same force and effect as attaches to a vote

against asking for the opinion given by a Member of the League of Nations either in the Assembly or in the Council.

Article 5.

Subject to the provisions of Article 7 below, the provisions of the present Protocol shall have the same force and effect as the provisions of the Statute annexed to the Protocol of December 16th, 1920.

Article 6.

The present Protocol shall be ratified. Each State shall forward the instrument of ratification to the Secretary-General of the League of Nations, who shall inform all the other signatory States. The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall come into force as soon as all the States which have ratified the Protocol of December 16th, 1920, including the United States, have deposited their ratifications.

Article 7.

The United States may at any time notify the Secretary-General of the League of Nations that it withdraws its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately communicate this notification to all the other States signatories of the Protocol.

In such case the present Protocol shall cease to be in force as from the receipt by the Secretary-General of the notification by the United States.

On their part, each of the Contracting States may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16th, 1920, in the second part of its fourth reservation and in its fifth reservation. The Secretary-General shall immediately give communication of this notification to each of the States signatories of the present Protocol. The present Protocol shall be considered as ceasing to be in force if and when, within one year from the receipt of the said notification, not less than two-thirds of the Contracting States other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance.

Article 8.

The present Protocol shall remain open for signature by any State which may in the future sign the Protocol of Signature of December 16th, 1920.

DONE at....., the day of, 19..., in a single copy, of which the French and English texts shall both be authoritative.

7. The Conference recommends to all the States signatories of the Protocol of December 16th, 1920, that they should adopt the above conclusions and despatch their replies as soon as possible. It directs its President to transmit to the Governments of the said States a draft letter of reply to the Secretary of State of the United States.

In faith of which the Delegates have signed the present Act.

DONE at Geneva, the twenty-third day of September nineteen hundred and twenty-six, in a single copy, of which the French and English texts shall both be authoritative, and which shall remain deposited in the archives of the League of Nations. A certified copy shall be sent to each of the States signatories of the Protocol of December 16th, 1920, as well as to the Council of the League of Nations, which convoked the Conference.

ANNEX 5.

C.R.S.C. 2.

CO-ORDINATION OF THE TERMS OF ARTICLE 14 OF THE COVENANT
AND ARTICLE 423 OF THE TREATY OF VERSAILLES.

MEMORANDUM BY THE INTERNATIONAL LABOUR OFFICE.

In view of the possible revision of the Statute of the Permanent Court of International Justice, the International Labour Office desires to call attention to a question which is of great importance from the point of view of the working of the International Labour Organisation. Under Article 14 of the Treaty of Versailles (Covenant of the League of Nations), the Permanent Court of International Justice is invested with a twofold function. In the first

place, it possesses a judicial function and is competent "to hear and determine any dispute of an international character which the parties thereto submit to it". Secondly, the Court possesses an advisory function and gives "an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly".

In Part XIII, the Treaty of Versailles established the permanent Labour Organisation, and Article 423 provides that :

"Any question or dispute relating to the interpretation of this part of the present Treaty or of any subsequent Convention concluded by the Members in pursuance of this part of the present Treaty shall be referred for decision to the Permanent Court of International Justice."

Between Article 14 and Article 423 of the Treaty of Versailles there is, if not a discrepancy, at least an absence of co-ordination which is worthy of notice.

How, indeed, are the extensive powers conferred on the Court by the very general terms of Article 423 to be exercised ?

In the judicial sphere, these powers only come into play if a "dispute" arises between two or more States. In this case, Article 423 is the clause by which the States Members of the International Labour Organisation have agreed in advance and as a general principle to submit their disputes to the Court for decision. Such a case, however, has never yet arisen since the International Labour Organisation has been in existence, and, though it is evidently not unlikely, it will probably only occur in comparatively rare circumstances.

It is rather in its advisory capacity that the competence of the Court, as laid down in Article 423, may be expected to come most frequently into play. This is indicated by the wording of the clause, which provides for the settlement of "toutes questions ou difficultés" and, in the English text, reproduces the terminology employed in Article 14 in connection with the advisory procedure ("any question or dispute"). In practice, moreover, the Court has already been called upon to pronounce four times since 1922 on questions connected with the working of the International Labour Organisation, and each time the matter has been referred to it by the advisory procedure.

It may therefore be affirmed that the competence conferred on the Court by Article 423 may be expected to come into play in the great majority of cases in an advisory form.

Now the legal basis of the advisory function is to be found in Article 14 of the Covenant, and this article is so worded as to give only the Council and the Assembly of the League of Nations the right to ask the Court for an advisory opinion. When a question arises concerning the International Labour Organisation (apart from the exceptional case of an actual dispute between States), the competent organs of the permanent Labour Organisation and the Governments concerned are debarred from referring the matter directly to the Court; they are obliged to apply to the Council or to the Assembly, which are alone competent to call into play the advisory functions of the Court.

This system does not seem entirely coherent, and there is a regrettable absence of co-ordination between Articles 14 and 423 of the Treaty of Versailles. The application of the latter article, which ought to give free access to the Court to the organs of the permanent Labour Organisation or to the Governments whenever a difficulty arises in regard to labour, actually depends on the pleasure of the Council or the Assembly. In practice, no doubt, no obstacle has hitherto been placed in the way of the consultation of the Court on questions concerning labour; the Council has transmitted without objection questions submitted to the Court by the Labour Conference or by the French Government or by the Governing Body of the International Labour Office, on which Advisory Opinions Nos. 1, 2, 3 and 13 have been given. But it is not impossible to imagine circumstances in which the Council or the Assembly might be led to refuse to refer a question to the Court. However unlikely such an eventuality may appear, that it should even be possible shows that the present system is not satisfactory. Both from the practical and from the theoretical point of view, it is hardly admissible that the fundamental provisions of Article 423 should run the risk of remaining a dead letter, and that the organs and Members of the International Labour Organisation might be refused access to the jurisdiction provided for in the Treaties.

This danger would become particularly serious if the principle were generally admitted that the Council or the Assembly could only make a request to the Court for an advisory opinion by a unanimous decision. The International Labour Office cannot presume to settle the delicate question whether unanimity is a necessary condition for the Council or the Assembly to be able to request the Court for an advisory opinion. It must point out, however, that, if this question were settled affirmatively for all cases, the result would be to confer on each member of the Council an individual and absolute veto which would allow him to obstruct the application of a formal provision of Part XIII of the Treaty of Versailles. The same applies as regards the fifth reservation attached by the United States Government to its accession to the Statute of the Court; the acceptance of this reservation in the form in which it stands would have the effect of making the application of Article 423 conditional on the consent of a Power outside the International Labour Organisation.

It seems unnecessary to stress the foregoing considerations. It is enough to mention them to show the necessity of explicitly and clearly reconciling Article 14 and Article 423 of the Treaty of Versailles. Nevertheless, the solution of this problem is no easy matter, since it is hardly possible to contemplate a modification of the terms either of Article 14 of the Covenant or of Article 423.

As regards the Statute of the Court, it contains no clause relating to the Court's advisory functions, but it is possible that the proposed revision may lead to the introduction of certain

clauses dealing with this point into the Statute. Any attempt to forecast at the present juncture the sense and scope of such clauses would seem to be premature, and the International Labour Office cannot at present offer any opinion on the subject. The only observation it wishes to make is that it trusts that Article 423 of the Treaty of Versailles will not be overlooked if the Statute of the Court is revised, and that in the revision no formula will be introduced which could interfere with the exercise of the Court's jurisdiction of labour questions. The force of this recommendation, however, is in a sense merely negative. Whatever may be the tenor of the revised Statute of the Court, it seems hardly possible that Articles 14 and 423 of the Treaty of Versailles can be brought into harmony by the Statute. The latter is, after all, a separate international treaty, and it would appear difficult, if not impossible, in law that it should bind the Council and the Assembly to observe a clause in another treaty.

In the view of the International Labour Office, the true solution of the problem of co-ordinating Articles 14 and 423 of the Treaty of Versailles is to be found in an interpretation of these two articles in combination. According to this combined interpretation, it would be the duty of the Council or the Assembly, under Article 14 of the Covenant, to refer to the Court any request for an advisory opinion in regard to the interpretation of Part XIII of the Treaty of Versailles or to the interpretation of the international labour conventions. Such requests for advisory opinions, however, made by the appropriate organs of the permanent Labour Organisation or by the States which are Members of that Organisation, find their true legal justification, not in any specific decision of the Council or the Assembly, but in a general provision in the Treaties. The authority for the reference of such requests for advisory opinions to the Court is to be found in Article 423 of the Treaty of Versailles, and not in any action taken by the Assembly or the Council on its own initiative. The real fact is that, if the Council or the Assembly is requested to ask the Court for an opinion on a labour question under Article 423, they are not free to accept or refuse such a request, but are legally bound to comply therewith. The Council and the Assembly are not called upon to take any "decision" in the strict sense of the term. They are called upon to discharge a constitutional function with which they have been invested by the Treaties, and the performance of this function does not even seem to require a formal vote.

At the very least, if the view were taken that the reference of a request for an advisory opinion to the Court under Article 423 should be based on a resolution of the Council or the Assembly, it is quite plain that such a resolution would not need to be passed unanimously. Whatever general solution may be found for the problem of the procedure in respect of requests for advisory opinions, it is hardly possible to contemplate unanimity as a necessary condition in the special case under consideration here. Paragraph 1 of Article 5 of the Covenant makes unanimity necessary only for "decisions" of the Council and Assembly, and it is doubtful whether the transmission of a request for an opinion under Article 423 can be regarded as a "decision". Even if it is so regarded, Article 5 requires unanimity only except where otherwise provided in the Covenant or in the treaty; whereas, in paragraph 2 of the same article, it is stipulated that "all matters of procedure . . ., including the appointment of Committees to investigate particular matters", shall be regulated by the Council or the Assembly by a majority vote. The transmission of a request for an opinion from the Court under Article 423 can scarcely be held to be more than a "matter of procedure"; and if the appointment of a Committee of Enquiry on the spontaneous initiative of the Council or the Assembly does not require a unanimous vote, it is hard to see why unanimity should be necessary for the application of an imperative and permanent provision such as Article 423.

In short, according to the combined interpretation of Articles 14 and 423 of the Treaty of Versailles, it is for the Council or the Assembly to refer to the Court requests for advisory opinions made under Article 423. At the same time, the reference of such requests for opinions does not represent, properly speaking, a decision on the part of the Assembly and the Council, but constitutes the discharge of a duty which they could not evade without disregarding the jurisdiction vested in the Court by Article 423.

The International Labour Office considers that the establishment of this interpretation as definite and incontestable would be a most valuable step. While it seems difficult from the legal point of view to formulate this interpretation in an amendment to the Statute of the Court, there is a procedure which appears admirably suited to produce a similar result. The Permanent Court of International Justice is the proper authority to interpret Article 423, by virtue of the provision of that very article. The International Labour Office, while reserving its freedom to call, if necessary, for a consultation of the Court on this point, thinks that it would be a desirable step for the Committee appointed to consider the possible revision of the Statute of the Court to suggest such a consultation to the Council.

It is of the utmost importance for the efficiency of all the institutions of the League that Articles 14 and 423 of the Treaty of Versailles should be brought into harmony. The object of this memorandum is to call the attention of the Committee of Jurists appointed to consider the possible revision of the Statute of the Permanent Court of International Justice to the difficulties that would result from the existence of divergent interpretations of Articles 14 and 423. In this connection, the International Labour Office is of opinion that the Permanent Court is the proper body to formulate an authoritative interpretation, bringing these two clauses into line. The Labour Office considers it desirable that the Court should be consulted on this question, and sincerely trusts that, when examining the Statute of the Court, the Committee of Jurists will make a recommendation in this sense to the Council.

March 7th, 1929.

ANNEX 6.

C.R.S.C. 11.

QUESTION OF THE EXTENSION OF THE JURISDICTION OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE AS A COURT OF APPEAL.

MEMORANDUM BY M. RUNDSTEIN.

[Translation.]

Practical experience of arbitration shows that States very frequently entrust the solution of their disputes to special arbitral tribunals; the disputes consequently do not come within the jurisdiction of the Permanent Court of International Justice.

In practice, special arbitrations may result, and have already resulted, in conflicts which may sometimes be very unfortunate, particularly in the case in which the question arises of the tribunal having exceeded its competence.

To escape from the disadvantages of situations which cause litigation on points of law to produce political conflicts, it might perhaps be convenient to contemplate an extension of the jurisdiction of the Permanent Court.

Such an extension would in no way require any modification of the Statute of the Court.

States preferring to have recourse to a special jurisdiction for certain disputes would be free, by making declarations on their respective accounts, to recognise the Permanent Court of International Justice as having obligatory jurisdiction as an appeal tribunal from awards given by special arbitral tribunals.

By signing such declarations, the States would accept the Permanent Court as exercising obligatory appellate jurisdiction in all the cases in which they might submit any disputes which might arise to a special arbitral or judicial procedure. Such recourse to the Court could only be excluded by an express provision inserted in the particular convention. It would follow that acceptance of an appellate jurisdiction of the Permanent Court would not be unconditionally binding upon the States: a State accepting the above principle, and signing a special arbitration convention with a State which did not recognise the admissibility of the appeal, would find itself in a very difficult situation if it were not free to exclude the possible consequences of the general declaration.

The basic provisions of such a declaration might be formulated as follows:

1.

Where a dispute arising between signatory States is submitted to a procedure of arbitration or judicial settlement outside the jurisdiction of the Permanent Court of International Justice, recourse may be had by each signatory party to the Permanent Court as a jurisdiction of appeal.

2.

The appellate jurisdiction of the Permanent Court of International Justice may be excluded by a provision inserted in the treaties or conventions providing for arbitration or judicial settlement.

3.

The appeal will lie as regards:

- (a) Violation of a rule of international law;
- (b) Exceeding of its competence by the tribunal.

4.

The appeal must be made to the Permanent Court of International Justice within the two months following the notification of the award by way of an application addressed to the Registrar.

5.

Eventual revision of an award belongs to the competence of the international arbitral or judicial tribunal which has been established by the signatory parties, except where they confer on the Permanent Court of International Justice jurisdiction as a tribunal for revision.

An application for revision may only be made in accordance with the provisions of Article 61 of the Statute of the Court.

6.

Where an international arbitral or judicial tribunal is open to private persons, any appeal or application for revision must be made by the State of which the person concerned is a national.

7.

The Court shall determine by Rules of Court the manner in which it will exercise its functions in cases of appeal or revision.

8.

The signatory parties may extend the application of the preceding provisions to treaties and conventions for arbitration or judicial settlement which were concluded before the entry into force of their respective declarations.

ANNEX 7.

C.R.S.C. 17.

REVISED DRAFT OF THE PROTOCOL OF 1926.

The States signatories of the Protocol of Signature of the Permanent Court of International Justice, dated December 16th, 1920, and the United States of America, through the undersigned duly authorised representatives, have mutually agreed upon the following provisions regarding the adherence of the United States of America to the said Protocol subject to the five reservations formulated by the United States in the resolution adopted by the Senate on January 27th, 1926.

Article 1.

The States signatories of the said Protocol accept the special conditions attached by the United States in the five reservations mentioned above to its adherence to the said Protocol upon the terms and conditions set out in the following articles.

Article 2.

The United States shall be admitted to participate, through representatives designated for the purpose and upon an equality with the signatory States, Members of the League of Nations, represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, provided for in the Statute of the Court. The vote of the United States shall be counted in determining the absolute majority of votes required by the Statute.

Article 3.

No amendment of the Statute annexed to the Protocol of December 16th, 1920, may be made without the consent of all the Contracting States.

Article 4.

The Court shall render advisory opinions in public session after notice and opportunity for hearing substantially as provided in the now existing Articles 73 and 74 of the Rules of Court.

Article 5.

With a view to ensuring that the Court shall not without the consent of the United States entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest, the Secretary-General of the League of Nations shall, through any channel designated for that purpose by the United States, inform the United States of any proposal before the Council or the Assembly of the League for obtaining an advisory opinion from the Court, and thereupon an exchange of views as to whether an interest of the United States is affected shall proceed with all convenient speed between the Council or Assembly of the League and the United States.

Whenever a request for an advisory opinion comes to the Court, the Registrar shall notify the United States thereof among other States mentioned in the now existing Article 73 of the Rules of Court, stating a reasonable time-limit fixed by the President within which a written statement by the United States concerning the request will be received. If for any reason no sufficient opportunity for an exchange of views upon such request should have been afforded, and the United States advises the Court that the question upon which the opinion of the Court is asked is one that affects the interest of the United States, proceedings shall be stayed for a period sufficient to enable an exchange of views between the Council or the Assembly and the United States to take place.

With regard to requesting an advisory opinion of the Court in any case covered by the preceding paragraphs, there shall be attributed to an objection of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations in the Council or in the Assembly.

If, after the exchange of views provided for in paragraphs 1 and 2, it shall appear that no agreement can be reached, and the United States is not prepared to forgo its objection, the exercise of the powers of withdrawal provided for in Article 8 hereof will follow naturally and goodwill.

Article 6.

Subject to the provisions of Article 8 below, the provisions of the present Protocol shall have the same force and effect as the provisions of the Statute of the Court.

Article 7.

The present Protocol shall be ratified. Each State shall forward the instrument of ratification to the Secretary-General of the League of Nations, who shall inform all the other signatory States. The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall come into force as soon as all States which have ratified the Protocol of December 16th, 1920, and also the United States have deposited their ratifications.

Article 8.

The United States may at any time notify the Secretary-General of the League of Nations that it withdraws its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately communicate this notification to all the other States signatories of the Protocol.

In such case, the present Protocol shall cease to be in force as from the receipt by the Secretary-General of the notification by the United States.

On their part, each of the Contracting States may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16th, 1920 (in the second part of its fourth reservation and in its fifth reservation). The Secretary-General shall immediately give communication of this notification to each of the States signatories of the present Protocol. The present Protocol shall be considered as ceasing to be in force if and when, within one year from the receipt of the said notification, not less than two-thirds of the Contracting States other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance.

Article 9.

The present Protocol shall remain open for signature by any State which may in the future sign the Protocol of Signature of December 16th, 1920.

DONE at, the day of....., 19....., in a single copy, of which the French and English texts shall both be authoritative.

ANNEX 8.

C.R.S.C. 19.

ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL OF SIGNATURE OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

DRAFT REPORT SUBMITTED BY SIR CECIL HURST.

On February 19th, 1929, the Secretary of State of the United States of America addressed to each of the Governments which had signed the Protocol of Signature of the Statute of the Permanent Court of International Justice dated December 16th, 1920, and also to the Secretary-General of the League of Nations a note suggesting that an exchange of views might lead to an agreement with regard to the acceptance of the stipulations set forth in the resolution adopted by the Senate of the United States on January 27th, 1926, as the conditions upon which the United States would adhere to the said Protocol. This note was considered by the Council of the League of Nations at its meeting on March 9th, 1929, and cordial satisfaction was expressed at the prospect which the note held out that a solution might be found for the difficulties which had prevented the adherence of the United States in 1926. On the same date, a resolution was adopted by the Council requesting the Committee of Jurists which had been appointed by the Council, at its meeting on December 14th, 1928, to consider the revision of the Statute of the Permanent Court of International Justice, to deal with this question as well as those with which it was already charged, and to make any suggestions which it felt able to offer, with a view to facilitating the accession of the United States on conditions satisfactory to all the interests concerned.

It has been of the greatest assistance to the Committee in the accomplishment of this additional task that among its members was to be found the Honourable Elihu Root, formerly Secretary of State of the United States, and one of the members of the Committee which in 1920 framed the original draft of the Statute of the Court. His presence in the Committee has enabled it to re-examine the work accomplished by the Special Conference which was convoked by the Council in 1926 after the receipt of the letter of March 2nd of that year from the then Secretary of State of the United States informing the Secretary-General of the League that the United States was disposed to adhere to the Protocol of December 16th, 1920, on certain conditions enumerated in that letter. The United States did not see its way to participate, as it was invited to do, in the Special Conference of 1926, and, unfortunately, the proposals which emanated from that Conference were found not to be acceptable to the United States. Nevertheless, as is shown by the note of February 19th, 1929, from Mr. Kellogg, the margin of difference between the requirements of the United States and the recommendations made by the Special Conference to the Powers which had signed the Protocol of December 16th, 1920, is not great. For this reason, the Committee adopted as the basis of its discussions the Preliminary Draft of a Protocol annexed to the Final Act of that Conference and has introduced into the text the changes which it believes to be necessary to overcome the objections encountered by the draft of 1926 and to render it acceptable to all parties. This revised text is now submitted to the Council of the League.

The discussions in the Committee have shown that the conditions with which the Government of the United States thought it necessary to accompany the expression of its willingness to adhere to the Protocol establishing the Court owed their origin to apprehension that the Council or the Assembly of the League might request from the Court advisory opinions without reference to interests of the United States which might in certain cases be involved. Those discussions have also shown that the hesitation felt by the delegates to the Conference of 1926 as to recommending the acceptance of those conditions was due to apprehension that the rights claimed in the reservations formulated by the United States might be exercised in a way which would interfere with the work of the Council or the Assembly and embarrass their procedure. The task of the Committee has been to discover some method of ensuring that neither on the one side nor on the other should these apprehensions turn out to be well founded.

No difficulty has at any time been felt with regard to the acceptance of the conditions laid down by the United States except in so far as they relate to advisory opinions, and the task of the Committee would have been simplified if its members had felt able to recommend that the system of asking the Court for an advisory opinion upon any particular question should be abandoned altogether. The Committee, however, is of opinion that the time is not yet ripe for any such drastic solution. The system of asking the Court for an advisory opinion has proved to be of substantial utility in securing a solution of questions which could not conveniently be submitted to the Court in any other form. It has also on occasions enabled questions to be submitted to the Court which the parties to a dispute were for various reasons unwilling themselves to submit to it in the form of international litigation.

The Committee has also felt obliged to reject another method by which satisfaction might without difficulty be given to the conditions laid down by the United States. It is that of recommending the adoption of a rule that in all cases a decision on the part of the Council or of the Assembly to ask for an advisory opinion from the Court must be unanimous. As is pointed out in the Final Act of the Special Conference of 1926, it was not then possible to say with certainty whether a decision by a majority was not sufficient. It is equally impossible to-day. Nor is it expedient to attempt to force this question of unanimity to a decision at the present time. It would be premature to do so. All that is possible is to guarantee to the United States a position of equality in this matter with the States which are represented in the Council or the Assembly of the League and to leave the major issue to be settled by the gradual evolution of a recognised and obligatory practice.

Furthermore, mature reflection convinced the Committee that it was useless to attempt to allay the apprehensions on either side, which have been referred to above, by the elaboration of any system of paper guarantees or abstract formulæ. The more hopeful system is to deal with the problem in a concrete form, to provide some method by which questions as they arise may be examined and views exchanged, and a conclusion thereby reached after each side has made itself acquainted with the difficulties and responsibilities which beset the other. It is this method which the Committee recommends should be adopted, and to provide for which it now submits a text of a Protocol to be concluded between the States which signed the Protocol of 1920 and the United States of America.

The note of February 19th, 1929, from the Secretary of State of the United States makes it clear that the Government of the United States has no desire to interfere with or to embarrass the work of the Council or the Assembly of the League, and that that Government realises the difficulties and responsibilities of the tasks with which the League is from time to time confronted. It shows that there is no intention on the part of the United States Government of hampering upon unreal or unsubstantial grounds the machinery by which advisory opinions are from time to time requested. The Committee is thereby enabled to recommend that the States which signed the Protocol of 1920 should accept the reservations formulated by the United States upon the terms and conditions set out in the articles of the draft Protocol. This is the effect of Article 1 of the draft Protocol now submitted.

The next three articles reproduce without substantial change the corresponding article of the draft of 1926.

The fifth article provides machinery by which the United States will be made aware of any proposal in the Council or the Assembly for obtaining an advisory opinion and will have an opportunity of indicating whether the interests of the United States are affected, so that

the Council or the Assembly, as the case may be, may decide its course of action with full knowledge of the position. One may hope with confidence that the exchange of views so provided for will be sufficient to ensure that an understanding will be reached and no conflict of views will remain.

The provisions of this article have been worded with due regard to the exigencies of business in the Council of the League. The desirability of obtaining an advisory opinion may only become apparent as the session of the Council is drawing to a close and when it may not be possible to complete the exchange of views before the members of that body separate. In that case, it will be for the Council to give such directions to the Secretary-General as the circumstances may require, in order to ensure that the intentions of the article are carried out. The request addressed to the Court may, for instance, be held up temporarily, or it may be despatched with a request that the Court will nevertheless suspend action on the request, until the exchange of views with the United States has been completed. The provisions of the article have purposely been framed so as to afford a measure of elasticity in its application. Similarly, if the Court has commenced the preliminary proceedings consequent upon the receipt of the request for an advisory opinion and has given notice of the request to the United States in the same way as to the other Governments, the proceedings may, if necessary, be interrupted, in order that the necessary exchange of views may take place. What is said in this paragraph with regard to requests for advisory opinions made by the Council would also apply to requests by the Assembly in the event of the Assembly making any such request.

The provisions of this article should in practice afford protection to all parties in all cases, but if they do not, it must be recognised that the solution embodied in the present proposal will not have achieved the success that was hoped, and that the United States would be fully justified in withdrawing from the arrangement. It is for this eventuality that provision is made in the last paragraph of the article. It may be hoped that, should any such withdrawal by the United States materialise, it would in fact be followed or accompanied by the conclusion of some new and more satisfactory arrangement.

The remaining provisions of the draft Protocol do not call for detailed comment, because they are in substance similar to the corresponding provisions of the draft Protocol of 1926.

It is necessary to consider what steps will be necessary to bring the Protocol of which the text is now submitted into force in the event of the recommendations of the Committee, being accepted.

If the terms of the Protocol are approved by the Council, it will be advisable that the Secretary-General should be directed, when answering Mr. Kellogg's note of February 19th, 1929, to communicate the draft to the Government of the United States. Since the Protocol, if approved, covers the entire ground of Mr. Kellogg's note, its transmission with a statement of the Council's approval would seem to constitute an adequate reply to that note. It should at the same time be communicated to all the States which signed the Protocol of December 16th, 1920.

It should also be communicated to the Assembly in which the proposal for appointment of this Committee originated, in order that, if its terms are acceptable to that body, a resolution approving it may be passed by the Assembly in the course of its ensuing session. Any action taken by the Assembly should be communicated to the signatory States which are called upon to determine whether or not to sign the new Protocol now proposed.

If the replies from the various Governments indicate a desire for a further exchange of views with regard to the nature of the proposed arrangement with the United States or to the terms of the draft Protocol, it will be for the Council to decide whether such exchange of views should proceed through the diplomatic channel or whether it is necessary to convoke a further Special Conference for the purpose, at which States not Members of the League might be represented. In any event, such exchange of views should, if possible, be completed before the conclusion of the Assembly, in order that the approval by the Assembly may be obtained in 1929. A copy of the Protocol in the terms approved will then be prepared for signature, and every effort should be made to secure that delegates to the meeting of the Assembly, or of the Special Conference if there should be one, should be authorised to sign the instrument and should actually sign it before they leave Geneva. The signature of representatives of States not Members of the League should be obtained at the same time.

As provided in Article 7 of the draft, the Protocol will come into force as soon as it has been ratified by the States which have ratified the Protocol of December 16th, 1920, and by the United States, and as soon as it has come into force, it will be possible for the United States to take the necessary steps to become a party to the Protocol of December 16th, 1920, and to any further Protocol which may have been concluded for introducing amendments into the Statute of the Court.

When that happy result has been achieved, it will be possible to feel that further progress has been made in establishing the reign of law among the nations of the world and in diminishing the risk that there may be a resort to force for the solution of their conflicts.

AMENDMENT OF THE STATUTE OF THE COURT.

REPORT ON THE WORK OF THE COMMITTEE SUBMITTED BY M. FROMAGEOT AND M. POLITIS.

On September 20th, 1928, the Assembly of the League of Nations adopted the following resolution :

“ The Assembly,

“ Considering the ever-increasing number of matters referred to the Permanent Court of International Justice ;

“ Deeming it advisable that, before the renewal of the term 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 ;

“ Draws the Council's attention to the advisability of proceeding, before the renewal of the term 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. ”

In pursuance of this resolution, the Council decided on December 13th and 14th, 1928, to set up a Committee consisting of Jonkheer VAN EYSINGA, M. FROMAGEOT, M. GAUS, Sir Cecil HURST, M. ITO, M. PILOTTI, M. POLITIS, M. RAESTAD, M. RUNDSTEIN, M. SCIALOJA, M. URRUTIA and a jurist of the United States of America, to be appointed by the President of the Council and the Rapporteur, who selected Mr. Elihu ROOT. The Council further invited the President and the Vice-President of the Court, M. ANZILOTTI and M. HUBER, and the Chairman of the Supervisory Commission, M. OSUSKÝ, to participate in the work of the Committee. M. PILOTTI was added to the Committee on March 9th, 1929.

The Council Rapporteur had pointed out that, having regard to the terms of the Assembly's decision, the Committee should have wide termes of reference, namely, “ to report what amendments appear desirable in the various provisions of the Court's Statute ”. He further stated “ that the Committee would, of course be competent to examine such suggestions as may reach it, during its work, from authoritative sources ” and “ that it would fall to the Committee to ascertain the opinion of the Permanent Court of International Justice in respect of the working of the Court ”.

As may be seen from the discussion in the Assembly, the latter did not contemplate recasting completely the Statute of the Court ; it had merely in view the possibility of supplementing or improving the Statute in the light of the experience already acquired.

It is in this spirit that the Committee, which met at Geneva on March 11th, 1929, under the chairmanship of M. SCIALOJA, has pursued its work, which was completed on March 19th under the chairmanship of Jonkheer VAN EYSINGA, the Vice-Chairman.

In the proposals which the Committee has the honour to submit to the Council, it has been in general actuated by the desire to give the States full assurance that the Permanent Court of International Justice established by the League of Nations is a real *judicial* body which is constantly at their disposal for the purpose of hearing and determining their disputes and which possesses alike the necessary juristic competence and experience of international affairs.

It would appear that effect can be given to some of the Committee's proposals by means of *vœux* or recommendations ; other proposals would appear to call for an amendment of the existing text of the Statute.

In the first place, the Committee examined the qualifications which members of the Court should possess in order to satisfy the expectations of Governments in regard to the Permanent Court of International Justice. These conditions will be found in Article 2 of the Statute. The Committee has thought that it would be desirable to mention, in addition to recognised competence in international law which is mentioned in Article 2 of the Statute, the requirement of practical experience in this sphere.

Similarly, the national groups, when nominating their candidates in accordance with Article 5, should attach to each nomination a statement of the career of the person nominated, showing that he possesses the required qualifications.

Further, as the official languages of the Court are French and English, it appears essential that the judges should possess an adequate knowledge of these two languages. Though this may be self-evident, the Committee has thought that it would be desirable to draw the special attention of the national groups to the point.

The Committee is of opinion that, despite their importance, none of these three questions necessitates a modification of the existing texts, and that it would be sufficient to proceed by way of a recommendation, as follows :

“ The Committee decides to advise the Assembly to adopt the following recommendation :

“ ‘ The Secretary-General, in issuing the invitations provided for in Article 5 of the Statute, will request the national groups to satisfy themselves that the candidates nominated

by them possess recognised practical experience in international law and that they have an adequate knowledge of the French and English languages ; he will recommend the groups to attach to each nomination a statement of the career of the person nominated showing that he possesses the required qualifications.' ”

On the other hand, it appeared necessary to deal with the following questions by means of amendments :

1. COMPOSITION OF THE COURT.

Experience has shown that deputy-judges have been called upon almost constantly to sit on the Court, the reason being that the majority of them are resident in Europe and were consequently more readily available than judges belonging to other continents ; this has tended to give the Europeans a privileged position. On the other hand, as the deputy-judges have in fact been placed on a footing of equality with the ordinary judges in regard to the work performed, without being subject to the same disabilities, the difference in treatment in this latter respect has not been without its disadvantages. Finally, a further difference between the two classes of judges—that relating to their emoluments—has actually disappeared, since the allowances granted to deputy-judges have placed them in a situation almost equal to that of the ordinary judges.

Practical experience thus points to assimilation of the two classes of judges and accordingly suggests the desirability of abolishing the deputy-judges and replacing them by an equal number of ordinary judges.

The Committee proposes, therefore, to increase the number of ordinary judges from eleven to fifteen and to omit all mention of deputy-judges in Article 3. The disappearance of the deputy-judges naturally involves consequential amendment of various articles in the Statute in which they are mentioned. These changes will be indicated below in connection with Articles 8, 15, 16, 17, 25, 31 and 32. To avoid the risk of an exaggeration which might cause misconception, it also appeared desirable to omit in the new text of Article 3 the reference to a possible increase of the members of the Court above the number of fifteen.

As a result, the new text of Article 3 would be as follows :

“ The Court shall consist of fifteen members. ”

2. ELECTION OF JUDGES.

As already stated, the text of Article 8 will, as a result of the disappearance of the deputy-judges, read as follows :

“ The Assembly and the Council shall proceed independently of one another to elect the members of the Court. ”

3. RESIGNATION OF A JUDGE.

The resignation of a judge is not provided for in the present existing text of the Statute. The question has, however, arisen in practice, and doubts have been felt as to the procedure to be adopted in such cases. The Committee considered that it would be desirable to supply the omission and to take the view that, once a resignation has been transmitted to the League of Nations, it must be regarded as final ; but that, nevertheless, the resignation should be transmitted to the League by the President of the Court in order that he may be able to satisfy himself that the decision of the judge concerned is irrevocable.

Consequently, the Committee proposes to add two paragraphs to Article 13, which would read as follows :

“ The members of the Court shall be elected for nine years.

“ They may be re-elected.

“ They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

“ In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations.

“ This notification makes the place vacant. ”

4. FILLING OF OCCASIONAL VACANCIES.

Article 14 of the Statute merely provides that vacancies which may occur shall be filled by the same method as that laid down for the renewal of the entire Court. Experience has shown that there is a serious disadvantage in waiting for the annual meeting of the Assembly before filling a vacancy, as this may cause a delay of as much as fifteen months. During this period, the Court might be deprived of its essential characteristic—that of a body representative of the various juridical systems—while at the same time the uninterrupted and regular working of this high tribunal might be rendered more difficult.

To remedy this defect, the Committee has thought it desirable to establish a somewhat elastic system which, especially in cases deemed by the Council of the League of Nations to be urgent, would allow of the filling of a single vacancy within the shortest possible space of time. Under this system, the Secretary-General of the League of Nations would address the prescribed request, within one month after the occurrence of any vacancy, to the national groups, in accordance with Article 5, and the Council would be in a position at its next session

to decide whether the election was of a sufficiently urgent character to necessitate the convening of the Assembly in extraordinary session before its ordinary September session.

The system would be embodied in the following new draft of Article 14 :

“ Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision : the Secretary-General of the League of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Council at its next session. ”

5. NEW ARTICLE 15.

As Article 15 of the Statute disappears with the disappearance of the deputy-judges, the Committee proposes to make a new Article 15 out of the unaltered part of Article 14, reading as follows :

“ A member of the Court elected to replace a member whose period of appointment has not expired will hold the appointment for the remainder of his predecessor's term. ”

6. FUNCTIONS AND OCCUPATIONS INCOMPATIBLE WITH MEMBERSHIP OF THE COURT.

In accordance with the guiding idea of the Committee's work, namely, that the Court, by its composition and its operation, should inspire in the States the highest possible degree of confidence, the Committee has thought that it would be necessary to amplify the rules of Article 16 as to what functions and occupations are incompatible with membership of the Court, and for this purpose to indicate clearly that the members of the Court must not only refrain from exercising any political or administrative function, but also may not engage in any other occupation of a professional nature. Naturally, it would be permissible for members of the Court to be included on the list of members of the Permanent Court of Arbitration and to exercise, if their duties on the Court allowed them the necessary leisure, the functions of arbitrators or conciliators, provided always that, under they would never be able to take part in deciding a case in which they had participated in one of the capacities mentioned.

With the disappearance of the deputy-judges, the second sentence of paragraph 1 of Article 17, Article 16 naturally disappears as well.

Article 16 would thus read as follows :

“ The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

“ Any doubt on this point is settled by the decision of the Court. ”

7. ARTICLE 17.

The second sentence of the first paragraph of Article 17 referring to deputy-judges becomes meaningless and is to be omitted.

At this point, the Committee feels it should observe that, while it is stated that no member of the Court can act as agent, counsel or advocate in any case of an international nature, it would not be possible to infer *a contrario* that he is free to exercise the said functions in a case which is national in character. This seemed too obvious for it to be necessary to redraft the text of the second paragraph.

The same consideration applies to the end of the second paragraph, which states that no member of the Court may participate personally in any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity. Obviously, the same would hold good as to their participation in a commission of conciliation; this appeared to be indicated clearly enough in the expression “ or in any other capacity ”.

Article 17 would therefore read as follows :

“ No member of the Court may act as agent, counsel or advocate in any case of an international nature.

“ No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

“ Any doubt on this point is settled by the decision of the Court. ”

8. PERMANENT FUNCTIONING OF THE COURT.

Under the system at present laid down, the Court holds one session annually, beginning on June 15th, and it is convened, in exceptional cases, in extraordinary session when circumstances so require.

In practice, the Court has often been obliged, on account of the increase in the cases referred to it, to hold several extraordinary sessions annually. In so doing, it has occasionally encountered serious practical difficulties. The repeated holding of extraordinary sessions has, in this way, tended, in fact, to bring the Court nearer to that permanent character which its title denotes, and which its promoters had contemplated in order to advance the progress of international justice.

The Committee accordingly considers that it is desirable to bring the written rules into harmony with the facts and to indicate, in a new draft of Article 23, a more regular working

of the Court by providing, in imitation of national courts, for a real international judicial year. It therefore proposes to state that the Court shall, in principle, remain constantly in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

On the other hand, in order to enable members of the Court whose ordinary residence is in a country at a considerable distance from its seat to return occasionally to their homes during their term of office, it is suggested that they should be granted the right to six months' leave every three years in addition to the ordinary vacations.

Apart from exceptional cases, such as that of illness or other good reason for absence, the judges must be permanently at the disposal of the Court.

It is to be understood that this principle applies even during the judicial vacations, in the sense that it will be for the Court, when fixing the length of the vacation, to provide for the possibility of convening at The Hague, in an urgent case, such a number of judges as would be necessary to allow it to discharge its duties.

It would also be for the Court to provide in its Rules for the organisation of a vacations procedure for the cases in which a full meeting of the Court would not be necessary.

Article 23 would accordingly be redrafted as follows :

“ The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court at the end of each year for the following year.

“ Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years.

“ Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court.”

9. MANNER OF FORMING THE COURT.

As a result of the disappearance of the deputy-judges, the present paragraph 2 of Article 25 must be deleted.

The Committee proposes to replace it by a provision which would enable judges, when there is a heavy cause-list, to sit in turn in order to ensure the prompt despatch of business and would at the same time make it possible to remove the disadvantages that might arise from the co-operation in one and the same case of fifteen members of the Court.

Under this provision, the Court would have the power to provide in its Rules that, according to circumstances and in rotation, a judge or judges might be dispensed from sitting.

The intention of the Committee has of course been that the right just mentioned should in no case be so exercised as to give grounds for any suspicion that the Court has in a given case been specially composed for the purpose of affecting the decision of the case.

The deletion of paragraph 2 of Article 25 necessarily involves the redrafting of paragraph 3. There is no longer any point in providing that a certain number of judges must be available since, as previously stated, all the judges are in principle constantly at the disposal of the Court. It is therefore sufficient to retain the essential sentence in the third paragraph relating to the quorum.

The new Article 25 would be worded as follows :

“ The full Court shall sit except when it is expressly provided otherwise.

“ Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

“ Provided always that a quorum of nine judges shall suffice to constitute the Court.”

10. SPECIAL CHAMBER FOR LABOUR CASES.

The redrafting of Article 25 involves a change in paragraph 2 of Article 26, which states that the Court will sit with the number of judges provided for in Article 25. It should now be said that the full Court will sit.

In the next sentence of the same paragraph, the Committee is of opinion that, for the sake of clearness, it is necessary to read “ In both cases, ” that is to say, the cases which are referred to, instead of “ on all occasions ”, because, as is suggested later on, the summary procedure without the assistance of the technical assessors becomes possible in labour cases.

Paragraph 3 of Article 26 should be deleted in consequence of the modification proposed later in Article 31 in regard to national judges.

The Committee would suggest replacing this paragraph by inserting, as the last paragraph but one of Article 26, a stipulation allowing the parties, should they so desire, to resort to the summary procedure provided for in Article 29.

It is the Committee's intention that, whenever resort is had to this right, the Court constituted as a Chamber for summary procedure should consist of five judges only, as will be stated later in connection with Article 29, without the presence of technical assessors.

Article 26 would accordingly be drafted as follows :

“ Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions :

“ The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases, the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

“ The technical assessors shall be chosen for each particular case in accordance with rule of procedure under Article 30 from a list of “ Assessors for Labour Cases ”, composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The governing Body will nominate, as to one-half, representatives of the workers and, as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding articles of the other Treaties of Peace.

“ Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

“ In Labour cases, the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings. ”

11. SPECIAL CHAMBER FOR TRANSIT AND COMMUNICATIONS CASES.

The Committee considered whether it might not be well to delete Article 27, seeing that no application has yet been received and that in the opinion of certain persons it is unlikely that any will ever be received. Nevertheless, the Committee thought it preferable to retain the Article, modifying it, however, in the same way as Article 26 : i. e., by substituting in paragraph 2 the words “ the full Court will sit ” for the present text “ the Court will sit with the number of judges provided for under Article 25 ” ; by omitting paragraph 3 ; and, finally, by inserting as the last paragraph of Article 27 the same new provision as is contained in the previous article with regard to summary procedure.

The new draft of Article 27 would therefore be as follows :

“ Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace shall be heard and determined by the Court under the following conditions :

“ The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

“ The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of “ Assessors for Transit and Communications Cases ”, composed of two persons nominated by each Member of the League of Nations.

“ Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request. ”

12. CHAMBER FOR SUMMARY PROCEDURE.

As indicated below in connection with Article 31, the Committee considered that, so long as the system of national judges exists, it should apply to the Chamber for Summary Procedure as well as to any other form of the Court. It will therefore be necessary to bring Article 29 into harmony with the new draft of Article 31 and for this purpose to make the Chamber for Summary Procedure consist of five judges instead of three.

Article 29 would therefore read as follows :

“ With a view to the speedy dispatch of business, the Court shall form annually a Chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. ”

13. NATIONAL JUDGES.

The Committee considered that it was no part of its duty to deal with the institution of national judges, which is regarded by certain States as one of the essential principles of the organisation of the Court.

It also considered that, in view of the importance which certain States attach to this system, its application should not be limited, as is at present done in Article 31, to the single case in which the full Court sits, but that, on the contrary, it should be extended to the Court in all its forms.

With this object, the Committee proposes to insert as a fourth paragraph in Article 31 a provision making the system of national judges apply to the Special Chambers for Labour, for Communications and Transit and for Summary Procedure (Articles 26, 27 and 29).

Moreover, the disappearance of the deputy-judges necessitates redrafting paragraph 2 of Article 31. There must be a slight change in paragraph 2 and changes of minor importance in paragraphs 3 and 5 of Article 31.

The new Article 31 would read as follows :

“ Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

“ If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

“ If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to select a judge as provided in the preceding paragraph.

“ The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

“ Should there be several parties in the same interest, they shall for the purpose of the preceding provisions be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

“ Judges selected as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 16, 17, 20 and 24 of this Statute. They shall take part in the decision on terms of complete equality with their colleagues.”

14. SALARIES OF JUDGES.

The permanent character of the Court having been more firmly established, and the requirements as to the selection of judges and the rules regarding the other occupations which they may not follow concurrently having been more clearly stated, it has been thought expedient to abandon the mixed system at present in force, which consists in an annual indemnity and allowances for each day of service. Payment for the services and subsistence expenses of members of the Court at The Hague will now take the form of a fixed inclusive annual salary which in fact, will correspond approximately to the maximum obtainable by the judges under the present system.

This will be a simplification of a system which at present is particularly complicated.

Accordingly, the Committee proposes to redraft Article 32 completely and to submit to the Assembly a draft resolution to be substituted for the resolution of December 18th, 1920, concerning the salaries of members of the Court.

It has not, however, been thought expedient to include in the annual salary the travelling expenses of members attending the Court or their travelling expenses while on duty.

In the Committee's view, it is for the Assembly to lay down special regulations on this point. The Committee considers, however, that the members of the Court and the Registrar should, apart from journeys made on duty, be reimbursed for only one journey every year from the seat of the Court to their homes and back again.

The final paragraph of the present Article 32 deals with retiring pensions for the personnel of the Court. It refers to a special regulation which was made by the Assembly in 1924. This regulation will require revision; the Supervisory Commission will lay the matter before the Assembly, but on account of certain proposed amendments to the Statute of the Court, of which a brief summary was given at the head of this section, the Committee is of opinion that the Assembly's attention should be specially drawn to the desirability of redrafting paragraph 5 of Article 1 of the 1924 regulation in the terms indicated in the attached draft resolution as to pensions.

The new text of Article 32 and the accompanying draft resolutions, referred to above, would be as follows :

“ The members of the Court shall receive an annual salary.

“ The President shall receive a special annual allowance.

“ The Vice-President shall receive a special allowance for every day on which he acts as President.

“ The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

“ These salaries, allowances and indemnities shall be fixed by the Assembly of the League of Nations on the proposal of the Council. They may not be decreased during the term of office.

“ The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court.

“ Regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.

“ The above salaries, indemnities and allowances shall be free of all taxation.”

Draft Resolution concerning Salaries.

“ In accordance with the provisions of Article 32 of the Statute, the Assembly of the League of Nations fixes the salaries, allowances and indemnities of the members and judges of the Permanent Court of International Justice as follows :

	Dutch florins
<i>“ President :</i>	
Annual salary	45,000
Special indemnity	15,000
<i>“ Vice-President :</i>	
Annual salary	45,000
Allowance for each day on duty (100×100)	10,000 (maximum)
<i>“ Members :</i>	
Annual salary	45,000
<i>“ Judges referred to in Article 31 of the Statute :</i>	
Indemnity for each day on duty	100
Allowance for each day of attendance50 ”

Draft Resolution regarding Pensions.

“ The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. Should, however, the person entitled to a pension, before attaining that age, reach the end of his term of office with out being re-elected, his pension may be made payable to him as from the date on which his functions cease. The decision shall be taken by the Court. ”

15. CONTRIBUTIONS OF STATES NOT MEMBERS OF THE LEAGUE OF NATIONS.

The Committee does not propose any amendment to Article 35, but thinks that an observation is called for on paragraph 3 of that Article.

In view of the third reservation attached by the United States to their accession to the Protocol of Signature, paragraph 3 of Article 35 should not apply to the special case of the United States.

16. AMENDMENT TO No. 4 OF ARTICLE 38.

The Committee has only a very slight and purely formal amendment to propose to No. 4 of Article 38. It consists in restoring in the French text a few words which appear in the English text. In the said No. 4 of Article 38, after the words “ la doctrine des publicistes les plus qualifiés ”, the words “ *des différentes nations* ” should be added.

Article 38, No. 4, would then read in the French text as follows :

“ Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit. ”

17. PROCEDURE.

In the final paragraph of Article 39, where reference is made to the power of the Court to authorise, at the request of the parties, the use of a language other than French or English, the Committee thinks it should be more clearly stated that such authorisation may be granted without agreement between the parties, provided one of them so requests. Experience has shown that it is necessary to make this clearer.

Article 39, paragraph 3, would then read as follows :

“ The Court may, at the request of any party, authorise a language other than French or English to be used. ”

18. COMMUNICATION OF APPLICATIONS.

In paragraph 3 of Article 40, the Committee thinks it would be desirable to bring the text of the Statute into line with Article 73 of the present Rules of Court, which latter provision, as will be seen, the Committee proposes to embody in the new draft of the Statute.

Article 40, paragraph 3, would then read as follows :

“ He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court. ”

19. DIRECTION OF THE HEARING.

The English text of Article 45 does not quite correspond to the French text, which here is better.

In order to bring the two texts into concordance, the Committee proposes to replace the words “ if both are absent ” by the words “ if neither is able to preside ”.

The English text of this Article would then read as follows :

“ The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President ; if neither is able to preside, the senior judge shall preside. ”

20. ADVISORY OPINIONS.

The present Statute contains no explicit reference to advisory opinions. The Court has been compelled by circumstances to remedy this omission to a certain extent in Articles 72, 73 and 74 of the Rules of Court.

The Committee considers that the essential parts of these provisions should be transferred to the Statute of the Court in order to give them a permanent character, which seems particularly desirable to-day in view of the special circumstances attending the possible accession of the United States to the Protocol of Signature of the Statute of the Court.

The Committee therefore proposes to add at the end of the present Statute a new chapter numbered IV and headed "Advisory Opinions", the first three Articles of which, numbered 65, 66 and 67, would reproduce the substance of Articles 72, 73 and 74 of the present Rules of Court.

It also proposes that a final Article numbered 68 should be added to this chapter in order to take account of the fact that the Court may be called upon to give advisory opinions both in contentious and in non-contentious matters. The effect would be that, in the former case, the Court would apply the provisions relating to contentious procedure referred to in the previous chapters of the Statute, whereas those provisions would not always be applicable when the Court gave an opinion on a non-contentious matter. Thus, for example, Articles 57 and 58 should apply in all cases, but Article 31 would only apply when an advisory opinion was asked on a question relating to a dispute which had already arisen.

The new Articles 65, 66, 67 and 68 would be worded as follows :

CHAPTER VI. — ADVISORY OPINIONS.

" Article 65.

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

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

" Article 66.

" The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

" The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

" Should any State or Member referred to in the first paragraph have failed to receive the communication specified above, such State or Member may express a desire to submit a written statement, or to be heard ; and the Court will decide.

" States or Members having presented written or oral statements or both shall be admitted to comment on the statements made by other States or Members in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States or Members having submitted similar statements.

" Article 67.

" The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States and Members of the League immediately concerned.

" Article 68.

" In addition to Articles 65, 66 and 67 the Court, in the exercise of its advisory functions, shall be guided by the provisions of the preceding chapters of this Statute to the extent to which it recognises them to be applicable to the case."

* * *

Such are the proposals which the Committee has the honour to submit for the Council's consideration.

The Committee has to observe that, in the course of its work, it has found inappropriate expressions used in the French and in the English texts of several articles of the Statute ; it has, however, felt it unnecessary to propose corrections, as it does not wish to encumber the present report with suggestions which are not clearly of practical value.

ANNEX 10.

[C.R.S.C.18 (1).]

REPORT ADOPTED BY THE COMMITTEE OF JURISTS ON THE QUESTION OF
AMENDMENT OF THE STATUTE OF THE COURT.¹

On September 20th, 1928, the Assembly of the League of Nations adopted the following resolution :

- “ The Assembly,
- “ Considering the ever-increasing number of matters referred to the Permanent Court of International Justice ;
- “ Deeming it advisable that, before the renewal of the term 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 ;
- “ Draws the Council's attention to the advisability of proceeding, before the renewal of the term 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. ”

In pursuance of this resolution, the Council decided on December 13th and 14th, 1928, to set up a Committee consisting of Jonkheer VAN EYSINGA, M. FROMAGEOT, M. GAUS, Sir Cecil HURST, M. ITO, M. POLITIS, M. RAESTAD, M. RUNDSTEIN, M. SCIALOJA, M. URRUTIA and a jurist of the United States of America, to be appointed by the President of the Council and the Rapporteur, who selected Mr. Elihu ROOR. The Council further invited the President and the Vice-President of the Court, M. ANZILOTTI and M. HUBER, and the Chairman of the Supervisory Commission, M. OSUSKÝ, to participate in the work of the Committee. M. PILOTTI was added to the Committee on March 9th, 1929.

The Council Rapporteur had pointed out that, having regard to the terms of the Assembly's decision, the Committee should have wide terms of reference, namely, “ to report what amendments appear desirable in the various provisions of the Court's Statute ”. He further stated “ that the Committee would, of course, be competent to examine such suggestions as may reach it, during its work, from authoritative sources ” and “ that it would fall to the Committee to ascertain the opinion of the Permanent Court of International Justice in respect of the working of the Court ”.

As may be seen from the discussion in the Assembly, the latter did not contemplate recasting completely the Statute of the Court ; it had merely in view the possibility of supplementing or improving the Statute in the light of the experience already acquired.

It is in this spirit that the Committee, which met at Geneva on March 11th, 1929, under the chairmanship of M. SCIALOJA, has pursued its work, which was completed on March 19th under the chairmanship of Jonkheer VAN EYSINGA, the Vice-Chairman.

In the proposals which the Committee has the honour to submit to the Council, it has been in general actuated by the desire to give the States full assurance that the Permanent Court of International Justice established by the League of Nations is a real *judicial* body which is constantly at their disposal for the purpose of hearing and determining their disputes and which possesses alike the necessary juristic competence and experience of international affairs.

It would appear that effect can be given to some of the Committee's proposals by means of *decret* or recommendations ; other proposals would appear to call for an amendment of the existing text of the Statute.

In the first place, the Committee examined the qualifications which members of the Court should possess in order to satisfy the expectations of Governments in regard to the Permanent Court of International Justice. These conditions will be found in Article 2 of the Statute. The Committee has thought that it would be desirable to mention, in addition to recognised competence in international law which is mentioned in Article 2 of the Statute, the requirement of practical experience in this sphere.

Similarly, the national groups, when nominating their candidates in accordance with Article 5, should attach to each nomination a statement of the career of the person nominated, showing that he possesses the required qualifications.

Further, as the official languages of the Court are French and English, it appears essential that the judges should be at least able to read these languages and to speak one of them. Though this may be self-evident, the Committee has thought that it would be desirable to draw the special attention of the national groups to the point.

¹ Rapporteurs : M. FROMAGEOT and M. POLITIS.

The Committee is of opinion that, despite their importance, none of these three questions necessitates a modification of the existing texts, and that it would be sufficient to proceed by way of a recommendation, as follows :

“ The Committee decides to advise the Assembly to adopt the following recommendation :

“ ‘ The Secretary-General, in issuing the invitations provided for in Article 5 of the Statute, will request the national groups to satisfy themselves that the candidates nominated by them possess recognised practical experience in international law and that they are at least able to read both the official languages of the Court and to speak one of them ; he will recommend the groups to attach to each nomination a statement of the career of the person nominated showing that he possesses the required qualifications. ’ ”

On the other hand, it appeared necessary to deal with the following questions by means of amendments :

1. COMPOSITION OF THE COURT.

Experience has shown that deputy-judges have been called upon almost constantly to sit on the Court, the reason being that the majority of them are resident in Europe and were consequently more readily available than judges belonging to other continents ; this has tended to give the Europeans a privileged position. On the other hand, as the deputy-judges have in fact been placed on a footing of equality with the ordinary judges in regard to the work performed, without being subject to the same disabilities, the difference in treatment in this latter respect has not been without its disadvantages. Finally, a further difference between the two classes of judges — that relating to their emoluments — has actually disappeared, since the allowances granted to deputy-judges have placed them in a situation almost equal to that of the ordinary judges.

Practical experience thus points to assimilation of the two classes of judges and accordingly suggests the desirability of abolishing the deputy-judges and replacing them by an equal number of ordinary judges.

The Committee proposes, therefore, to increase the number of ordinary judges from eleven to fifteen and to omit all mention of deputy-judges in Article 3. The disappearance of the deputy-judges naturally involves consequential amendment of various articles in the Statute in which they are mentioned. These changes will be indicated below in connection with Articles 8, 15, 16, 17, 25, 31 and 32. To avoid the risk of an exaggeration which might cause misconception, it also appeared desirable to omit in the new text of Article 3 the reference to a possible increase of the members of the Court above the number of fifteen.

As a result, the new text of Article 3 would be as follows :

“ The Court shall consist of fifteen members. ”

2. ELECTION OF JUDGES.

As already stated, the text of Article 8 will, as a result of the disappearance of the deputy-judges, read as follows :

“ The Assembly and the Council shall proceed independently of one another to elect the members of the Court. ”

3. RESIGNATION OF A JUDGE.

The resignation of a judge is not provided for in the present existing text of the Statute. The question has, however, arisen in practice, and doubts have been felt as to the procedure to be adopted in such cases. The Committee considered that it would be desirable to supply the omission and to take the view that, once a resignation has been transmitted to the League of Nations, it must be regarded as final ; but that, nevertheless, the resignation should be transmitted to the League by the President of the Court in order that he may, if desirable, be able to satisfy himself that the decision of the judge concerned is irrevocable.

Consequently, the Committee proposes to add two paragraphs to Article 13, which would read as follows :

“ The members of the Court shall be elected for nine years.

“ They may be re-elected.

“ They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

“ In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations.

“ This notification makes the place vacant. ”

4. FILLING OF OCCASIONAL VACANCIES.

Article 14 of the Statute merely provides that vacancies which may occur shall be filled by the same method as that laid down for the renewal of the entire Court. Experience has shown that there is a serious disadvantage in waiting for the annual meeting of the Assembly before filling a vacancy, as this may cause a delay of as much as fifteen months. During this period, the Court might be deprived of its essential characteristic — that of a body representative of the various juridical systems — while at the same time the uninterrupted and regular working of this high tribunal might be rendered more difficult.

To remedy this defect, the Committee has thought it desirable to establish a somewhat elastic system which, especially in cases deemed by the Council of the League of Nations to be urgent, would allow of the filling even of a single vacancy within the shortest possible space of time. Under this system, the Secretary-General of the League of Nations would address the prescribed request, within one month after the occurrence of any vacancy, to the national groups, in accordance with Article 5, and the Council would be in a position at its next session to decide whether the election was of a sufficiently urgent character to necessitate the convening of the Assembly in extraordinary session before its ordinary September session.

The system would be embodied in the following new draft of Article 14 :

" Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision : the Secretary-General of the League of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Council at its next session."

5. NEW ARTICLE 15.

As Article 15 of the Statute disappears with the disappearance of the deputy-judges, the Committee proposes to make a new Article 15 out of the unaltered part of Article 14, reading as follows :

" A member of the Court elected to replace a member whose period of appointment has not expired will hold the appointment for the remainder of his predecessor's term."

6. FUNCTIONS AND OCCUPATIONS INCOMPATIBLE WITH MEMBERSHIP OF THE COURT.

In accordance with the guiding idea of the Committee's work, namely, that the Court, by its composition and its operation, should inspire in the States the highest possible degree of confidence, the Committee has thought that it would be necessary to amplify the rules of Article 16 as to what functions and occupations are incompatible with membership of the Court, and for this purpose to indicate clearly that the members of the Court must not only refrain from exercising any political or administrative function, but also may not engage in any other occupation of a professional nature. Naturally, it would be permissible for members of the Court to be included on the list of members of the Permanent Court of Arbitration and to exercise, if their duties on the Court allowed them the necessary leisure, the functions of arbitrators or conciliators, provided always that the instrument under which they were appointed did not provide for a reference to the Court following upon the arbitration or upon the failure of the conciliation proceedings.

With the disappearance of the deputy-judges, the second sentence of paragraph 1 of Article 16 naturally disappears as well.

Article 16 would thus read as follows :

" The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

" Any doubt on this point is settled by the decision of the Court."

7. ARTICLE 17.

The second sentence of the first paragraph of Article 17 referring to deputy-judges becomes meaningless and is to be omitted.

At this point, the Committee feels it should observe that, while it is stated that no member of the Court can act as agent, counsel or advocate in any case of an international nature, it will not henceforth, in view of the new Article 16, be possible to infer *a contrario* that he is free to exercise the said functions in a case which is national in character. It has not seemed necessary to redraft the text of the second paragraph.

The same consideration applies to the end of the second paragraph, which states that no member of the Court may participate personally in any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity. Obviously, the same would hold good as to their participation in a commission of conciliation ; this appeared to be indicated clearly enough in the expression " or in any other capacity ".

Article 17 would therefore read as follows :

" No member of the Court may act as agent, counsel or advocate in any case of an international nature.

" No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

" Any doubt on this point is settled by the decision of the Court. "

8. PERMANENT FUNCTIONING OF THE COURT.

Under the system at present laid down, the Court holds one session annually, beginning on June 15th, and it is convened, in exceptional cases, in extraordinary session when circumstances so require.

In practice, the Court has often been obliged, on account of the increase in the cases referred to it, to hold several extraordinary sessions annually. In so doing, it has occasionally

encountered serious practical difficulties. The repeated holding of extraordinary sessions has in this way, tended, in fact, to bring the Court nearer to that permanent character which its title denotes, and which its promoters had contemplated in order to advance the progress of international justice.

The Committee accordingly considers that it is desirable to bring the written rules into harmony with the facts and to indicate, in a new draft of Article 23, a more regular working of the Court by providing, in imitation of national courts, for a real international judicial year. It therefore proposes to state that the Court shall, in principle, remain constantly in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

On the other hand, in order to enable members of the Court whose ordinary residence is in a country at a considerable distance from its seat to return occasionally to their homes during their term of office, it is suggested that they should be granted the right to six months' leave every three years in addition to the ordinary vacations.

Apart from exceptional cases, such as that of illness or other good reason for absence, the judges must be permanently at the disposal of the Court.

It is to be understood that this principle applies even during the judicial vacations, in the sense that it will be for the Court, when fixing the length of the vacation, to provide for the possibility of convening at The Hague, in an urgent case, such a number of judges as would be necessary to allow it to discharge its duties.

It would also be for the Court to provide in its Rules for the organisation of a vacations procedure for the cases in which a full meeting of the Court would not be necessary.

Article 23 would accordingly be redrafted as follows :

" The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court at the end of each year for the following year.

" Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years.

" Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court."

9. MANNER OF FORMING THE COURT.

As a result of the disappearance of the deputy-judges, the present paragraph 2 of Article 25 must be deleted.

The Committee proposes to replace it by a provision which would enable judges, when there is a heavy cause-list, to sit in turn in order to ensure the prompt despatch of business and would at the same time make it possible to remove the disadvantages that might arise from the co-operation in one and the same case of fifteen members of the Court.

Under this provision, the Court would have the power to provide in its Rules that, according to circumstances and in rotation, a judge or judges might be dispensed from sitting.

The intention of the Committee has of course been that the right just mentioned should in no case be so exercised as to give grounds for any suspicion that the Court has in a given case been specially composed for the purpose of affecting the decision of the case.

The deletion of paragraph 2 of Article 25 necessarily involves the redrafting of paragraph 3. There is no longer any point in providing that a certain number of judges must be available since, as previously stated, all the judges are in principle constantly at the disposal of the Court. It is therefore sufficient to retain the essential sentence in the third paragraph relating to the quorum.

The new Article 25 would be worded as follows :

" The full Court shall sit except when it is expressly provided otherwise.

" Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

" Provided always that a quorum of nine judges shall suffice to constitute the Court."

10. SPECIAL CHAMBER FOR LABOUR CASES.

The redrafting of Article 25 involves a change in paragraph 2 of Article 26, which states that the Court will sit with the number of judges provided for in Article 25. It should now be said that the full Court will sit.

In the next sentence of the same paragraph, the Committee is of opinion that, for the sake of clearness, it is necessary to read " In both cases ", that is to say, the cases which are referred to, instead of " on all occasions ", because, as is suggested later on, the summary procedure without the assistance of the technical assessors becomes possible in labour cases.

Paragraph 3 of Article 26 should be deleted in consequence of the modification proposed later in Article 31 in regard to national judges.

The Committee would suggest replacing this paragraph by inserting, as the last paragraph but one of Article 26, a stipulation allowing the parties, should they so desire, to resort to the summary procedure provided for in Article 29.

It is the Committee's intention that, whenever resort is had to this right, the Court constituted as a Chamber for summary procedure should consist of five judges only, as will be stated later in connection with Article 29, without the presence of technical assessors.

Article 26 would accordingly be drafted as follows :

" Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions :

" The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases, the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

" The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of ' Assessors for Labour Cases ', composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers and, as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding articles of the other Treaties of Peace.

" Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

" In Labour cases, the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings."

11. SPECIAL CHAMBER FOR TRANSIT AND COMMUNICATIONS CASES.

The Committee considered whether it might not be well to delete Article 27, seeing that no application has yet been received and that in the opinion of certain persons it is unlikely that any will ever be received. Nevertheless, the Committee thought it preferable to retain the Article, modifying it, however, in the same way as Article 26 : i.e., by substituting in paragraph 2 the words " the full Court will sit " for the present text " the Court will sit with the number of judges provided for under Article 25 " ; by omitting paragraph 3 ; and, finally, by inserting as the last paragraph of Article 27 the same new provision as is contained in the previous article with regard to summary procedure.

The new draft of Article 27 would therefore be as follows :

" Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace shall be heard and determined by the Court under the following conditions :

" The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

" The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of ' Assessors for Transit and Communications Cases ', composed of two persons nominated by each Member of the League of Nations.

" Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request."

12. CHAMBER FOR SUMMARY PROCEDURE.

As indicated below in connection with Article 31, the Committee considered that, as the system of national judges exists, it should apply to the Chamber for Summary Procedure as well as to any other form of the Court. It will therefore be necessary to bring Article 29 into harmony with the new draft of Article 31 and for this purpose to make the Chamber for Summary Procedure consist of five judges instead of three. Provision must also be made, as in the case of the other special Chambers (Articles 26 and 27), for the selection of two judges to replace a judge who finds it impossible to sit.

Article 29 would therefore read as follows :

" With a view to the speedy despatch of business, the Court shall form annually a Chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit."

13. NATIONAL JUDGES.

The Committee considered that it was no part of its duty to deal with the institution of national judges, which is regarded by certain States as one of the essential principles of the organisation of the Court.

It also considered that, in view of the importance which certain States attach to this system, its application should not be limited, as is at present done in Article 31, to the single case in which the full Court sits, but that, on the contrary, it should be extended to the Court in all its forms.

With this object, the Committee proposes to insert as a fourth paragraph in Article 31 a provision making the system of national judges apply to the Special Chambers for Labour, for Communications and Transit and for Summary Procedure (Articles 26, 27 and 29).

Moreover, the disappearance of the deputy-judges necessitates redrafting paragraph 2 of Article 31. There must be a slight change in paragraph 2 and changes of minor importance in paragraphs 3 and 5 of Article 31.

The new Article 31 would read as follows :

“ Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

“ If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

“ If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to select a judge as provided in the preceding paragraph.

“ The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges, specially appointed by the parties.

“ Should there be several parties in the same interest, they shall for the purpose of the preceding provisions be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

“ Judges selected as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of this Statute. They shall take part in the decision on terms of complete equality with their colleagues. ”

14. SALARIES OF JUDGES.

The permanent character of the Court having been more firmly established, and the requirements as to the selection of judges and the rules regarding the other occupations which they may not follow concurrently having been more clearly stated, it has been thought expedient to abandon the mixed system at present in force, which consists in an annual indemnity and allowances for each day of service. Payment for the services and subsistence expenses of members of the Court at The Hague will now take the form of a fixed inclusive annual salary which, in fact, will correspond approximately to the maximum obtainable by the judges under the present system.

This will be a simplification of a system which at present is particularly complicated.

Accordingly, the Committee proposes to redraft Article 32 completely and to submit to the Assembly a draft resolution to be substituted for the resolution of December 18th, 1920, concerning the salaries of members of the Court.

It has not, however, been thought expedient to include in the annual salary the travelling expenses of members attending the Court or their travelling expenses while on duty.

In the Committee's view, it is for the Assembly to lay down special regulations on this point. The Committee considers, however, that the members of the Court and the Registrar should, apart from journeys made on duty, be reimbursed for only one journey every year from the seat of the Court to their homes and back again.

The final paragraph of the present Article 32 deals with retiring pensions for the personnel of the Court. It refers to a special regulation which was made by the Assembly in 1924. This regulation will require revision; the Supervisory Commission will lay the matter before the Assembly, but on account of certain proposed amendments to the Statute of the Court, of which a brief summary was given at the head of this section, the Committee is of opinion that the Assembly's attention should be specially drawn to the desirability of redrafting paragraph 5 of Article 1 of the 1924 regulation in the terms indicated in the attached draft resolution as to pensions.

The new text of Article 32 and the accompanying draft resolutions, referred to above, would be as follows :

“ The members of the Court shall receive an annual salary.

“ The President shall receive a special annual allowance.

“ The Vice-President shall receive a special allowance for every day on which he acts as President.

“ The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

" These salaries, allowances and indemnities shall be fixed by the Assembly of the League of Nations on the proposal of the Council. They may not be decreased during the term of office.

" The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court.

" Regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.

" The above salaries, indemnities and allowances shall be free of all taxation."

Draft Resolution concerning Salaries.

" In accordance with the provisions of Article 32 of the Statute, the Assembly of the League of Nations fixes the salaries, allowances and indemnities of the members and judges of the Permanent Court of International Justice as follows :

	Dutch florins
" President :	
Annual salary	45,000
Special indemnity	15,000
" Vice-President :	
Annual salary	45,000
Allowance for each day on duty (100 × 100).	10,000 (maximum)
" Members :	
Annual salary	45,000
" Judges referred to in Article 31 of the Statute :	
Indemnity for each day on duty	100
Allowance for each day of attendance	50 "

Draft Resolution amending Paragraph 5 of Article 1 of the Regulation regarding Pensions.

" The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. Should, however, the person entitled to a pension, before attaining that age, reach the end of his term of office without being re-elected, his pension may, by a decision of the Court, be made payable to him, in whole or part, as from the date on which his functions cease."

15. CONTRIBUTIONS OF STATES NOT MEMBERS OF THE LEAGUE OF NATIONS.

The Committee does not propose any amendment to Article 35, but thinks that an observation is called for on paragraph 3 of that Article.

In view of the third reservation attached by the United States to their accession to the Protocol of Signature, paragraph 3 of Article 35 should not apply to the special case of the United States if they accede to the Court Statute.

16. AMENDMENT TO NO. 4 OF ARTICLE 38.

The Committee has only a very slight and purely formal amendment to propose to No. 4 of Article 38. It consists in restoring in the French text a few words which appear in the English text. In the said No. 4 of Article 38, after the words " la doctrine des publicistes les plus qualifiés ", the words " des différentes nations " should be added.

Article 38, No. 4, would then read in the French text as follows :

" Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit."

17. PROCEDURE.

In the final paragraph of Article 39, where reference is made to the power of the Court to authorise, at the request of the parties, the use of a language other than French or English, the Committee thinks it should be more clearly stated that such authorisation may be granted without agreement between the parties, provided one of them so requests. Experience has shown that it might be desirable to make this clearer.

Article 39, paragraph 3, would then read as follows :

" The Court may, at the request of any party, authorise a language other than French or English to be used."

18. COMMUNICATION OF APPLICATIONS.

In paragraph 3 of Article 40, the Committee thinks it would be desirable to bring the text of the Statute into line with Article 73 of the present Rules of Court, which latter provision, as will be seen, the Committee proposes to embody in the new draft of the Statute.

Article 40, paragraph 3, would then read as follows :

" He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court."

19. DIRECTION OF THE HEARING.

The English text of Article 45 does not quite correspond to the French text, which here is better.

In order to bring the two texts into concordance, the Committee proposes to replace the words "in his absence" by the words "if he is unable to preside", and the words "if both are absent" by the words "if neither is able to preside".

The English text of this Article would then read as follows:

"The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge shall preside."

20. ADVISORY OPINIONS.

The present Statute contains no explicit reference to advisory opinions. The Court has been compelled by circumstances to remedy this omission to a certain extent in Articles 71, 72, 73 and 74 of the Rules of Court.

The Committee considers that the essential parts of these provisions should be transferred to the Statute of the Court in order to give them a permanent character, which seems particularly desirable to-day in view of the special circumstances attending the possible accession of the United States to the Protocol of Signature of the Statute of the Court.

The Committee therefore proposes to add at the end of the present Statute a new chapter numbered IV and headed "Advisory Opinions", the first three Articles of which, numbered 65, 66 and 67, would reproduce the substance of Articles 72, 73 and 74 of the present Rules of Court.

It also proposes that a final Article numbered 68 should be added to this chapter in order to take account of the fact that the Court may be called upon to give advisory opinions both in contentious and in non-contentious matters. The effect would be that, in the former case, the Court would apply the provisions relating to contentious procedure referred to in the previous chapters of the Statute, whereas those provisions would not always be applicable when the Court gave an opinion on a non-contentious matter. Thus, for example, Articles 57 and 58 should apply in all cases, but Article 31 would only apply when an advisory opinion was asked on a question relating to a dispute which had already arisen.

The new Articles 65, 66, 67 and 68 would be worded as follows:

"CHAPTER IV. — ADVISORY OPINIONS.

"Article 65.

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

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

"Article 66.

"The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

"The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

"Should any State or Member referred to in the first paragraph have failed to receive the communication specified above, such State or Member may express a desire to submit a written statement, or to be heard; and the Court will decide.

"States or Members having presented written or oral statements or both shall be admitted to comment on the statements made by other States or Members in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States or Members having submitted similar statements.

"Article 67.

"The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States and Members of the League immediately concerned.

"Article 68.

"In the exercise of its advisory functions, the Court shall apply Articles 65, 66 and 67. It shall further be guided by the provisions of the preceding chapters of this Statute to the extent to which it recognises them to be applicable to the case."

Such are the proposals which the Committee has the honour to submit for the Council's consideration.

The Committee has to observe that, in the course of its work, it has found somewhat inappropriate expressions used in the French and in the English texts of several articles of the Statute; it has, however, felt it unnecessary to propose corrections, as it does not wish to encumber the present report with suggestions which are not clearly of practical value.

Finally, the Committee has considered what would be the appropriate procedure for bringing into force the amendments proposed in the present report.

On this subject, the Committee ventures to make the following suggestions:

If the Council approves the conclusions of the report, it will no doubt find it convenient to communicate them to the Members of the League of Nations and the States mentioned in the Annex to the Covenant and to transmit them to the Assembly; it would be desirable that, if the amendments secure general approval, the Protocol accepting them which must be concluded between the parties which have ratified the 1920 Statute should be made in the course of the next Assembly.

On this point, the Committee must call the attention of the Council to the necessity for taking appropriate measures to secure the entry into force of the amendments a sufficient time before the election of the members of the Court in September 1930, on account, more particularly, of the changes which are made in regard to the number of the members of the Court and the rules as to the occupations which are incompatible with membership.

Appendix.

TEXTS PROPOSED BY THE COMMITTEE.

A. PROVISIONS OF THE STATUTE OF THE COURT.

NEW ARTICLE 3.

The Court shall consist of fifteen members.

NEW ARTICLE 8.

The Assembly and the Council shall proceed independently of one another to elect the members of the Court.

NEW ARTICLE 13.

The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations.

This notification makes the place vacant.

NEW ARTICLE 14.

Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of the League of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Council at its next session.

NEW ARTICLE 15.

A member of the Court elected to replace a member whose period of appointment has not expired, will hold the appointment for the remainder of his predecessor's term.

NEW ARTICLE 16.

The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

Any doubt on this point is settled by the decision of the Court.

NEW ARTICLE 17.

No member of the Court may act as agent, counsel or advocate in any case of an international nature.

No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.

NEW ARTICLE 23.

The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court at the end of each year for the following year.

Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years.

Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court.

NEW ARTICLE 25.

The full Court shall sit except when it is expressly provided otherwise.

Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

Provided always that a quorum of nine judges shall suffice to constitute the Court.

NEW ARTICLE 26.

Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions :

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases, the judges will be assisted by four technical assessors sitting with them but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labour Cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers, and, as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

In Labour cases, the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

NEW ARTICLE 27.

Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions :

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications Cases" composed of two persons nominated by each Member of the League of Nations.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

NEW ARTICLE 29.

With a view to the speedy despatch of business, the Court shall form annually a Chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit.

NEW ARTICLE 31.

Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to select a judge as provided in the preceding paragraph.

The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of this Statute. They shall take part in the decision on terms of complete equality with their colleagues.

NEW ARTICLE 32.

The members of the Court shall receive an annual salary.

The President shall receive a special annual allowance.

The Vice-President shall receive a special allowance for every day on which he acts as President.

The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

These salaries, allowances and indemnities shall be fixed by the Assembly of the League of Nations on the proposal of the Council. They may not be decreased during the term of office.

The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court.

Regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.

The above salaries, indemnities and allowances shall be free of all taxation.

NEW ARTICLE 38, No. 4.

The amendment only affects the French text which is altered to read as follows :

4. *Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit.*

NEW ARTICLE 39.

The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers ; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of any party, authorise a language other than French or English to be used.

NEW ARTICLE 40.

Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court.

NEW ARTICLE 45.

The amendment only affects the English text which is altered to read as follows :

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President ; if neither is able to preside, the senior judge shall preside.

CHAPTER IV. — ADVISORY OPINIONS. ¹

NEW ARTICLE 65.

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

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

¹ This subdivision (Chapter IV) is entirely new.

NEW ARTICLE 66.

1. The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

Should any State or Member referred to in the first paragraph have failed to receive the communication specified above, such State or Member may express a desire to submit a written statement, or to be heard; and the Court will decide.

2. States or Members having presented written or oral statements or both shall be admitted to comment on the statements made by other States or Members in the form, to the extent and within the time which-limits the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States or Members having submitted similar statements.

NEW ARTICLE 67.

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States and Members of the League immediately concerned.

NEW ARTICLE 68.

In the exercise of its advisory functions, the Court shall apply Articles 65, 66 and 67. It shall further be guided by the provisions of the preceding chapters of this Statute to the extent to which it recognises them to be applicable to the case.

B. RECOMMENDATIONS AND DRAFT RESOLUTIONS.

1. The Committee decided to suggest that the Assembly should adopt the following recommendation :

The Secretary-General, in issuing the invitations provided for in Article 5 of the Statute, will request the national groups to satisfy themselves that the candidates nominated by them possess recognised practical experience in international law and that they are at least able to read both the official languages of the Court and to speak one of them ; he will recommend the groups to attach to each nomination a statement of the career of the person nominated showing that he possesses the required qualifications.

2. In connection with the new text of Article 32 of the Statute, the Committee drew up the following draft resolutions :

DRAFT RESOLUTION CONCERNING SALARIES.

In accordance with the provisions of Article 32 of the Statute, the Assembly of the League of Nations fixes the salaries, allowances and indemnities of the members and judges of the Permanent Court of International Justice as follows :

	Dutch florins
<i>President :</i>	
Annual salary	45,000
Special indemnity	15,000
<i>Vice-President :</i>	
Annual salary	45,000
Allowance for each day on duty (100 × 100)	10,000 (maximum)
<i>Members :</i>	
Annual salary	45,000
<i>Judges referred to in Article 31 of the Statute :</i>	
Indemnity for each day on duty	100
Allowance for each day of attendance	50

DRAFT RESOLUTION AMENDING PARAGRAPH 5 OF ARTICLE 1 OF THE REGULATION REGARDING PENSIONS.

The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. Should, however, the person entitled to a pension, before attaining that age, reach the end of his term of office without being re-elected, his pension may, by a decision of the Court, be made payable to him, in whole or part, as from the date on which his functions cease.

ANNEX II.

[C.R.S.C. 19 (1).]

REPORT ADOPTED BY THE COMMITTEE OF JURISTS ON THE QUESTION OF THE
ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL
OF SIGNATURE OF THE STATUTE OF THE COURT. ¹

On February 19th, 1929, the Secretary of State of the United States of America addressed to each of the Governments which had signed the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16th, 1920, and also to the Secretary-General of the League of Nations a note suggesting that an exchange of views might lead to an agreement with regard to the acceptance of the stipulation set forth in the resolution adopted by the Senate of the United States on January 27th, 1926, as the conditions upon which the United States would adhere to the said Protocol. This note was considered by the Council of the League of Nations at its meeting on March 9th, 1929, and cordial satisfaction was expressed at the prospect which the note held out that a solution might be found for the difficulties which had prevented the adherence of the United States in 1926. On the same date, a resolution was adopted by the Council, requesting the Committee of Jurists, which had been appointed by the Council at its meeting on December 14th, 1928, to consider the revision of the Statute of the Permanent Court of International Justice, to deal with this question as well as those with which it was already charged and to make any suggestions which it felt able to offer with a view to facilitating the accession of the United States on conditions satisfactory to all the interests concerned.

It has been of the greatest assistance to the Committee in the accomplishment of this additional task that among its members was to be found the Honourable Elihu Root, formerly Secretary of State of the United States, and one of the members of the Committee which in 1920 framed the original draft of the Statute of the Court. His presence in the Committee has enabled it to re-examine with good results the work accomplished by the Special Conference which was convoked by the Council in 1926 after the receipt of the letter of March 2nd of that year from the then Secretary of State of the United States informing the Secretary-General of the League that the United States was disposed to adhere to the Protocol of December 16th, 1920, on certain conditions enumerated in that letter. The United States did not see its way to participate, as it was invited to do, in the Special Conference of 1926, and, unfortunately, the proposals which emanated from that Conference were found not to be acceptable to the United States. Nevertheless, as is shown by the note of February 19th, 1929, from Mr. Kellogg, the margin of difference between the requirements of the United States and the recommendations made by the Special Conference to the Powers which had signed the Protocol of December 16th, 1920, is not great. For this reason, the Committee adopted as the basis of its discussions the Preliminary Draft of a Protocol annexed to the Final Act of that Conference and has introduced into the text the changes which it believes to be necessary to overcome the objections encountered by the draft of 1926 and to render it acceptable to all parties. This revised text is now submitted to the Council of the League.

The discussions in the Committee have shown that the conditions with which the Government of the United States thought it necessary to accompany the expression of its willingness to adhere to the Protocol establishing the Court owed their origin to apprehension that the Council or the Assembly of the League request from the Court advisory opinions without reference to interests of the United States which might in certain cases be involved. Those discussions have also shown that the hesitation felt by the delegates to the Conference of 1926 as to recommending the acceptance of those conditions was due to apprehension that the rights claimed in the reservations formulated by the United States might be exercised in a way which would interfere with the work of the Council or the Assembly and embarrass their procedure. The task of the Committee has been to discover some method of ensuring that neither on the one side nor on the other should these apprehensions prove to be well founded.

No difficulty has at any time been felt with regard to the acceptance of the conditions laid down by the United States except in so far as they relate to advisory opinions, and the task of the Committee would have been simplified if its members had felt able to recommend that the system of asking the Court for an advisory opinion upon any particular question should be abandoned altogether. The Committee however, is of opinion that it cannot recommend any such drastic solution. The system of asking the Court for an advisory opinion has proved to be of substantial utility in securing a solution of questions which could not conveniently be submitted to the Court in any other form. It has also on occasions enabled parties to a dispute to ask for the submission of their difference to the Court in the form of a request for an advisory opinion when they were for various reasons unwilling to submit it in the form of international litigation.

The Committee has also felt obliged to reject another method by which satisfaction might without difficulty be given to the conditions laid down by the United States. It is that of recommending the adoption of a rule that in all cases a decision on the part of the Council

¹ Rapporteur : Sir Cecil Hurst.

or of the Assembly to ask for an advisory opinion from the Court must be unanimous. As is pointed out in the Final Act of the Special Conference of 1926, it was not then possible to say with certainty whether a decision by a majority was not sufficient. It is equally impossible to-day. All that is possible is to guarantee to the United States a position of equality in this matter with the States which are represented in the Council or the Assembly of the League.

Furthermore, mature reflection convinced the Committee that it was useless to attempt to allay the apprehensions on either side, which have been referred to above, by the elaboration of any system of paper guarantees or abstract formulæ. The more hopeful system is to deal with the problem in a concrete form, to provide some method by which questions as they arise may be examined and views exchanged, and a conclusion thereby reached after each side has made itself acquainted with the difficulties and responsibilities which beset the other. It is this method which the Committee recommends should be adopted, and to provide for which it now submits a text of a Protocol to be concluded between the States which signed the Protocol of 1920 and the United States of America (see Appendix, next page).

The note of February 19th, 1929, from the Secretary of State of the United States makes it clear that the Government of the United States has no desire to interfere with or to embarrass the work of the Council or the Assembly of the League, and that that Government realises the difficulties and responsibilities of the tasks with which the League is from time to time confronted. It shows that there is no intention on the part of the United States Government of hampering, upon unreal or unsubstantial grounds, the machinery by which advisory opinions are from time to time requested. The Committee is thereby enabled to recommend that the States which signed the Protocol of 1920 should accept the reservations formulated by the United States upon the terms and conditions set out in the articles of the draft Protocol. This is the effect of Article 1 of the draft now submitted.

The next three Articles reproduce without substantial change the corresponding articles of the draft of 1926.

The fifth Article provides machinery by which the United States will be made aware of any proposal before the Council or the Assembly for obtaining an advisory opinion and will have an opportunity of indicating whether the interests of the United States are affected, so that the Council or the Assembly, as the case may be, may decide its course of action with full knowledge of the position. One may hope with confidence that the exchange of views so provided for will be sufficient to ensure that an understanding will be reached and no conflict of views will remain.

The provisions of this Article have been worded with due regard to the exigencies of business in the Council of the League. The desirability of obtaining an advisory opinion may only become apparent as the session of the Council is drawing to a close and when it may not be possible to complete the exchange of view before the members of that body separate. In that case, it will be for the Council to give such directions as the circumstances may require, in order to ensure that the intentions of the Article are carried out. The request addressed to the Court may, for instance, be held up temporarily, or it may be despatched with a request that the Court will nevertheless suspend action on the request until the exchange of views with the United States has been completed. The provisions of the Article have purposely been framed so as to afford a measure of elasticity in its application. Similarly, if the Court has commenced the preliminary proceedings consequent upon the receipt of the request for an advisory opinion and has given notice of the request to the United States in the same way as to the other Governments, the proceedings may, if necessary, be interrupted in order that the necessary exchange of views may take place. What is said in this paragraph with regard to requests for advisory opinions made by the Council would also apply to requests by the Assembly in the event of the Assembly making any such request.

The provisions of this Article should in practice afford protection to all parties in all cases, but if they do not, it must be recognised that the solution embodied in the present proposal will not have achieved the success that was hoped, and that the United States would be fully justified in withdrawing from the arrangement. It is for this eventuality that provision is made in the last paragraph of the Article. It may be hoped that, should any such withdrawal by the United States materialise, it would in fact be followed or accompanied by the conclusion of some new and more satisfactory arrangement.

In order to ensure so far as possible that the parties to the Protocol of 1920 shall be identical with the parties to the new Protocol, Article 6 provides that any State which in future signs the Protocol of 1920 shall be deemed to accept the new Protocol.

The remaining provisions of the draft Protocol do not call for detailed comment, because they are in substance similar to the corresponding provisions of the draft Protocol of 1926.

It is necessary to consider what steps will be required to bring the Protocol of which the text is now submitted into force in the event of the recommendations of the Committee being accepted.

If the terms of the Protocol are approved by the Council, it will be advisable that the Secretary-General should be directed, when answering Mr. Kellogg's note of February 19th, 1929, to communicate the draft to the Government of the United States. Since the Protocol, if approved, covers the entire ground of Mr. Kellogg's note, its transmission with a statement of the Council's approval would seem to constitute an adequate reply to that note. It should at the same time be communicated to all the States which signed the Protocol of December

16th, 1920, together with a copy of the resolution of the Senate of the United States, dated January 27th, 1926, containing the reservations of the United States.

It should also be communicated to the Assembly, in which the proposal for the appointment of this Committee originated, in order that, if its terms are acceptable to that body, a resolution approving it may be passed by the Assembly in the course of its ensuing session. Any action taken by the Assembly should be communicated to the signatory States which are called upon to determine whether or not to sign the new Protocol now proposed.

If the replies from the various Governments indicate a desire for a further exchange of views with regard to the nature of the proposed arrangement with the United States or to the terms of the draft Protocol, it will be for the Council to decide whether such exchange of views should proceed through the diplomatic channel or whether it is necessary to convoke a further special conference for the purpose, at which States not Members of the League might be represented. In any event, such exchange of views should, if possible, be completed before the conclusion of the Assembly, in order that the approval by the Assembly may be obtained in 1929. A copy of the Protocol in terms approved will then be prepared for signature and every effort should be made to secure that delegates to the meeting of the Assembly or of the special conference, if there should be one, should be authorised to sign the instrument and should actually sign it before they leave Geneva. The signature of representatives of States not Members of the League should be obtained at the same time.

As provided in Article 7 of the draft, the Protocol will come into force as soon as it has been ratified by the States which have ratified the Protocol of December 16th, 1920, and by the United States, and, as soon as it has come into force, it will be possible for the United States to take the necessary steps to become a party to the Protocol of December 16th, 1920, and to any further protocol which may have been concluded for introducing amendments into the Statute of the Court.

When that happy result has been achieved, it will be possible to feel that further progress has been made in establishing the reign of law among the nations of the world and in diminishing the risk that there may be a resort to force for the solution of their conflicts.

Appendix.

[C.R.S.C. 17 (1).]

DRAFT PROTOCOL.

The States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16th, 1920, and the United States of America, through the undersigned duly authorised representatives, have mutually agreed upon the following provisions regarding the adherence of the United States of America to the said Protocol, subject to the five reservations formulated by the United States in the resolution adopted by the Senate on January 27th, 1926.

Article 1.

The States signatories of the said Protocol accept the special conditions attached by the United States in the five reservations mentioned above to its adherence to the said Protocol upon the terms and conditions set out in the following Articles.

Article 2.

The United States shall be admitted to participate, through representatives designated for the purpose and upon an equality with the signatory States Members of the League of Nations represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, provided for in the Statute of the Court. The vote of the United States shall be counted in determining the absolute majority of votes required by the Statute.

Article 3.

No amendment of the Statute of the Court may be made without the consent of all the Contracting States.

Article 4.

The Court shall render advisory opinions in public session after notice and opportunity for hearing substantially as provided in the now existing Articles 73 and 74 of the Rules of Court.

Article 5.

With a view to ensuring that the Court shall not, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in

which the United States has or claims an interest, the Secretary-General of the League of Nations shall, through any channel designated for that purpose by the United States, inform the United States of any proposal before the Council or the Assembly of the League for obtaining an advisory opinion from the Court, and thereupon, if desired, an exchange of views as to whether an interest of the United States is affected shall proceed with all convenient speed between the Council or Assembly of the League and the United States.

Whenever a request for an advisory opinion comes to the Court, the Registrar shall notify the United States thereof, among other States mentioned in the now existing Article 73 of the Rules of Court, stating a reasonable time-limit fixed by the President within which a written statement by the United States concerning the request will be received. If for any reason no sufficient opportunity for an exchange of views upon such request should have been afforded and the United States advises the Court that the question upon which the opinion of the Court is asked is one that affects the interests of the United States, proceedings shall be stayed for a period sufficient to enable such an exchange of views between the Council or the Assembly and the United States to take place.

With regard to requesting an advisory opinion of the Court in any case covered by the preceding paragraphs, there shall be attributed to an objection of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations in the Council or in the Assembly.

If, after the exchange of views provided for in paragraph 1 and 2 of this Article, it shall appear that no agreement can be reached and the United States is not prepared to forgo its objection, the exercise of the powers of withdrawal provided for in Article 8 hereof will follow naturally without any imputation of unfriendliness or unwillingness to co-operate generally for peace and goodwill.

Article 6.

Subject to the provisions of Article 8 below, the provisions of the present Protocol shall have the same force and effect as the provisions of the Statute of the Court and any future signature of the Protocol of December 16th, 1920, shall be deemed to be an acceptance of the provisions of the present Protocol.

Article 7.

The present Protocol shall be ratified. Each State shall forward the instrument of ratification to the Secretary-General of the League of Nations, who shall inform all the other signatory States. The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall come into force as soon as all States which have ratified the Protocol of December 16th, 1920, and also the United States, have deposited their ratifications.

Article 8.

The United States may at any time notify the Secretary-General of the League of Nations that it withdraws its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately communicate this notification to all the other States signatories of the Protocol.

In such case, the present Protocol shall cease to be in force as from the receipt by the Secretary-General of the notification by the United States.

On their part, each of the other Contracting States may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately give communication of this notification to each of the States signatories of the present Protocol. The present Protocol shall be considered as ceasing to be in force if and when, within one year from the date of receipt of the said notification, not less than two-thirds of the Contracting States other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance.

DONE at....., the..... day of....., 19....., in a single copy, of which the French and English texts shall both be authoritative.

RESOLUTION ADOPTED BY THE SENATE OF THE UNITED STATES OF AMERICA
ON JANUARY 27TH, 1926.

Whereas the President, under date of February 24th, 1923, transmitted a message to the Senate, accompanied by a letter from the Secretary of State, dated February 17th, 1923 asking the favourable advice and consent of the Senate to the adherence on the part of the United States to the Protocol of December 16th, 1920, of Signature of the Statute for the Permanent Court of International Justice, set out in the said message of the President (without accepting or agreeing to the Optional Clause for Compulsory Jurisdiction contained therein), upon the conditions and understandings hereafter stated, to be made a part of the instrument of adherence :

Therefore be it

Resolved (two-thirds of the Senators present concurring), That the Senate advise and consent to the adherence on the part of the United States to the said Protocol of December

16th, 1920, and the adjoined Statute for the Permanent Court of International Justice (without accepting or agreeing to the Optional Clause for Compulsory Jurisdiction contained in said Statute), and that the signature of the United States be affixed to the said Protocol, subject to the following reservations and understandings, which are hereby made a part and condition of this resolution, namely :

1. That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Treaty of Versailles.

2. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other States, Members respectively of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice or for the filling of vacancies.

3. That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

4. That the United States may at any time withdraw its adherence to the said Protocol and that the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

5. That the Court shall not render any advisory opinion except publicly after due notice to all States adhering to the Court and to all interested States and after public hearing or opportunity for hearing given to any State concerned ; nor shall it without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest.

The signature of the United States to the said Protocol shall not be affixed until the Powers signatory to such Protocol shall have indicated, through an exchange of notes, their acceptance of the foregoing reservations and understandings as a part and a condition of adherence by the United States to the said Protocol.

Resolved further, As a part of this act of ratification, that the United States approve the Protocol and Statute hereinabove mentioned, with the understanding that recourse to the Permanent Court of International Justice for the settlement of differences between the United States and any other State or States can be had only by agreement thereto through general or special treaties concluded between the parties in dispute ; and

Resolved further, That adherence to the said Protocol and Statute hereby approved shall not be so constructed as to require the United States to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign State ; nor shall adherence to the said Protocol and Statute be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions.

Agreed to, January 16th (Calendar day, January 27th), 1926.

ANNEX 12.

LETTER FROM THE VICE-CHAIRMAN OF THE COMMITTEE OF JURISTS TO THE SECRETARY-GENERAL OF THE LEAGUE.

[*Translation.*]

Geneva, March 20th, 1929.

By resolutions of December 13th and 14th, 1928, the Council of the League of Nations appointed a Committee of Jurists to study the question of revision of the Statute of the Permanent Court of International Justice. By a subsequent resolution of March 9th, 1929, the Council, with reference to a letter of the Secretary of State of the United States of America dated February 19th, 1929, further requested the Committee to consider the present situation as regards accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice, and to make any suggestions which it might feel able to offer with a view to facilitating such accession on conditions satisfactory to all the interests concerned.

As you are aware, the Committee met from the 11th to the 19th of this month at the Secretariat. It was presided over by M. Scialoja and, after he was obliged to leave, by myself in my capacity of Vice-Chairman.

I have the honour to forward to you herewith for transmission to the Council the two reports¹ made by the Committee of Jurists to the Council. The one report relates to the question of the amendments which might eventually be introduced in the Statute of the Court. The other, which carries out the second part of the Committee's terms of reference, relates

¹ See Annexes 10 and 11.

to the accession of the United States of America to the Statute and, as you will see, is accompanied by a draft Protocol. The Committee has felt that it should draw the Council's attention to the desirability of annexing the resolution adopted by the Senate of the United States on January 27th, 1926 (which contains the text of the American reservations), to the letter by which the draft Protocol would be communicated to the States signatories of the Protocol of December 16th, 1920, if the Council should adopt the proposal to that effect contained in the Committee's report.

In the same connection, I beg you to be so good as to transmit also to the Council of the League of Nations, together with the memorandum (C.R.S.C. 2) presented to the Committee of Jurists by the International Labour Office, the letter of which a copy is annexed, by which the Committee has informed that Office of its point of view.¹

Finally, the Committee has thought it desirable that the considerations set out by one of its members, M. Rundstein, in the memorandum reproduced in document C.R.S.C. 11 should also be brought to the attention of the Council.

(Signed) VAN EYSINGA,
Vice-Chairman of the Committee.

ANNEX 13.

LETTER FROM THE VICE-CHAIRMAN OF THE COMMITTEE OF JURISTS
TO THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE.

Geneva, March 20th, 1929.

By resolutions of December 13th and 14th, 1928, and March 9th, 1929, the Council of the League of Nations instructed a Committee of Jurists to make a study of the Statute of the Permanent Court of International Justice.

In a most interesting memorandum dated the 7th instant, the International Labour Office was good enough to bring to the notice of the Committee certain considerations regarding Articles 14 and 423 of the Treaty of Peace of Versailles. The memorandum contained the following conclusion :

“ In this connection, the International Labour Office is of opinion that the Permanent Court is the proper body to formulate an authoritative interpretation, bringing these two clauses into line. The Labour Office considers it desirable that the Court should be consulted on this question, and sincerely trusts that, when examining the Statute of the Court, the Committee of Jurists will make a recommendation in this sense to the Council. ”

I have the honour to inform you that the Committee of Jurists has given careful attention to this question ; as a result, it does not consider itself competent to give expression to the recommendation suggested above. The Committee thought, however, that the Council's attention should be drawn to the matter ; it has therefore decided to bring the memorandum to the notice of the Council.

(Signed) VAN EYSINGA,
Vice-Chairman of the Committee of Jurists.

¹ The memorandum and letter here referred to have been communicated separately to the Council : document C. 146. 1929. V.

Geneva, June 25th, 1929.

LEAGUE OF NATIONS

PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW

**Report by the Committee of Three Jurists
appointed by the Council on December 14th, 1928.**

Note by the Secretary-General:

In execution of the resolution adopted by the Council on June 10th, 1929, the Secretary-General has the honour to communicate to the Members of the League and to the delegates at the Assembly the report of the Committee of Three Jurists which was appointed by the Council on December 14th, 1928, in pursuance of the Assembly's resolution of September 24th, 1928, with the mandate:

- (a) To draw up a systematic survey of the subjects of international law with a view to eventual codification; and
- (b) To report on the question of publishing certain general conventions in the form of a code.

The report made to the Council by the representative of Italy and the resolution adopted by the Council on June 10th, 1929, are reproduced on page 6 of the present document.

REPORT OF THE COMMITTEE OF THREE JURISTS.

By a Council resolution of December 14th, 1928, a Committee composed of Professor DIENA, His Excellency M. GUERRERO and Professor SCHÜCKING was appointed to draw up a systematic survey of the subjects of international law with a view to a general codification, and to examine the question of publishing, as an accompaniment to the *Treaty Series* and in the form of a code, general conventions open to acceptance by States in general, in accordance with the Assembly resolution of September 24th, 1928.¹

In pursuance of these instructions, the Committee met at Geneva from April 15th to 23rd, 1929.

It fulfilled its twofold mission as follows:

*A. Establishment of a Systematic Survey of the Subjects of International Law
with a View to a General Codification.*

In carrying out this work, the Committee was guided by the following considerations:

(1) In order to adhere to its terms of reference, it included the whole of international law in its survey, without omitting any part thereof.

¹ The text of the Assembly's resolution is as follows:

"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.

"The Assembly 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 examination by 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."

Series of League of Nations Publications

✓ V. LEGAL. ✓
1929. V. 6.

(2) In order to conform to the wish of the Assembly, it has had in mind the principal technical organisations of the League of Nations and the international conferences initiated by various Governments. These organisations and conferences have already dealt with a number of the questions which should appear in the systematic survey that the Committee has to prepare. When mentioning these questions, the Committee has indicated in a footnote the organisations or conferences dealing with them.

(3) The Committee thought that, although its work is to fulfil a practical need, it should not go into questions in detail; if it had acted otherwise, it would have incurred the risk of overlooking certain points or attaching more importance to some subjects than to others. It would also have been in danger of being obliged to take up a definite position on a large number of controversial questions. In point of fact, many fields of international law are at present in a fluid and uncertain state, and the question whether certain institutions do or do not form part of established international law is still a moot point. A committee of jurists which has simply to prepare a systematic survey of international law has no power to settle these controversial matters.

In some cases, it is true, the Committee has somewhat departed from this method and has ventured to go into greater detail; but it has done so because it had to mention the organisations dealing with certain special questions. The survey prepared by the Committee is reproduced below (Appendix A).

B. Code of General Conventions open to Acceptance by States in general.

The Committee was at pains to define precisely what it understood by general conventions for the purposes of the publication contemplated by the Assembly, before proceeding to prepare the systematic scheme for the publication of those conventions. The Committee's report containing suggestions regarding the publication of general conventions in the form of a code is reproduced below (Appendix B).

Appendix A.

SYSTEMATIC SURVEY OF THE SUBJECTS OF INTERNATIONAL LAW WITH A VIEW TO A GENERAL CODIFICATION.

PART I. — PERSONS IN INTERNATIONAL LAW.

- I. International legal personality. — Conditions for its existence.
- II. Essential rights and duties of States possessing the quality of persons in international law.
- III. The extinction of States and the legal consequences arising therefrom.
- IV. Neutralised States.
- V. The League of Nations and its organisation:
 - (a) Rules of law arising out of the Covenant, and their development.
 - (b) Rights and duties created by treaties the execution of which is supervised by the League of Nations, particularly as regards:
 - (1) The legal status of minorities in certain countries,
 - (2) International mandates.
 - (c) The Permanent Court of International Justice and its Statute.
 - (d) The International Labour Organisation.

PART II. — OBJECTS OF INTERNATIONAL LAW.

Section I.

- I. State territory:
 - (a) Territory in the strict sense of the term;
 - (b) Inland waters;
 - (c) The territorial sea;¹
 - (d) The air space above territory.
- II. Acquisition and loss of territory.
- III. International rivers, straits and canals subject to a special regime.
- IV. The high seas.
- V. Vessels, their nationality; jurisdiction over vessels.
- VI. The air space above the high seas or territories free from all sovereignty.

Section II. — Individuals.

- I. Nationality.²
- II. The legal status of aliens.³

¹ The subject of territorial waters is on the programme of the Conference for the Progressive Codification of International Law which is to be convened by the Council of the League of Nations at The Hague in 1930.

² This subject will also be dealt with by the Hague Conference of 1930 for the Progressive Codification of International Law.

³ Some aspects of this subject are being dealt with by the Economic Committee of the League of Nations.

PART III. — LEGAL RELATIONS BETWEEN STATES.

Section I. — Organs of International Relations.

- I. Heads of States and Ministers for Foreign Affairs.
- II. Diplomatic agents.
- III. Consular agents.
- IV. International organs.

Section II. — International Conventions.

- I. Conditions of form and substance required for the validity of treaties.
- II. Interpretation, effects and means of guaranteeing the execution of treaties; extinction of treaties.

Section III. — International Obligations formed without Conventions.

- I. Source of such obligations. — International delinquencies.
- II. The international responsibility of States.¹

Section IV. — Pursuit of Common Interests.

- I. Communications and transit:
 - (1) Maritime, fluvial and air navigation ² (see Part II).
 - (2) Road traffic.³
 - (3) Postal services.
 - (4) Telegraphs.
 - (5) Radiotelegraphy.
- II. Protection of intellectual and cultural interests.³
- III. Economic and financial interests.⁴
- IV. Humanitarian interests.⁵
- V. Health interests.⁶
- VI. Labour interests.⁷
- VII. Legislation and administration of justice:
 - (1) Conventions for the adoption of uniform municipal laws on certain subjects. Bills of exchange.⁸ Maritime law.⁹
 - (2) Settlement of conflicts of laws in matters of civil and commercial law and of procedure.¹⁰
 - (3) International criminal law and mutual assistance between States with a view to the punishment of criminal offences.¹¹

PART IV. — INTERNATIONAL DISPUTES.

Section I. — Methods of settling disputes.

- I. Good offices.
- II. Mediation.
- III. Commissions of enquiry.
- IV. Commissions of conciliation.
- V. Pacific methods of procedure provided by the Covenant.
- VI. Arbitral settlement.
- VII. Judicial settlement.

Section II. — Means of pacific constraint.

- I. Retortion.
- II. Reprisals.

Section III. — Collective Execution provided for by Article 16 of the Covenant.

¹ The question of damage caused in their territory to the person or property of foreigners is to be dealt with at The Hague Conference for the Progressive Codification of International Law, 1930.

² League of Nations Organisation for Communications and Transit.

³ League of Nations Committee on Intellectual Co-operation and Institute of Intellectual Co-operation, Paris. International Educational Cinematographic Institute, Rome.

⁴ Economic and Financial Organisation of the League of Nations. International Institute of Agriculture, Rome. Institute for the exploration of the Riches of the Sea, Copenhagen.

⁵ Advisory Commission for the Protection and Welfare of Children and Young People (which also deals with the traffic in women and children). Advisory Committee of the League of Nations on Traffic in Opium and other Dangerous Drugs.

⁶ Health Organisation of the League of Nations. Office international d'hygiène publique, Paris.

⁷ International Labour Organisation.

⁸ Economic and Financial Organisation of the League of Nations. International Institute for the Unification of Private Law, Rome.

⁹ Brussels Conferences.

¹⁰ Hague Conferences on Private International Law. As regards the execution of foreign arbitral awards, Economic and Financial Organisation of the League of Nations.

¹¹ As regards the suppression of counterfeiting currency, International Conference of Geneva, 1929.

PART V. — WAR.

Section I. — The Law of War in general.

Section II. — The Conduct of War.

- I. Land warfare.
- II. Warfare at sea.
- III. Air warfare.

Section III. — Neutrality.



Appendix B.

PUBLICATION IN THE FORM OF A CODE OF CONVENTIONS OPEN TO STATES IN GENERAL.

According to the Assembly resolution, the Committee's second duty is to carry out the methodical classification of general conventions with a view to republishing them from time to time in the form of a code. This work will certainly prove of very considerable service.

In the first place, the Committee had to decide upon a definition of the term "general conventions", since the scope of the publications contemplated in the Assembly's resolution would ultimately depend upon this definition; and moreover, a criterion would thereby be established which could always be followed afterwards. The Committee then examined the method of carrying out a systematic classification of conventions, with a view to laying down a rule to govern the publication of the general conventions not only in present circumstances but in the future as well.

While realising the technical character of its task, the Committee is of opinion that, although it should take theoretical criteria into account, it should not lose sight of the practical aims envisaged by the Assembly.

The Committee had first to settle a very important and difficult question, namely, what conventions are to be regarded as general, that is to say, according to the words of the Assembly's resolution, conventions which are open to acceptance by States in general.

After a careful examination of the subject, the Committee felt able to divide conventions into two categories.

The first category would include under the term "absolutely open conventions" those to which all countries may become parties at any time by a unilateral declaration of their intention to do so.

The second category would include conventions which might be termed "relatively open", *i.e.*, (1) conventions which, while providing for the accession of other States, require such accessions to be accepted by the original contracting parties, even though—as is the case in some of these conventions—such acceptance may be expressed tacitly (*e.g.*, the Geneva Convention of July 6th, 1906, for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field); (2) conventions which contain clauses whereby other States may accede if invited to do so after its conclusion by the central organ which is the depository of the Convention (*e.g.*, the Barcelona Convention on Transit of April 20th, 1921, and many other conventions concluded under the auspices of the League of Nations).

The category of closed conventions would, on the other hand, comprise those not containing a clause allowing of accession by States in general.

This classification was only adopted by the Committee after it had caused the Secretariat to examine more than 400 multilateral conventions. The Committee also utilised a study issued by the "Institut für internationales Recht" of Kiel University entitled "Systematisches Verzeichnis der völkerrechtlichen Kollektivverträge", an interesting publication which the Committee found of great service.

If a code is to be published of the existing collective conventions from which rules of international law can be derived, the Committee thinks that the conventions to be taken into consideration should not be merely those of the first category.

The Committee would add that, even among closed collective conventions, there are some which could advantageously be utilised for the preparation or codification of objective international law.

In point of fact, some of these conventions can be extended to other States, subject to the consent of the original contracting States expressed in a special diplomatic act. As an example may be quoted the Hague Conventions on Private International Law, which were afterwards opened for acceptance by certain new States by means of special protocols.

According to the information placed at the Committee's disposal, the number of conventions to be published would be about 250. This figure would seem to represent the maximum number of general conventions which it would be of practical interest to publish in a code. This figure includes general conventions of recent date which have not yet come into force, but which it is believed will shortly do so.

The Committee suggests that the conventions in question should be grouped in the proposed publication as follows:

- 1.—Conventions regarding the constitutional organisation of the League of Nations.
- 2.—Rules of law regarding:
 - (a) Territory,
 - (b) The sea,
 - (c) The air.
- 3.—Conventions regarding means of communication and transit:
 - (a) Straits and maritime canals,
 - (b) Rivers,
 - (c) Railways,
 - (d) Roads,
 - (e) Maritime navigation,
 - (f) Air navigation,
 - (g) Posts,
 - (h) Telegraphs, telephones and radiotelegraphy.
- 4.—Conventions regarding the protection of intellectual and cultural interests.
- 5.—Economic conventions.
- 6.—Humanitarian and sanitary conventions.
- 7.—Labour conventions.
- 8.—Conventions for the creation of uniform municipal law.
- 9.—Conventions regarding the status of aliens.
- 10.—Conventions on international private law:
 - (a) Civil,
 - (b) Commercial,
 - (c) Procedure.
- 11.—Conventions on international criminal law and conventions on mutual assistance between States with a view to the punishment of criminal offences.
- 12.—Conventions for the pacific settlement of international disputes.
- 13.—Conventions on the law of war:
 - (a) Land,
 - (b) Sea,
 - (c) Air.

The work begun by the Committee in accordance with the Assembly's resolution is necessarily of a preparatory character.

If the Assembly decides to continue the study of this question, a consultation of the contracting States, or at all events of the States which are depositaries of the conventions, is essential. The Committee considers that the parties to be consulted should include the offices of the international unions established by some of these conventions, as these central organs often possess important information on the matters within their competence.

The object of the consultation which the Committee suggests as a second stage of its work would be to obtain the authentic texts of the conventions to be published and also a large amount of relevant information. This information would include, for example, the names of the original contracting parties and the acceding parties, the period of validity of the conventions, the reservations made by certain contracting parties, denunciations, etc. A questionnaire for the purpose of this consultation would be sent in due course to the various Governments and, where necessary, to the offices of the international unions.

The Committee's object in offering the Council a suggestion as to the method to be followed to give effect to the aim of the Assembly resolution is to enable the latter to have all the necessary information at its disposal.

According to the particulars supplied by the Secretariat, the proposed publication would probably consist of several volumes, of which not more than two, of about 500 pages each, could be issued in the course of 1930.

As regards the cost of the publication, the Committee has asked the Secretariat to prepare budget estimates. These are attached to the present report (Appendix C).

In submitting to the Council the systematic scheme for the publication of general conventions and in indicating the field which the Committee considers this publication should cover, the undersigned members desire to take this occasion to express their gratitude to the Secretariat for the zealous and able assistance it has rendered them.

(Signed) Giulio DIENA.

(Signed) J. Gustavo GUERRERO.

(Signed) Walther SCHÜCKING.

Geneva, April 23rd, 1929.

Appendix C.

ESTIMATES.

The Secretariat has been requested by the Committee of Jurists to make an estimate of the charge on the Budget which might result from the publication of general conventions in the form of a code.

Two different methods might be followed in producing the publication:

- (1) As rapid as possible a publication of the conventions;
- (2) Issue of a limited number of volumes each year.

In the first case, a somewhat considerable credit would be required in the Budgets of 1930 and 1931 and eventually 1932. It would also be necessary to take account of the cost of the increase of staff which would be necessary to carry out the work successfully in a brief period of time.

In the second case, publication of two volumes per annum might be contemplated. This would necessitate a credit of about 20,000 francs per annum for printing, on the assumption that the volumes were in the same form as the *Treaty Series*. Issue of only two volumes of general conventions in each year would not necessitate an increase of staff. Accordingly, adoption of the second proposal would involve credits of, approximately, the same sum of 20,000 francs in each successive year until all the conventions already concluded have been published.

Until the enquiry suggested by the Committee has been carried out, it is not possible to estimate the number of volumes of which the publication would consist. The systematic plan drawn up by the Committee could be followed, but it would perhaps be desirable to publish in advance those sections of the plan which are of more general interest or contain the texts which are least easily accessible in other forms.

Taking the estimates of the Committee, the publication in question might contain a maximum of 250 multilateral conventions. If the text of the conventions were inserted in full, together with their annexes and administrative regulations, some sections of the new collection, more particularly those dealing with the conventions concerning the various international unions, would fill several volumes even after the omission of texts which have ceased to be in force. Ten conventions were adopted at ten Conferences of the International Telegraphic Union, and the nine Conferences of the Universal Postal Union have produced about forty conventions. The agreements adopted at the Conference of the Universal Postal Union held at Stockholm in August, 1924, fill 560 pages of Volumes XL and XLI of the *Treaty Series*. In such cases the question arises as to whether it would not be desirable only to reproduce the texts of the conventions and to leave out annexes and administrative regulations which are not of general interest from the point of view of international law.

In the same connection, the question arises whether only the texts adopted at the various conferences should be reproduced or whether, as is the practice in the *Treaty Series*, the new collection should contain translations in the official languages of the League of Nations.

REPORT BY THE REPRESENTATIVE OF ITALY AND RESOLUTION ADOPTED BY THE COUNCIL ON JUNE 10TH, 1929.

By a resolution dated December 14th, 1928, the Council appointed a Committee composed of Professor Diena, His Excellency M. Guerrero and Professor Schücking, in pursuance of the Assembly resolution of September 24th, 1928. In this resolution the Assembly requested that the preparation of a systematic survey of the subjects of international law should be entrusted to a Committee of Three Jurists, to be chosen preferably from among the members of the Committee of Experts, and that this survey should be communicated to the Members of the League as soon as possible.

By the same resolution, the Assembly also requested the Council 'to submit to examination, by 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 — certain general Conventions [*i.e.*, Conventions open to accession by all States] and to report to the Assembly on the matter at its next session.'

This Committee of Three Jurists met at Geneva from April 15th to 23rd last and submitted a report which has been communicated to all the Members of the Council (document C.171.1929.V).

In its report, the Committee explains the principles to which it has adhered in carrying out its twofold mission. The first annex (Annex A) contains a systematic survey of the subjects of international law, as requested by the Council. Annex B is the Committee's detailed report on the publication of general Conventions in the form of a code. Annex C contains budget estimates, prepared by the Secretariat at the request of the Committee, concerning the publication contemplated in Annex B.

The Assembly suggested that the survey of subjects of international law prepared by the Committee should be communicated as soon as possible to all the Members of the League. It would seem to be desirable that the Council should at the same time communicate them to the Assembly.

The second question, that of the publication of general Conventions in the form of a code, is more strictly a matter for the Assembly to deal with. The latter, though recognising the practical value of the proposed publication, reserved the right, after examining the results of the above-mentioned enquiry, to decide as to the advisability of undertaking this work.

In these circumstances, I think that the Council might thank the Committee of Three Jurists for the valuable work it has accomplished and decide that its report shall be communicated to all Members of the League of Nations and to the Assembly.

I would therefore propose to my colleagues the following resolution:

Resolution proposed by the Representative of Italy and adopted by the Council.

- ' The Council:
 - ' Thanks the Committee of Three Jurists for the work it has accomplished;
 - ' And decides that the report of the Committee shall be communicated to the Members of the League and to the Assembly.'
-

[Communiqué au Conseil,
aux Membres de la Société
et à d'autres Gouvernements.]

N° officiel: **C. 190(1). M. 93.** 1929. V.

Genève, le 25 juin 1929.

SOCIÉTÉ DES NATIONS

**CONFÉRENCE POUR LA CODIFICATION DU
DROIT INTERNATIONAL**

PROJET DE RÈGLEMENT

Note du Secrétaire général:

Ce projet de règlement a été élaboré par le Comité préparatoire en exécution d'une résolution du Conseil du 7 mars 1929. (Voir pages 7 à 9 des documents C.73.M.38.1929.V, C.74.M.39.1929.V et C.75.M.69.1929.V.)

Par une résolution du 12 juin 1929, le Conseil en a décidé la transmission aux Membres de la Société et aux autres Gouvernements intéressés.

LEAGUE OF NATIONS

**CONFERENCE FOR THE CODIFICATION OF
INTERNATIONAL LAW**

DRAFT RULES OF PROCEDURE

Note by the Secretary-General:

These Draft Rules were drawn up by the Preparatory Committee in execution of the Council's resolution of March 7th, 1929 (see pages 7 to 9 of documents C.73.M.38.1929.V, C.74.M.39.1929.V and C.75.M.69.1929.V).

By a resolution of June 12th, 1929, the Council decided to transmit them to the Members of the League and to the other interested Governments.

Série de Publications de la Société des Nations

✓ V. QUESTIONS JURIDIQUES

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PROJET DE RÈGLEMENT DE LA PREMIÈRE CONFÉRENCE POUR LA CODIFICATION DU DROIT INTERNATIONAL.

I.

La première Conférence pour la codification du droit international est formée des plénipotentiaires et délégués techniques des Membres de la Société des Nations et des Etats non membres qui ont été invités par le Conseil de la Société des Nations à s'y faire représenter.

La Conférence aura un président et un secrétaire général.

II.

A l'ouverture de la Conférence, les pleins pouvoirs des plénipotentiaires seront remis au Secrétariat avec la liste des délégués techniques.

III.

Une Commission de cinq membres nommés par la Conférence, sur la proposition du président, sera chargée de vérifier les pouvoirs et en fera immédiatement rapport à la Conférence. Tout plénipotentiaire dont l'admission soulève de l'opposition siège provisoirement avec les mêmes droits que les autres plénipotentiaires, à moins que la Conférence n'en ait décidé autrement.

IV.

La préséance entre les délégations est déterminée selon l'ordre alphabétique français.

V.

Le Bureau de la Conférence comprend le président, trois vice-présidents élus par la Conférence, les présidents élus par les trois Commissions mentionnées à l'article VI, le secrétaire général de la Conférence et un secrétaire général adjoint, qui sera élu par la Conférence.

VI.

Trois Commissions sont constituées, savoir: 1^o Commission de la nationalité; 2^o Commission des eaux territoriales; 3^o Commission de la responsabilité des Etats en raison de dommages subis par des étrangers.

Aussitôt que possible après l'ouverture de la Conférence, le chef de chaque délégation désigne pour chaque Commission le membre de sa délégation chargé d'y représenter celle-ci. Ce membre peut se faire remplacer par un autre membre de sa délégation. Sauf dans ce cas, les membres de la Conférence assistant aux séances des Commissions dont ils ne sont pas membres ne peuvent prendre part à la délibération que sur autorisation du président de la Commission. Toutefois, le chef de chaque délégation peut, quand il le juge utile, prendre part aux délibérations de chaque Commission.

En règle générale, les trois Commissions poursuivent leurs travaux simultanément.

VII.

Chaque Commission nomme son président et un vice-président; elle nomme également, au moment où elle le juge utile, un ou plusieurs rapporteurs.

VIII.

Chaque Commission a la faculté de se diviser en Sous-Commissions et de choisir parmi les membres des délégations des comités chargés d'examiner des questions particulières. La Sous-Commission ou le Comité nomme son président et, s'il y a lieu, un rapporteur et fait rapport à la Commission.

IX.

Un Comité de rédaction composé de cinq membres sera chargé de la coordination des actes votés par la Conférence. Il sera nommé par la Conférence, sur la proposition du Bureau; ses membres seront choisis parmi les plénipotentiaires ou délégués techniques. Un délégué de chaque Commission sera adjoint à ce Comité pour l'examen des actes préparés par cette Commission.

Sur rapport du Comité de rédaction, les actes de la Conférence seront adoptés par celle-ci en leur forme définitive.

Il appartient à chaque Commission de déterminer s'il y a lieu pour elle de constituer un comité spécial de rédaction.

DRAFT RULES OF PROCEDURE FOR THE FIRST CONFERENCE FOR THE CODIFICATION OF INTERNATIONAL LAW.

I.

The First Conference for the Codification of International Law shall comprise the plenipotentiaries and technical delegates of Members of the League of Nations and of the non-Member States which have been invited by the Council of the League of Nations to send representatives. There shall be a President and a Secretary-General of the Conference.

II.

On the opening of the Conference, the credentials of the plenipotentiaries shall be presented to the Secretariat, together with a list of the technical delegates.

III.

A committee of five members, appointed by the Conference on the proposal of the President, shall be entrusted with the duty of examining credentials, and shall report immediately to the Conference. Any plenipotentiary to whose admission objection has been made shall sit provisionally with the same rights as other plenipotentiaries, unless the Conference decides otherwise.

IV.

Priority as between delegations shall be determined according to the French alphabetical order.

V.

The Bureau of the Conference shall consist of the President, three Vice-Presidents elected by the Conference, the Chairman elected by the three Committees mentioned in Article VI, the Secretary-General of the Conference and a Deputy-Secretary-General, who will be elected by the Conference.

VI.

Three Committees shall be set up, namely: (1) Committee on Nationality; (2) Committee on Territorial Waters; (3) Committee on the Responsibility of States for Damage suffered by Foreigners.

As soon as possible after the opening of the Conference, the head of each delegation shall designate for each Committee the member of his delegation empowered to represent the latter thereon. This member may be replaced by another member of the delegation. Except in such a case, members of the Conference present at meetings of Committees of which they are not members may not take part in the proceedings save by authorisation of the Chairman of the Committee. Nevertheless, the head of each delegation may, should he think fit, take part in the proceedings of any Committee.

As a general rule, the three Committees will work simultaneously.

VII.

Each Committee shall appoint its Chairman and one Vice-Chairman; it shall also appoint, at such time as it thinks fit, a rapporteur or rapporteurs.

VIII.

Each Committee shall have the power to form sub-committees and to constitute from among the members of the delegations special committees for the examination of particular questions. The sub-committee or the special committee shall appoint its chairman and, if necessary, a rapporteur, and shall report to the full Committee.

IX.

A Drafting Committee, composed of five members, shall be entrusted with the co-ordination of the acts adopted by the Conference. It shall be appointed by the Conference on the proposal of the Bureau; its members shall be selected from among the plenipotentiaries or technical delegates. A delegate of each Committee shall be attached to the Drafting Committee for the examination of the acts prepared by the said Committee.

On the report of the Drafting Committee, the acts of the Conference shall be adopted by the latter in their final form.

It shall be left to each Committee to determine whether it is necessary for it to set up a special drafting committee.

X.

Le public sera admis à assister aux séances plénières de la Conférence; à cet effet, le secrétaire général assurera la distribution de cartes conformément aux instructions du président.
Le Bureau peut, toutefois, décider que des séances déterminées ne seront pas publiques.
Les séances des Commissions ne sont pas publiques.
Dans la mesure où les séances ne sont pas publiques, la publicité des travaux de la Conférence et de ses Commissions sera assurée par les communiqués officiels préparés par le secrétaire général et signés par le président de la Conférence ou de la Commission, suivant le cas.

XI.

Le secrétaire général assure la rédaction en français et en anglais des procès-verbaux de la Conférence. Pour les séances des Commissions, il ne sera dressé que des procès-verbaux succincts. Pour les sous-commissions et comités d'examen, il sera seulement pris note des conclusions auxquelles ils auront abouti.

Les procès-verbaux seront distribués en épreuve provisoire aux délégations dans le plus bref délai possible. Si aucune modification n'est demandée dans les quarante-huit heures, le texte est considéré comme approuvé et déposé aux archives. Si des modifications sont demandées, le secrétaire général peut faire des corrections qui sont de pure forme; pour les autres, il en réfère au président qui, s'il y a lieu, saisit de la question la Conférence ou la Commission intéressée.

Les procès-verbaux des séances des Commissions ne seront publiés qu'après la fin des travaux de la Conférence; celle-ci pourra, à titre exceptionnel, et notamment dans le cas où la délibération sur certaines matières n'aurait pas pu aboutir à un accord, décider de surseoir à la publication de certains procès-verbaux.

XII.

Le secrétaire général assure la traduction en français ou en anglais des opinions émises et des documents, propositions et rapports présentés dans l'une ou l'autre de ces langues. Tout délégué employant une autre langue devra assurer lui-même la traduction en français ou en anglais.

XIII.

Le Bureau de la Conférence délibère sur l'ordre des travaux de celle-ci et lui soumet ses propositions à cet égard. Il assure la coordination entre les travaux des diverses Commissions.

XIV.

Le président de la Conférence et, dans chaque Commission, le président de cette Commission, dirige les débats en s'inspirant des dispositions inscrites dans le Règlement intérieur de l'Assemblée de la Société des Nations, en tant que le présent Règlement ne contient pas de dispositions contraires.

XV.

Tout acte destiné à faire partie de l'œuvre de la Conférence est tout d'abord préparé et voté par la Commission compétente, puis, après adoption par celle-ci, soumis à l'approbation de la Conférence.

XVI.

Au sein de chaque Commission, la délibération est ouverte sur le texte des bases de discussion préparées par le Comité préparatoire de la Conférence de codification.

Tout membre de la Commission peut présenter des amendements et propositions rentrant dans le cadre des bases de discussion et observations soumises à la Commission. Les propositions qui sortiraient de ce cadre ne seront mises en discussion que si la Commission décide de les prendre en considération.

XVII.

Tout amendement ou proposition doit être remis par écrit au président, qui en fait effectuer la distribution.

En règle générale, nul projet n'est discuté qu'après avoir été distribué aux délégations la veille de la séance. Le président peut, toutefois, autoriser la discussion immédiate.

XVIII.

Dans les Commissions, chaque disposition donne lieu à un vote séparé. Le vote ne peut être acquis que si la majorité des délégations présentes à la séance se prononcent en faveur de la proposition.

Toutefois, si ce vote a été effectué sans que la majorité des délégations représentées à la Commission ait été présente, il sera procédé à un nouveau vote sur demande de dix délégations.

XIX.

Si le président d'une Commission estime que des modifications à certaines dispositions adoptées par celle-ci seraient de nature à faciliter la conclusion d'un accord unanime, il pourra inviter cette Commission à en délibérer.

X.

The public shall be admitted to the plenary meetings of the Conference; the Secretary-General shall be responsible for the issue of tickets for this purpose, in conformity with the President's instructions.

The Bureau may, however, decide that particular meetings shall be private. Meetings of the Committees shall be private.

In the case of meetings not open to the public, the publicity of the work of the Conference and its Committees shall be ensured by means of official *communiqués* prepared by the Secretary-General and signed by the President of the Conference or the Chairman of the Committee, as the case may be.

XI.

The Secretary-General shall be responsible for the French and English texts of the Minutes of the Conference. For meetings of the Committees, only summary reports shall be drawn up. In the case of the sub-committees and special committees of examination, a record shall be kept only of the conclusions reached by them.

The Minutes shall be distributed in provisional form to the delegations with the least possible delay. If no corrections are asked for within forty-eight hours, the text shall be regarded as approved and shall be deposited in the archives. If corrections are asked for, the Secretary-General shall be responsible for purely formal changes; for others, he shall refer to the President, who shall, if necessary, lay the matter before the Conference or the Committee concerned.

The Minutes of meetings of Committees shall not be published until after the close of the Conference; the latter may, as an exceptional measure and more particularly when the proceedings in regard to certain questions have not resulted in an agreement, decide to defer the publication of those Minutes.

XII.

The Secretary-General shall be responsible for the translation into French or English of opinions expressed and of documents, proposals and reports submitted in either of those languages. Any delegate employing another language must himself be responsible for a translation in French or English.

XIII.

The Bureau shall consider the order of the work of the Conference and shall submit to the latter proposals on the subject. It shall be responsible for co-ordinating the work of the different Committees.

XIV.

The President of the Conference and, in the case of each Committee, the Chairman of that Committee, shall direct the proceedings in accordance with the provisions laid down in the Rules of Procedure of the Assembly of the League of Nations, unless otherwise provided in the present Rules.

XV.

Any act intended to form part of the work of the Conference shall first be prepared and voted upon by the competent Committee, and shall then, after adoption by the latter, be submitted to the Conference for approval.

XVI.

In each Committee, the debate shall be opened on the text of the Bases of Discussion prepared by the Preparatory Committee for the Codification Conference.

Any member of the Committee may present amendments and proposals coming within the scope of the Bases of Discussion and of the Observations submitted to the Committee. Proposals outside this scope shall only be discussed if the Committee so decides.

XVII.

All amendments and proposals must be submitted in writing to the President, who shall cause them to be circulated.

As a general rule, no draft shall be discussed unless it has been circulated to delegations on the day preceding the meeting. The President, however, may permit immediate discussion.

XVIII.

Within the Committees, each provision shall be voted upon separately. The vote shall only be valid if the proposal is supported by a majority of the delegations present at the meeting.

If, however, a majority of the delegations represented on the Committee was not present when the vote was taken, a new vote shall be taken should this be asked for by ten delegations.

XIX.

If the Chairman of a Committee considers that modifications of certain provisions adopted by that Committee are likely to facilitate a unanimous agreement, he may request the Committee to discuss such modifications.

XX.

Si la Commission ne peut parvenir sur tous les points à un accord unanime, elle réunira en un instrument distinct les dispositions sur lesquelles l'accord unanime se sera formé.

La Commission établira également les dispositions ayant obtenu l'assentiment de la majorité des délégations.

Elle pourra également établir les termes d'une Déclaration énonçant les principes qui seraient considérés, au moins par la majorité des délégations représentées à la Commission, comme l'expression du droit international actuellement en vigueur.

XXI.

Chaque Commission transmet à la Conférence le résultat de ses travaux, avec un rapport à l'appui. Elle indique, notamment, si elle considère certains projets comme définitifs ou si elle recommande de soumettre certaines questions ou certains projets à une nouvelle étude des gouvernements.

XXII.

La Conférence prononce sur les propositions dont elle a été saisie par les Commissions.

XXIII.

Dans la mesure où la Conférence aboutit à un accord unanime, l'acte le constatant est signé par les délégations, sauf ratification; il est ouvert à l'adhésion de tout Etat.

L'acte unanime peut faire l'objet de réserves de la part de certains signataires. Les réserves peuvent consister soit à exclure tel ou tel article, soit à dire que les dispositions de cet acte sont insuffisantes, mais non porter sur un autre point et, par exemple, sur l'interprétation à donner à cet acte. Ledit acte déterminera dans quelle mesure l'adhésion pourrait être accompagnée de réserves. Il déterminera également sa durée et, éventuellement, son mode de révision.

XXIV.

A défaut ou en dehors d'un accord unanime, il pourra être procédé à la signature, comme actes de la Conférence, de conventions dont l'objet rentre dans la compétence de celle-ci, pourvu qu'elles aient été définitivement votées par la majorité des Membres de la Société des Nations et des Etats non membres représentés à la Commission dans laquelle le projet a été élaboré. Chacune de ces conventions sera ouverte à l'adhésion de tout Etat; sa durée et, éventuellement, son mode de révision seront fixés par la convention.

XXV.

Il pourra de même être procédé à la signature, comme actes de la Conférence, de Déclarations par lesquelles les gouvernements signataires reconnaîtront certains principes comme étant consacrés par le droit international existant, pourvu qu'elles aient été définitivement votées par la majorité des Membres de la Société des Nations et des Etats non membres représentés à la Commission dans laquelle le projet a été élaboré. Ces Déclarations, qui resteront soumises à ratification, seront ouvertes à adhésion; elles ne comporteront pas de détermination de durée ni de clause de dénonciation, leur effet devant s'éteindre si les règles qu'elles énoncent viennent à cesser de faire partie du droit international.

XX.

If the Committee cannot reach unanimous agreement on all points, it shall incorporate the provisions upon which it has unanimously agreed in a special instrument.

The Committee shall also formulate the provisions which have obtained the assent of the majority of the delegations.

It may also establish the terms of a Declaration setting forth the principles regarded at least by a majority of the delegations represented on the Committee as the expression of existing international law.

XXI.

Each Committee shall forward to the Conference the results of its work, backed by a report. In particular, it shall state whether it regards certain drafts as final or whether it recommends that certain questions or drafts should be submitted for fresh examination by Governments.

XXII.

The Conference shall pronounce upon proposals submitted to it by the Committees.

XXIII.

In so far as the Conference arrives at a unanimous agreement, the act embodying such agreement shall be signed by all the delegations subject to ratification; it shall be open for the accession of any State.

Reservations to the unanimous act may be made by individual signatories. Such reservations may either imply the exclusion of a particular article or may consist of a declaration that the provisions of the act are insufficient, but they may not relate to any other point, for example, the interpretation of the act. The said act shall indicate the extent to which reservations may accompany accession. It shall also specify the period of its validity and, if necessary, the method of revision.

XXIV.

In the absence of or in addition to a unanimous agreement, conventions may be signed, as acts of the Conference, provided that the object of the convention comes within the competence of the Conference and provided they are finally adopted by a vote of the majority of the Members of the League of Nations and non-member States represented on the Committee in which the draft was prepared. Each of these conventions shall be open to accession by any State; the period of validity and, if necessary, the method of revision shall be specified in the convention.

XXV.

Declarations by which the signatory Governments will recognise certain principles as being sanctioned by existing international law may also be signed as acts of the Conference, provided the said Declarations have been finally adopted by a vote of a majority of the Members of the League of Nations and non-member States represented on the Committee in which the draft was prepared. These Declarations, which shall be subject to ratification, shall be open for accession; they shall not specify any period of validity or contain any denunciation clause, and they shall lapse if the rules which they enunciate cease to form part of international law.

[Communiqué au Conseil,
aux Membres de la Société
et à d'autres Gouvernements.]

N^o officiel: **C. 73** (a). **M. 38** (a). 1929. V.

Genève, le 25 juin 1929.

SOCIÉTÉ DES NATIONS

CONFÉRENCE
POUR LA CODIFICATION DU DROIT INTERNATIONAL

Nationalité (Volume I — C.73.M.38.1929.V.)
Eaux territoriales (Volume II — C.74.M.39.1929.V.)
**Responsabilité des Etats en ce qui concerne les dommages causés sur leur territoire à la personne
ou aux biens des étrangers (Volume III — C.75.M.69.1929.V.).**

BASES DE DISCUSSION

ÉTABLIES PAR LE COMITÉ PRÉPARATOIRE A L'INTENTION
DE LA CONFÉRENCE.

Supplément au Tome I. — NATIONALITÉ.

RÉPONSES DES GOUVERNEMENTS A LA LISTE DE POINTS:
RÉPONSE DU CANADA.

GENÈVE, 1929.

LEAGUE OF NATIONS

CONFERENCE
FOR THE CODIFICATION OF INTERNATIONAL LAW

Nationality (Volume I — C.73.M.38.1929.V.)
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BASES OF DISCUSSION

DRAWN UP FOR THE CONFERENCE BY THE PREPARATORY
COMMITTEE

Supplement to Volume I. — NATIONALITY.

REPLIES MADE BY THE GOVERNMENTS TO THE SCHEDULE
OF POINTS: REPLIES OF CANADA.

GENEVA, 1929.

Série de Publications de la Société des Nations

V. QUESTIONS JURIDIQUES

1929. V. 8. ✓

CANADA.

LETTRE EN DATE DU 27 MAI 1929.

[Traduction.]

La législation canadienne en matière de nationalité, dans la mesure où elle repose sur des dispositions législatives, est contenue dans deux lois:

1. Une loi relative à la nationalité britannique, à la naturalisation et aux étrangers, appelée brièvement « Loi sur la naturalisation », et figurant dans le Code révisé du Canada 1927, chapitre 138; cette loi est indiquée dans le présent rapport par les initiales N.A., section.....

2. Une loi définissant les ressortissants canadiens et prévoyant la renonciation à la nationalité canadienne; cette loi est contenue dans le Code révisé du Canada, 1927, chapitre 21.

Un exemplaire de chacune de ces lois est annexé au présent rapport ¹.

I.

Bien que l'on accepte le principe général selon lequel l'acquisition et la perte de la nationalité sont des questions qui relèvent exclusivement de la compétence de chaque Etat, on estime que les conflits de lois résultant de ce principe devraient, autant que possible, être réglés par une convention internationale.

II, 1.

Dans ce cas, un Etat a le droit d'appliquer exclusivement sa propre législation et d'ignorer toute autre nationalité conférée par la législation d'un autre Etat.

II, 2.

Les articles 1, 5, 6 de l'avant-projet de convention établi par le Comité d'experts (document C.196.M.70.1927.V.) peuvent être utilisés comme base de discussion, mais il faudrait également tenir compte de certains autres facteurs pertinents, notamment des dispositions relatives à l'expatriation.

II, 3.

On estime que la préférence devrait être donnée à la nationalité qui se double du domicile, lorsqu'une personne possédant deux nationalités est domiciliée dans l'un des deux Etats auxquels elle ressortit. Lorsque la personne en question n'est pas domiciliée dans l'un ou l'autre des deux Etats, sa nationalité pourrait être déterminée d'après la loi de celui des deux Etats dans lequel elle était domiciliée en dernier lieu.

III.

La législation canadienne stipule qu'un sujet britannique perd automatiquement sa nationalité britannique à la suite de sa naturalisation dans un pays étranger (N. A., section 16).

Il y a concordance exacte entre la perte de la première nationalité et l'acquisition de la nouvelle nationalité. Le Gouvernement de Sa Majesté au Canada estime désirable que cette concordance existe dans tous les cas et soit établie par une convention internationale.

IV.

a) Le Secrétaire d'Etat du Canada a la faculté de porter sur le certificat de naturalisation, à la demande du requérant, le nom de tout enfant mineur né avant la date du certificat (N. A., section 7, paragraphe 1). Toutefois le Secrétaire d'Etat limite, en pratique, cette inscription aux enfants vivant au Canada lors de la délivrance du certificat.

b) Lorsqu'un sujet britannique perd la nationalité britannique en acquérant la nationalité d'un Etat étranger, ses enfants mineurs perdent également leur nationalité britannique, à moins que lesdits enfants mineurs, lorsque la personne visée cesse d'être un sujet britannique, n'acquiescent pas, en vertu de la loi d'un autre pays, la nationalité de ce pays. Toutefois, ces enfants peuvent, dans l'année qui suit leur majorité, exprimer, par une déclaration, leur désir de recouvrer la nationalité britannique, et ils redeviennent alors sujets britanniques (N. A., section 15).

La loi actuelle du Canada sur la naturalisation n'a pas modifié la situation des individus naturalisés sous le régime de la législation antérieure.

V.

a) Les enfants nés au Canada d'étrangers qui jouissent des privilèges diplomatiques, n'acquiescent pas la nationalité britannique.

¹ Conservé dans les archives du Secrétariat.

CANADA.

LETTER OF MAY 27TH, 1929.

The Canadian law of nationality, in so far as it depends on legislative enactment, is contained in two Acts:

1. An Act respecting British nationality, naturalisation and aliens, cited shortly as the Naturalisation Act, contained in the Revised Statutes of Canada, 1927, Chapter 138, and referred to in this Report as N. A., Section.....

2. An Act to define Canadian nationals and to provide for the renunciation of Canadian nationality, contained in the Revised Statutes of Canada, 1927, Chapter 21.

A copy of each of these Acts is annexed to this Report.¹

I.

Although it is agreed that the general principle is that the acquisition and loss of nationality are matters which fall solely within the domestic jurisdiction of each State, it is considered that as far as possible the conflicts of laws arising therefrom should be settled through an International Convention.

II (1).

A State, in this case, has the right to apply exclusively its own law and to ignore any second nationality conferred by the law of another State.

II (2).

Articles 1, 5, 6 of the Preliminary Draft Convention of the Committee of Experts (document C.196.M.70.1927.V) might be used as a basis for discussion, but certain other pertinent factors, including provisions as to expatriation, should also be considered.

II (3).

It is felt that preference should be given to the nationality of the domicile where a person possessing two nationalities is domiciled in one of his two States. Where such a person is not domiciled in either of his two States, his nationality might be determined according to the law of that one of those two States in which he was last domiciled.

III.

The Canadian law provides that a British subject loses directly his British nationality from naturalisation in a foreign country (N. A., Section 16).

There is an exact correspondence between the loss of the former nationality and the acquisition of the new nationality. His Majesty's Government in Canada think it desirable that such a correspondence should always exist and be established by an International Convention.

IV.

(a) The Secretary of State of Canada is at liberty to include in the certificate of naturalisation, on the request of the applicant, the name of any child born before the date of the certificate and being a minor (N. A., Section 7, paragraph 1). But the Secretary of State usually limits, as a matter of practice, the inclusion to those children living in Canada at the time of the issue of the certificate.

(b) When a British subject loses British nationality by becoming a citizen or subject of a foreign State, the minor children of that person also lose their British nationality, unless such minor children, on that person ceasing to be a British subject, do not become by the law of any other country naturalised in that country. Such children may, however, within one year after attaining their majority, make a declaration that they wish to resume British nationality, and thereupon shall again become British subjects (N. A., Section 15).

The existing Canadian Naturalisation Act did not change the position of individuals whose naturalisation was effected under previous legislation.

V.

(a) The children born in Canada of foreigners who enjoy diplomatic privileges do not acquire British nationality.

¹ Kept in the archives of the Secretariat.

b) Dans le cas d'étrangers exerçant des fonctions officielles au Canada (consuls, agents financiers, etc...) et ne jouissant pas des privilèges diplomatiques, la règle a) ne s'applique pas. Dans le cas des enfants nés de ces personnes, la naissance au Canada a pour effet de conférer la nationalité britannique. Les enfants en question peuvent, à leur majorité, répudier la nationalité ainsi conférée.

VI.

La législation canadienne n'établit aucune distinction entre un enfant né sur le territoire canadien lorsque les parents résident au Canada et un enfant né lorsque les parents sont simplement de passage. Toutefois, une personne née à bord d'un navire étranger dans les eaux territoriales britanniques n'acquiert pas, de ce fait, la nationalité britannique (N. A. section 3 [2]).

VII.

La nationalité d'un enfant ne dépend pas du fait qu'il est né de parents inconnus ou de parents qui n'ont pas de nationalité ou dont la nationalité est inconnue. Dans tous les cas, lorsqu'une personne est née sur les Territoires de Sa Majesté, le *jus soli* s'applique.

VIII.

Etant donné que toutes les personnes nées dans les limites des Territoires de Sa Majesté et dans l'allégeance de Sa Majesté sont, en vertu de la loi, des sujets britanniques, cette question n'appelle une réponse qu'en ce qui concerne les enfants nés à l'étranger de sujets britanniques. Une personne née en dehors des limites des Territoires de Sa Majesté est un sujet britannique: a) si le père était, au moment de la naissance de cet enfant, sujet britannique, soit i) par la naissance, soit ii) par voie de naturalisation, soit iii) par annexion de territoire, soit iv) si ledit père était au service de la Couronne; ou b) si la naissance de l'enfant a été enregistrée conformément à la loi (voir N. A., section 3 [b]). Un enfant illégitime né à l'étranger n'est pas un sujet britannique, quelle que soit la nationalité de ses parents. A cet égard, on estime désirable que la nationalité de l'enfant illégitime soit toujours déterminée par le *jus soli*.

IX.

Tout enfant né à bord d'un navire britannique, soit dans les eaux territoriales étrangères, soit dans un port étranger, soit en haute mer, est réputé de nationalité britannique.

X.

La section 15 de la loi sur la nationalité est ainsi conçue:

« Lorsqu'une personne de nationalité britannique cesse d'être sujet britannique à la suite d'une déclaration de nationalité étrangère ou autrement, tous les enfants mineurs de ladite personne cessent, *ipso facto*, d'être sujets britanniques, à moins que ces enfants, lorsque la personne en question cesse d'être sujet britannique, n'acquièrent pas, en vertu de la loi d'un autre pays, la nationalité de ce pays.

« 2. Tout enfant qui a ainsi cessé d'être sujet britannique peut, dans l'année qui suit sa majorité, exprimer, par une déclaration, son désir de recouvrer la nationalité britannique, et il redevient ainsi sujet britannique. »

La section 17 est ainsi conçue:

« Toute personne qui, par suite de sa naissance dans les limites des Territoires de Sa Majesté et dans l'allégeance de Sa Majesté, ou à bord d'un navire britannique, est sujet britannique de naissance, mais qui, à sa naissance ou durant sa minorité, a également acquis, en vertu de la loi d'un Etat étranger, la nationalité dudit Etat et qui a conservé ladite nationalité, peut, si elle est majeure et n'est pas frappée d'incapacité, faire une déclaration de nationalité étrangère, et en vertu de cette déclaration, elle cesse d'être sujet britannique. »

On estime que des dispositions analogues devraient être insérées dans une convention internationale.

XI.

Aux termes de la loi canadienne actuelle, une femme acquiert la nationalité britannique par son mariage avec un sujet britannique et perd sa nationalité britannique par son mariage avec un étranger.

Une femme qui a perdu sa nationalité britannique par le mariage, et dont le mari est décédé ou dont le mariage a été dissous, peut obtenir un certificat de naturalisation et recouvrer ainsi sa nationalité britannique en tout temps, à la discrétion du Secrétaire d'Etat du Canada.

Lorsqu'une femme a épousé un sujet britannique qui cesse, durant son mariage, d'être sujet britannique, elle peut conserver sa nationalité britannique, si elle le désire, en faisant une déclaration à cet effet.

Le Gouvernement de Sa Majesté au Canada serait prêt à accueillir favorablement les modifications de législation qui autoriseraient une femme britannique épousant un étranger à conserver sa nationalité britannique si, aux termes de la législation nationale de l'Etat de son mari, elle n'acquiert pas la nationalité de ce dernier en vertu de son mariage.

(b) In the case of foreigners exercising official functions in Canada (such as consuls, financial agents, etc.) and not enjoying diplomatic privileges, the rule in (a) does not apply. In the case of the children of such persons, birth in Canada operates to confer British nationality. The nationality so conferred may be cast off on such children attaining majority.

VI.

Our law does not make any distinction between a child born on Canadian territory when the parents are residing in Canada and one born when they are merely passing through. A person, however, born on board a foreign ship in British territorial waters does not by this fact acquire British nationality (N.A., Section 3 (2)).

VII.

The nationality of a child is not dependent upon the fact that he is of unknown parents or of parents having no nationality or of parents of unknown nationality. In every case, where a person is born in His Majesty's dominions, *jus soli* is applied.

VIII.

Since all persons born within His Majesty's dominions and allegiance are by law British subjects, this question requires answer only in relation to the children born abroad of British subjects. A person born out of His Majesty's dominions is a British subject: (a) if his father was at the time of that person's birth a British subject, either (i) by birth or (ii) by naturalisation or (iii) by annexation of territory or (iv) by service under the Crown; or (b) if such person's birth was registered according to law (see N.A., Section 3 (b)). An illegitimate child born abroad is not a British subject whatever the nationality of its parents. In this connection, it is considered desirable that the nationality of illegitimate children should always be determined by *jus soli*.

IX.

A child born on board a British ship, whether in foreign territorial waters or ports or on the high sea, shall be deemed to be British.

X.

Section 15 of the Nationality Act reads as follows:

"Where a person being a British subject ceases to be a British subject, whether by declaration of alienage or otherwise, every child of that person, being a minor, shall thereupon cease to be a British subject, unless such child, on that person ceasing to be a British subject, does not become by the law of any other country naturalised in that country.

"2. Any child who has so ceased to be a British subject may, within one year after attaining his majority, make a declaration that he wishes to resume British nationality, and shall thereupon again become a British subject."

Section 17 is as follows:

"Any person who by reason of his having been born within His Majesty's dominions and allegiance or on board a British ship is a natural-born British subject, but who at his birth or during his minority became under the law of any foreign State a subject also of that State, and is still such a subject, may, if of full age and not under disability, make a declaration of alienage, and on making the declaration shall cease to be a British subject."

It is felt that similar provisions should be embodied in an International Convention.

XI.

Under existing Canadian law, a woman acquires British nationality by the fact of her marriage to a British subject, and loses her British nationality by the fact of her marriage to an alien.

A woman who has lost her British nationality by marriage and whose husband has died or whose marriage has been dissolved may obtain a certificate of naturalisation and resume thus her British nationality, at any time, at the discretion of the Secretary of State of Canada.

Where a woman has married a British subject, who ceases during the continuance of his marriage to be a British subject, she may retain her British nationality, if she desires to do so, by making a declaration to that effect.

His Majesty's Government in Canada would be prepared to consider favourably such change in law as would allow a British woman marrying a foreigner to retain her British nationality, if by the national law of her husband's State she does not acquire his nationality by virtue of her marriage.

XII.

La section 14 de la N. A. stipule ce qui suit :

« La femme qui, ayant possédé la nationalité britannique, est devenue, par l'effet ou à la suite de son mariage, une étrangère, ne cesse pas d'être une étrangère, du seul fait du décès de son mari ou de la dissolution de son mariage, et une femme qui, ayant été une étrangère, est devenue sujet britannique par l'effet ou à la suite de son mariage, ne cesse pas d'être sujet britannique du seul fait du décès de son mari ou de la dissolution de son mariage. »

Toutefois, la section 4 (5) de la N. A. prévoit qu'une femme qui a perdu sa nationalité britannique, du fait de son mariage avec un étranger, et dont le mari est décédé ou dont le mariage a été dissous, peut obtenir un certificat de nationalité britannique sans avoir à remplir les conditions légales usuelles concernant la résidence. Toutefois, l'octroi d'un certificat de ce genre est laissé entièrement à la discrétion du Secrétaire d'Etat.

La législation canadienne stipule qu'une femme qui a perdu la nationalité britannique, par l'effet ou au cours de son mariage, ne peut la recouvrer que par la procédure indiquée ci-dessus. Dans les cas de ce genre, la nationalité britannique n'est jamais recouvrée automatiquement.

XIII.

En dehors des effets susmentionnés, il convient de relever que, lorsqu'une veuve de nationalité britannique épouse un étranger, les enfants du premier mariage ne cessent pas d'être de nationalité britannique, qu'ils résident ou non en dehors du Canada.

XIV.

Le changement d'état-civil d'un enfant illégitime (reconnaissance, légitimation) est une question qui, au Canada, relève de la législation des provinces et non pas de la législation du Dominion; dans le système actuel, ce changement n'affecte pas la nationalité de l'enfant. Toutefois, cette situation ne saurait provoquer de graves inconvénients.

a) Un enfant illégitime né au Canada ou ailleurs, dans les limites des Territoires de Sa Majesté ou dans l'allégeance de Sa Majesté acquiert de ce fait la nationalité britannique, indépendamment de la reconnaissance ou de la légitimation.

b) Aux termes de la législation canadienne (voir VIII), un enfant illégitime, né à l'étranger de ressortissants canadiens, n'est pas sujet britannique. Si un enfant se trouvant dans ce cas est légitimé conformément à la législation d'une province canadienne quelconque, par le mariage ultérieur de ses parents, le Secrétaire d'Etat peut, à son entière discrétion et à titre exceptionnel, lorsque, étant donné toutes les circonstances de chaque cas d'espèce, la situation ainsi créée provoque de graves inconvénients, octroyer audit enfant, s'il est mineur, un certificat de naturalisation (N. A., section 7 [2]). Si la légitimation a eu lieu après que l'enfant en question est devenu majeur en vertu de la législation actuelle du Canada, l'enfant ne peut acquérir la nationalité britannique que conformément aux règles prescrites par la loi (N.A., section 4). Toutefois, il peut se faire que cet enfant soit apatride; pour éviter cette difficulté, on a déjà suggéré (réponse VIII) que le *jus soli* s'applique dans le cas de tous les enfants illégitimes.

XV.

L'adoption ne rentre pas dans le domaine de compétence de la juridiction fédérale. C'est une question expressément réservée à la législation provinciale, et, dans le système actuellement en vigueur au Canada, l'adoption n'affecte pas la nationalité de l'enfant. Toutefois:

a) Si l'enfant adopté est né au Canada ou ailleurs, dans les limites des Territoires de Sa Majesté ou dans l'allégeance de Sa Majesté, ledit enfant acquiert de ce fait la nationalité britannique, indépendamment de l'adoption.

b) Si la nationalité de l'enfant adopté est connue, et s'il ne s'agit pas d'un enfant de nationalité britannique, le Secrétaire d'Etat du Canada peut faire usage de son pouvoir discrétionnaire et, lorsque, étant donné toutes les circonstances de chaque cas d'espèce, la situation ainsi créée provoque de graves inconvénients, il peut octroyer un certificat de naturalisation à l'enfant, si celui-ci est mineur (N. A., section 7 [2]) en laissant à l'enfant adopté la faculté de faire, à sa majorité, une déclaration de nationalité étrangère, si ledit enfant, du fait de l'exercice du pouvoir discrétionnaire du Secrétaire d'Etat, avait acquis une double nationalité.

c) Si la nationalité de l'enfant adopté n'est pas connue, ou si l'enfant adopté est apatride, le Secrétaire d'Etat peut faire usage de son pouvoir discrétionnaire (N. A., Section 7 [2]).

XII.

The N.A., Section 4, provides:

“ A woman who, having been a British subject, has by or in consequence of her marriage become an alien shall not, by reason only of the death of her husband or the dissolution of her marriage, cease to be an alien, and a woman who, having been an alien, has by or in consequence of her marriage become a British subject shall not, by reason only of the death of her husband or the dissolution of her marriage, cease to be a British subject. ”

The N.A., Section 4 (5), however, provides that a British woman who has lost her British nationality by virtue of her marriage with a foreigner and whose husband has died, or whose marriage has been dissolved, may obtain a certificate of British nationality without fulfilling the usual legal requirements of residence. The issuing of such certificate, however, is entirely at the discretion of the Secretary of State.

Canadian law provides that a woman who has lost British nationality in consequence of or during her marriage can only recover it in the method pointed out. There is no automatic recovery of nationality in such cases.

XIII.

In addition to the above-mentioned effects, it is to be noted that, when a widow who is a British subject marries an alien, the children of the former marriage shall not cease to be British whether they reside outside of Canada or not.

XIV.

Change of status of an illegitimate child (recognition, legitimation) is, in Canada, a matter for provincial, not dominion, legislation, and under our present system it does not affect the nationality of the child. However, no grave difficulties need arise:

(a) An illegitimate child, born in Canada or elsewhere within His Majesty's dominions or allegiance, acquires by that fact British nationality independent of recognition or legitimation.

(b) Under Canadian law (*cf.* Answer VIII), an illegitimate child born abroad to Canadian nationals is not a British subject. Were such a child legitimised under the law of any province of Canada by the subsequent marriage of the parents, the Secretary of State may, at his absolute discretion and as a special case where under all the circumstances of each case there is hardship, grant a Certificate of Naturalisation to such child being a minor (N.A., Section 7 (2)). If the legitimation took place after such child came of age under existing Canadian law, such child could only acquire British nationality under the statutory rules (N.A., Section 4). It may happen, however, that such a child is stateless; to avoid that difficulty, the suggestion (Answer VIII) has already been made that *jus soli* should apply in the case of all illegitimate children.

XV.

Adoption does not fall within the scope of federal jurisdiction. It is expressly reserved to provincial legalisation and under our present system it does not affect the nationality of a child. However:

(a) If the adopted child is born in Canada or elsewhere within His Majesty's dominions or allegiance, such child acquires by that fact British nationality, independent of adoption.

(b) If the nationality of the adopted child is known and it is not British, the Secretary of State for Canada might possibly exercise a discretion and, where under all the circumstances of each case there is hardship, grant a Certificate of Naturalisation to the child being a minor (N.A., Section 7 (2)), leaving the adopted child an opportunity to make a declaration, if of full age, of alienage, if such child had, through the exercise of the Secretary of State's discretion, acquired double nationality.

(c) If the nationality of the adopted child is not known, or if the adopted child is stateless, the Secretary of State might possibly exercise his discretion (N.A., Section 7 (2)).

Genève, le 25 juin 1929.

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Eaux territoriales (*Volume II* — C.74.M.39.1929.V.)
Responsabilité des Etats en ce qui concerne les dommages causés sur leur territoire à la personne
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BASES DE DISCUSSION

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Supplément au Tome II. — EAUX TERRITORIALES

RÉPONSES DES GOUVERNEMENTS A LA LISTE DE POINTS:
RÉPONSE DU CANADA.

GENÈVE, 1929.

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Nationality (*Volume I* — C.73.M.38.1929.V.)
Territorial Waters (*Volume II* — C.74.M.39.1929.V.)
Responsibility of States for Damage caused in their Territory to the Person or Property
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BASES OF DISCUSSION

DRAWN UP FOR THE CONFERENCE BY THE PREPARATORY
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Supplement to Volume II. — TERRITORIAL WATERS.

REPLIES MADE BY THE GOVERNMENTS TO THE SCHEDULE
OF POINTS: REPLIES OF CANADA.

GENEVA, 1929.

Série de Publications de la Société des Nations

V. QUESTIONS JURIDIQUES

1929. V. 9. ✓

CANADA.

LETTRE EN DATE DU 27 MAI 1929.

[Traduction.]

I.

Le Gouvernement de Sa Majesté au Canada convient qu'un Etat possède des droits de souveraineté sur ses propres eaux territoriales. Il ne revendique pas, pour sa part, de droits particuliers, à l'exception de ceux que confèrent des traités, limitant ou excluant les droits souverains d'un Etat riverain sur ses eaux territoriales. Il n'a pas connaissance de droits particuliers de ce genre appartenant à d'autres Etats, à l'exception de ceux que confèrent des traités.

II.

Les droits de l'Etat riverain s'étendent à l'espace atmosphérique au-dessus de ses eaux territoriales, ainsi qu'au fond de la mer au-dessous de ces eaux et au sous-sol situé au-dessous du fond de la mer.

III.

a) La largeur de la zone d'eaux territoriales soumises à la souveraineté de l'Etat riverain, est de trois milles marins;

b) Le Gouvernement de Sa Majesté au Canada ne reconnaît pas la prétention que pourrait émettre un Etat étranger quelconque, d'exercer la souveraineté sur des eaux territoriales d'une largeur supérieure à trois milles marins, quels que soient les motifs invoqués.

c) Il ne prétend pas exercer de droits sur des navires étrangers se trouvant en dehors des eaux territoriales canadiennes, sauf en vertu d'un accord particulier.

d) Il ne reconnaît pas les prétentions d'Etats étrangers à exercer des droits, sauf sur leurs propres navires, en dehors de leurs eaux territoriales. Il est admis qu'il peut se présenter des cas dans lesquels l'absence de juridiction d'un Etat sur des navires étrangers naviguant en haute mer, immédiatement au delà de la limite des eaux territoriales de cet Etat, risque de compromettre la sécurité de l'Etat ou de porter atteinte au bien-être de ses ressortissants. Lorsqu'une telle situation se présente, il peut y être remédié par voie d'accords particuliers conclus avec les Etats étrangers intéressés.

e) 1. Il est à la fois possible et désirable de faire figurer dans une convention un arrangement fixant, à tous effets, une étendue unique pour les eaux territoriales de tous les Etats.

2. Il n'est pas jugé désirable que l'étendue des eaux territoriales soit différente pour les différents Etats;

3. Dans les cas où il semble désirable de déterminer des droits particuliers, il y aurait lieu, pour les Etats intéressés, de conclure entre eux des accords à cet effet.

IV.

a) La ligne de base, pour calculer l'étendue des eaux territoriales, est la laisse de basse mer, suivant les sinuosités de la côte; la distance entre les îles et la côte ne doit pas être prise en considération, sauf dans les cas spécifiés plus loin;

b) 1. Dans le cas de baies dont la largeur, à l'entrée n'est pas supérieure à dix milles, la ligne de base à partir de laquelle est mesurée la largeur des eaux territoriales est la ligne tirée à l'entrée de la baie, de promontoire à promontoire.

2. Dans le cas de baies dont la largeur, à l'entrée, mesurée d'un promontoire à l'autre, dépasse dix milles, mais dans lesquelles on ne peut pas pénétrer sans traverser les eaux territoriales, les eaux de cette baie doivent être des eaux nationales.

3. Dans le cas de baies dont la largeur à l'entrée, mesurée d'un promontoire à l'autre, est supérieure à dix milles, et dans lesquelles on peut pénétrer sans traverser les eaux territoriales, la ligne de base est constituée par une ligne droite tirée à travers la baie au premier point où la largeur de l'entrée se réduit à dix milles.

4. Il y a lieu d'excepter certaines baies qui, pour des raisons historiques ou géographiques, sont considérées comme faisant partie des eaux intérieures de l'Etat riverain. Dans ces cas, la ligne de base est tirée d'un promontoire à l'autre.

5. Lorsque les côtes d'une baie appartiennent à deux ou à plusieurs Etats, la ligne de base est la laisse de basse-mer suivant les sinuosités de la côte.

c) La ligne de base, devant les ports, est une ligne tirée depuis le point extrême ou depuis les ouvrages du port, d'un côté, jusqu'au point extrême ou jusqu'aux ouvrages du port, de l'autre côté.

V.

Les îles ont leurs propres eaux territoriales qui sont déterminées de la façon indiquée au paragraphe IV a) ci-dessus. Lorsque la distance entre les îles et la côte, ou entre les différentes îles, n'est pas supérieure à six milles, les eaux territoriales se confondent et ne constituent qu'une seule zone. Lorsque certaines étendues d'eau restent ainsi complètement circonscrites par les eaux territoriales d'un seul et même Etat, et qu'il est par conséquent impossible d'y pénétrer sans traverser les eaux

CANADA.

LETTER OF MAY 27TH, 1929.

I.

His Majesty's Government in Canada agree that a State possesses rights of sovereignty over its territorial waters. They do not themselves claim any special rights a part from treaties restricting or excluding rights of sovereignty of a coastal State over its territorial waters. Nor are they aware of any such special rights apart from treaties possessed by other States.

II.

The rights of the coastal State extend to the air space above its territorial waters, to the sea bottom below those waters and to the subsoil below that sea bottom.

III.

(a) The breadth of the belt of territorial waters subject to the sovereignty of the coastal State is three nautical miles.

(b) The claim of any foreign State to exercise sovereignty on any grounds whatever over a greater breadth of territorial waters than three nautical miles is not admitted.

(c) No claim is made to exercise any rights over foreign vessels outside Canadian territorial waters except by special agreement.

(d) Claims by foreign States to exercise rights, except over their own ships, outside their territorial waters are not admitted. It is recognised that there may arise conditions under which the absence of jurisdiction by a State over foreign vessels on the high seas immediately outside its territorial waters may constitute a menace to its own safety and to the well-being of its citizens. When such conditions do arise, they may be met by special agreements concluded with those foreign States that are interested.

(e) 1. It is both possible and desirable to embody in a Convention an agreement fixing a uniform breadth for territorial waters, for all States and for all purposes.

2. It is not considered desirable that the breadth of the territorial belt should be different for different States.

3. Where special rights seem desirable, agreements should be concluded between the States concerned in order to achieve this end.

IV.

(a) The base line for the calculation of the breadth of territorial waters is the line of low water following the sinuosities of the coast. The distance between islands and the coast is not taken into consideration, except as stated below.

(b) 1. In the case of bays where the entrance is not more than ten miles wide, the base line for calculation of the breadth of territorial waters is the line drawn at the entrance from headland to headland.

2. In the case of bays where the distance from headland to headland is more than ten miles but the bay itself cannot be entered without traversing territorial waters, the waters of such bay shall be national waters.

3. In the case of bays where the distance from headland to headland is more than ten miles and the bay can be entered without traversing territorial waters, the base line is a straight line drawn across the bay at the place where the entrance first narrows to ten miles.

4. An exception should be made in the case of bays which, for historic or geographic reasons, are considered as part of the inland waters of the coastal State. Here the base line is drawn from headland to headland.

5. Where the coasts of a bay belong to two or more States, the base line is the line of low water following the sinuosities of the coast.

(c) The base line in front of ports is a line drawn from the outermost point or harbour-work on one side of the port to the outermost point or harbour-work on the other.

V.

Islands have their own territorial waters determined in the same way as in IV (a), *supra*. Where islands are within six miles of the coast or of each other, the territorial waters will mingle and form a single zone. Where an area of water is left completely surrounded by the territorial

territoriales de cet Etat, cette étendue d'eau devrait être considérée comme faisant partie intégrante des eaux territoriales dudit Etat.

VI.

Par île, il faut entendre une fraction de territoire entourée d'eau, émergeant d'une façon permanente à marée haute dans des circonstances normales; il faut en outre que ce territoire puisse être occupé et utilisé effectivement.

VII.

a) Lorsque les deux rives d'un détroit font partie du territoire du même Etat, les eaux du détroit sont des eaux territoriales partout où la largeur du détroit n'est pas supérieure à six milles; toutefois, si les deux entrées n'ont pas une largeur supérieure à six milles, toutes les eaux de ce détroit sont des eaux territoriales.

b) Lorsque les rives d'un détroit font partie du territoire de différents Etats, il y a lieu d'appliquer les dispositions indiquées en IIIa) et IVa) ci-dessus, mais, si le détroit a une largeur inférieure à six milles, les eaux territoriales de chaque Etat ne s'étendent que jusqu'à mi-distance entre les deux rives.

VIII.

La ligne de démarcation entre les eaux intérieures et les eaux territoriales est constituée par la ligne de base à partir de laquelle sont mesurées les eaux territoriales. Dans le cas d'un port et d'une baie, la méthode à suivre pour déterminer cette ligne est indiquée en IV b) et IV c). Dans le cas de l'embouchure d'un fleuve qui ne débouche pas dans un estuaire, cette ligne est la ligne tirée à travers le cours d'eau à son embouchure. Si le cours d'eau débouche dans un estuaire, les eaux situées en aval de l'embouchure doivent être considérées comme une baie au point de vue de la détermination de la ligne de base.

IX.

Les navires de commerce et les navires de guerre ont le droit de passage inoffensif dans les eaux territoriales; les sous-marins ne peuvent exercer ce droit que s'ils naviguent en surface. Le mouillage est autorisé dans les eaux territoriales lorsque cette manœuvre est la conséquence du droit de passage inoffensif, ou en cas de détresse. Le droit de passage inoffensif s'étend aux personnes et aux marchandises qui se trouvent à bord du navire.

X.

L'Etat riverain a le droit d'édicter une réglementation raisonnable visant le passage et le séjour des navires de guerre étrangers dans ses eaux territoriales; il peut être mis fin au séjour de tout navire de guerre étranger qui ne se conforme pas audit règlement.

XI.

On note que dans les points IX et X ne sont pas comprises les questions relatives à la guerre et à la neutralité.

XII.

Les droits qu'un Etat exerce sur ses eaux territoriales sont des droits de souveraineté; il s'ensuit qu'un Etat peut soumettre d'une façon absolue à sa juridiction civile et pénale les navires étrangers, autres que les navires de guerre, ainsi que les personnes et les biens se trouvant à bord, lorsque ces navires traversent les eaux territoriales. Il serait difficile et inopportun de vouloir établir des limites légales à cette juridiction et d'en restreindre l'application soit aux navires passant dans les eaux territoriales pour entrer dans un port de l'Etat riverain ou pour en sortir, soit aux faits qui se produisent pendant le passage ou dont les conséquences dépassent le bord du navire.

Toutefois, en règle générale, l'Etat riverain ne se prévaudrait pas de ce droit car l'exercice de ce droit ne ferait qu'apporter des entraves au commerce sans aucun profit pour l'Etat riverain, et provoquerait en outre des mesures de représailles.

Un Etat peut arrêter une personne à bord d'un navire autre qu'un navire de guerre qui est de passage dans ses eaux territoriales.

XIII.

Il ne saurait y avoir d'objection valable à la perception par l'Etat riverain des droits raisonnables pour services rendus qui sont fixés par conventions ou accords internationaux; toutefois, en pareil cas, il devrait y avoir égalité de traitement pour les nationaux et pour les navires de tous les Etats. Les navires faisant relâche forcée dans les eaux territoriales seraient, généralement, exemptés du paiement des droits.

XIV.

Le droit de « poursuite active » est reconnu, si la poursuite a été commencée dans les eaux territoriales ou dans les eaux intérieures et si elle est immédiate et ininterrompue de la part du navire ou des navires qui l'ont entreprise. Cette poursuite doit cesser lorsque le navire poursuivi atteint les eaux territoriales de son propre Etat ou d'un autre Etat.

XV.

La juridiction sur les navires de commerce dans les ports maritimes ne rentre pas, à strictement parler, dans le cadre des questions relatives aux « eaux territoriales ». Toutefois, comme il est désirable que l'on aboutisse à un accord sur ce point, le Gouvernement canadien ne s'oppose pas à ce que cette question soit comprise parmi celles qui devront faire l'objet d'un examen.

waters of a single State, and cannot therefore be approached save through the territorial waters of that State, such area should be deemed a part of the territorial waters of that State.

VI.

An island is a piece of territory surrounded by water, in normal circumstances permanently above high water, and capable of effective occupation and use.

VII.

(a) Where both shores of a strait form part of the territory of the same State, The waters of a strait are territorial where the width does not exceed six miles. If, however, both entrances are not more than six miles in width, all the waters of that strait are territorial.

(b) Where the shores of a strait form part of the territory of different States, The provisions of III (a) and IV (a), *supra*, apply, but if the strait is less than six miles in width, the territorial waters of each State extend only to the middle of the strait.

VIII.

The line of demarcation between inland and territorial waters is the base line from which territorial waters are measured. In the case of a port and a bay, the method of determining this line is described in Articles IV (b) and IV (c). In the case of the mouth of a river which does not debouch into an estuary, it is the line drawn across the river at its mouth. If the river debouches into an estuary, the waters below the mouth of the river are to be treated as a bay in determining the base line.

IX.

Merchant vessels and warships have the right of innocent passage through territorial waters; submarines only if they are navigating on the surface. Anchoring in territorial waters is permitted when incidental to such right of innocent passage or in case of distress. The right of innocent passage extends to the persons and goods on board the ship.

X.

The coastal State may establish reasonable regulations for dealing with the passage of foreign warships through its territorial waters and their anchoring therein. A foreign warship failing to comply with such regulations may be required to depart.

XI.

It is noted that, in connection with points IX and X, questions relating to war and neutrality are not included.

XII.

The rights which a State exercises over its territorial waters are rights of sovereignty. It follows that a State has unlimited civil and criminal jurisdiction over foreign vessels, other than warships, and over persons and property on board when they are passing through its territorial waters. It would be difficult and inadvisable to attempt to establish any legal limitation of this jurisdiction by restricting it to vessels passing to or from a port of the coastal State, or to occurrences which happen during the passage or whose effect goes beyond the ship itself.

Ordinarily, however, the coastal State would not exercise this right, as it would only hamper trade without benefiting the coastal State, and would also provoke retaliatory measures.

A State may arrest a person on board a vessel, other than a warship, passing through its territorial waters.

XIII.

There is no valid objection to the levying by the coastal State of such reasonable dues for services rendered as are determined by international convention or agreement, but in such a case there should be equality of treatment for the citizens and ships of all States. Ships forced to take refuge in territorial waters would ordinarily be exempt from the payment of dues.

XIV.

The right of "hot pursuit" is acknowledged if the pursuit is begun in territorial or inland waters and if it is immediate and continuous on the part of the vessel or vessels beginning the pursuit. It must terminate when the pursued vessel reaches the territorial waters of its own or another State.

XV.

Jurisdiction over foreign merchant vessels within maritime ports does not fall strictly within the subject of "Territorial Waters". But as an agreement on this point is desirable, no objection is taken to the above question being included for consideration.

Les navires autres que les bâtiments de guerre mouillés dans les ports étrangers, sont assujettis à la juridiction locale, tant civile que pénale, mais l'exercice de cette juridiction, comme dans le cas de navires traversant les eaux territoriales, est, dans la pratique, limité par des considérations de politique générale et d'opportunité pratique. L'Etat riverain conserverait toujours le droit de procéder à une arrestation ou à une saisie à bord, mais pourrait ne pas tenir à en faire usage, surtout dans les cas où il s'agit simplement de questions de discipline ou d'administration intérieure du navire, ne troublant en aucune façon la paix et le bon ordre du port.

Vessels, other than warships, in foreign ports are subject to the local jurisdiction, both civil and criminal, but the exercise of such jurisdiction, as in the case of vessels passing through territorial waters, is, in practice, subject to the limitations imposed by public policy and practical convenience. The coastal State would always have the right to make an arrest or seizure on board, but might not care to exercise that right, particularly if the matter concerned merely the discipline or internal economy of the vessel, and did not interfere in any way with the peace and good order of the port.

[Communiqué au Conseil,
aux Membres de la Société
et à d'autres Gouvernements.]

No officiel: **C. 75 (a). M. 69 (a).** 1929. V.

Genève, le 22 mai 1929.

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QUI CONCERNE LES DOMMAGES CAUSÉS SUR LEUR TERRI-
TOIRE A LA PERSONNE OU AUX BIENS DES ÉTRANGERS.

RÉPONSES DES GOUVERNEMENTS A LA LISTE DE POINTS:
RÉPONSES DU CANADA ET DES ÉTATS-UNIS D'AMÉRIQUE.

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Nationality (Volume I — C.73.M.38.1929.V.)

Territorial Waters (Volume II — C.74.M.39.1929.V.)

Responsibility of States for Damage caused in their Territory to the Person or Property of Foreigners (Volume III — C.75.M.69.1929.V.)

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REPLIES MADE BY THE GOVERNMENTS TO THE SCHEDULE
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Série de Publications de la Société des Nations

V. QUESTIONS JURIDIQUES

1929. V. 10. ✓

CANADA.

LETTRE EN DATE DU 27 MAI 1929.

[Traduction.]

I.

Le Canada se rallie à ce principe.

II.

Le Canada admet cette base juridique de responsabilité.

III, 1.

La responsabilité de l'Etat se trouve engagée s'il adopte des dispositions législatives de ce genre, sous réserve qu'elles soient appliquées; sa responsabilité se trouve également engagée lorsqu'il néglige d'adopter les dispositions législatives nécessaires à l'exécution de traités ou d'autres obligations internationales.

III, 2.

Oui, si la concession est accordée par l'Etat. Sa responsabilité se trouve engagée dans tous les cas, si les dispositions législatives sont simplement de nature à entraver l'exécution de la concession; toutefois, si elles annulent la concession en totalité ou en partie, soit expressément soit implicitement, la responsabilité de l'Etat ne se trouve engagée que si les circonstances ne sont pas de nature à justifier la rescision d'un contrat entre ressortissants de l'Etat.

III, 3.

Oui, si ces dispositions législatives établissent véritablement une discrimination au détriment des étrangers considérés comme tels, ou si ces dispositions sont incompatibles avec les obligations internationales de l'Etat; ce dernier cas a été examiné au N° III, 1.

III, 4.

Sous réserve que la question se pose bien ainsi, oui, mais seulement dans la mesure où l'emprunt a été émis par l'Etat et a été souscrit à l'étranger.

IV, 1.

Oui.

IV, 2.

Oui.

IV, 3.

Oui.

IV, 4.

Oui, si la malveillance a été le facteur déterminant de la décision.

IV, 5.

Dans aucune autre hypothèse (voir IV, 2).

V, 1 a).

Oui, si la concession est accordée par l'Etat. Sa responsabilité se trouve engagée dans tous les cas, si l'acte du pouvoir exécutif est simplement de nature à entraver l'exécution de la concession; toutefois, s'il annule la concession en totalité ou en partie, soit expressément, soit implicitement, la responsabilité de l'Etat ne se trouve engagée que si les circonstances ne sont pas de nature à justifier la rescision d'un contrat entre ressortissants de l'Etat.

V, 1 b).

Sous réserve que la question se pose bien ainsi, oui, mais seulement dans la mesure où l'emprunt a été émis par l'Etat et a été souscrit à l'étranger.

V, 1 c).

Oui, la responsabilité de l'Etat se trouve engagée en cas de dommages résultant du fait que l'Etat n'a pas apporté une diligence autre à protéger les étrangers sur son territoire, à moins qu'il ne puisse prouver qu'il n'avait aucune raison de prévoir une attaque quelconque pouvant menacer des étrangers ou que, l'ayant prévue, il a pris, pour protéger ces étrangers, toutes les précautions raisonnables qu'exigeaient et que permettaient les circonstances.

CANADA.

LETTER OF MAY 27TH, 1929.

I.

This principle is acceded to.

II.

The suggested juridical basis of liability is acceded to.

III (1).

The State is responsible for such legislation, assuming it to be enforced, and for failure to enact legislation necessary to implement treaty or other international obligations.

III (2).

Yes, if the concession be granted by the State. The liability arises in all cases if the legislative act is merely obstructive of the concession, but if the legislative act cancels the concession wholly or partially, and either expressly or implicitly, the liability arises only if the circumstances are such as would not justify the rescission of a contract between nationals of the State.

III (3).

Yes. If the legislation in effect discriminates against foreigners as such, or if the legislation was incompatible with the international obligations of the State, which last-mentioned legislation has been dealt with under III (1).

III (4).

Subject to the relevancy of the question, yes; in so far as, but only in so far as, the loan was offered by the State for subscription and was subscribed abroad.

IV (1).

Yes.

IV (2).

Yes.

IV (3).

Yes.

IV (4).

Yes, if the ill-will has been the determining factor in the decision.

IV (5).

In no other circumstances (see IV (2)).

V (1) (a).

Yes, if the concession be granted by the State. The liability arises in all cases if the executive act is merely obstructive of the concession, but if the executive act cancels the concession wholly or partially, and either expressly or implicitly, the liability arises only if the circumstances are such as would not justify the rescission of a contract between nationals of the State.

V (1) (b).

Subject to the relevancy of the question, yes; in so far as, but only in so far as, the loan was offered by the State for subscription and was subscribed abroad.

V (1) (c).

Yes, a State is responsible for damages arising out of failure to protect foreigners within its jurisdiction, unless it establishes that it had no grounds for anticipating any attack which might affect foreigners, or that, if it had, it took such reasonable precautions to protect them as the circumstances required and permitted.

V, 1 d).

Oui.

V, 2 a).

La responsabilité de l'Etat se trouve engagée pour tout acte d'un fonctionnaire agissant dans les limites de sa compétence ou pour toute omission de la part d'un fonctionnaire dans l'exercice de ses fonctions publiques, si ces actes ou omissions constituent une violation d'une obligation internationale, — qu'ils soient ou non entachés d'illégalité, en vertu de la législation nationale. Il n'y a lieu de tenir compte d'aucun autre élément pour établir la responsabilité internationale de l'Etat. Les mêmes règles s'appliqueraient à des dommages causés en mer.

V, 2 b).

Oui.

V, 2 c).

Cette question n'a pas de rapport avec la responsabilité d'un Etat en cas de dommages causés sur son territoire, à la personne ou aux biens d'étrangers.

V, 2 d).

La responsabilité de l'Etat ne se trouve pas davantage engagée que si l'acte ou omission émanait d'une personne autre qu'un fonctionnaire. Toutefois, la réponse à la question 5, 1 c) est applicable.

V, 2 e).

Lorsque l'acte ou l'omission du fonctionnaire est de nature à engager la responsabilité de l'Etat, conformément aux réponses précédentes, cette responsabilité n'est pas affectée par un acte ou une immunité quelconque, tels que ceux qui sont prévus aux numéros (i) et (ii). Lorsque l'acte ou l'omission même n'engage pas la responsabilité internationale de l'Etat, le fait que tout droit de recours contre le fonctionnaire en question est exclu par une loi ou une disposition législative quelconque, pourrait engager cette responsabilité, pour la raison qu'il y a là déni de justice ou discrimination au détriment de l'étranger.

VI.

Lorsqu'une collectivité a été constituée pour exercer des fonctions du même ordre que celles qui pourraient être exercées par les organes législatifs ou administratifs de l'Etat, tout acte ou omission de sa part, contraire à des obligations internationales, engage la responsabilité de l'Etat, de la même manière que si ces actes ou omissions émanaient de l'organe législatif ou administratif de l'Etat lui-même.

VII, a).

Oui, comme au numéro V, 1 c).

VII, b).

Lorsqu'il a été porté atteinte à la personne ou aux biens d'un étranger, il est du devoir de l'Etat d'exercer une diligence raisonnable en vue de faire comparaître l'auteur du dommage devant les tribunaux et d'exécuter toute sentence pénale qui pourra être prononcée contre lui.

VII, c).

Voir V, 1 c).

VII, d).

Voir V, 1 c).

VIII.

La responsabilité internationale de l'Etat ne se trouve pas engagée, à moins qu'une discrimination ne soit établie en faveur des nationaux ou que les dommages causés aient été excessifs eu égard aux circonstances.

IX, a).

Voir V, 1 c).

IX, b).

L'Etat est responsable s'il y a eu discrimination.

IX, c).

Le fait que le parti insurrectionnel prend le pouvoir et devient le Gouvernement, ne suffit pas en soi pour dégager ledit parti des obligations internationales qui incombaient à son prédécesseur.

Les réponses aux numéros VIII et IX a) et b) sont applicables.

IX, d).

Voir réponses aux numéros VIII et IX, a) et b).

Yes.

V (1) (d).

V (2) (a).

The State is responsible for any act of an official acting within the limits of his authority, or the omission by an official to perform his public duty where the act or omission constitutes a breach of international obligation, irrespective of the legality or illegality of the act or omission under municipal law. There are no other factors which need be taken into account. The same rules would apply to damage caused on the sea.

Yes.

V (2) (b).

V (2) (c).

This question does not relate to the liability of a State for damage caused in its territory to the person or property of foreigners.

V (2) (d).

There is no greater liability than if the act or omission was that of a person other than an official, but the answer to V (1) (c) is relevant.

V (2) (e).

Where the act or omission of the official is such as to give rise to liability in accordance with previous answers, such liability is unaffected by any act or immunity contemplated under (1) or (2). Where the act or omission itself does not involve the international responsibility of the State, the exclusion of a right of recourse against the official in question by some Act or rule of law might engage that responsibility on the grounds that it constitutes a denial of justice or discrimination against the foreigner.

VI.

When a body has been constituted to exercise functions of such a nature as might be exercised by the legislative or executive branches of the State Government, its acts or omissions in violation of international obligations give rise to the same liability as these acts or omissions on the part of the legislative or executive organ of the State itself.

Yes, as in V (1) (c).

VII (a).

VII (b).

When an offence has been committed against the person or property of a foreigner, it is the duty of the State to exercise reasonable diligence in bringing the offender to trial and in carrying into execution such punishment as may be imposed upon him.

See V (1) (c).

VII (c).

See V (1) (c).

VII (d).

VIII.

No international liability arises unless foreigners are discriminated against in favour of nationals or unless the damage done was excessive, having regard to the circumstances.

See V (1) (c).

IX (a).

IX (b).

The State is responsible if discrimination is shown.

IX (c).

The fact that an insurgent party is installed in power and becomes the Government does not in itself relieve it from the duty of assuming and fulfilling the international obligations where-with its predecessor was charged.

The answers to VIII and IX (a) and (b) are relevant.

IX (d).

Answered by VIII and IX (a) and (b).

X.

Les obligations internationales relatives à un territoire donné doivent être exécutées par l'autorité qui, pour ce territoire, est reconnue internationalement comme responsable de l'exécution en ce qui concerne l'obligation dont la violation est alléguée.

XI, a).

Les conditions de la responsabilité sont les mêmes que dans le cas d'insurrections (voir réponse au numéro VIII).

XI, b).

Les représailles ne sont justifiées qu'en l'absence de tout arrangement prévoyant le règlement judiciaire du différend.

XI, c).

Voir réponse au numéro III, 2.

XI, d).

Seulement dans les cas où la conclusion de contrats de ce genre est autorisée par les lois de l'Etat auquel ressortit l'intéressé.

XII.

Oui, à la condition qu'il existe des recours appropriés et opérants.

XIII, 1.

Il est simplement nécessaire que cette nationalité soit conservée jusqu'au moment où la réclamation est présentée par la voie diplomatique. La procédure pourra ensuite se poursuivre, au cas où l'Etat réclamant le désire, même si l'intéressé a ultérieurement changé de nationalité, à la condition, toutefois, qu'aucune réclamation ne soit introduite ou poursuivie par un Etat, relativement à des dommages subis par une personne qui est, ou devient, ressortissant de l'Etat contre lequel la réclamation est présentée.

XIII, 2.

La dernière réponse ne s'applique pas à une réclamation internationale fondée sur des dommages à la personne; l'Etat auquel ressortit la personne lésée pourra introduire une réclamation fondée sur les dommages subis par cette personne, même si, avant que la réclamation ne soit présentée par la voie diplomatique, la personne en question est décédée, en laissant des héritiers d'une autre nationalité.

XIII, 3.

Si l'on admet que cette question découle de la question immédiatement précédente, chacun des Etats qui comptent des héritiers parmi ses nationaux aurait le droit de présenter séparément des réclamations dans les cas où il s'agirait de dommages aux biens et où la personne lésée serait décédée avant que la réclamation n'eût été présentée par la voie diplomatique.

XIV.

On n'estime pas désirable que ce point fasse l'objet d'une disposition de l'arrangement à intervenir.

XV.

Cette question est d'ordre politique plutôt que juridique et ne devrait pas faire l'objet d'une disposition de l'arrangement à intervenir.

ÉTATS-UNIS D'AMÉRIQUE.

LETTRE EN DATE DU 22 MAI 1929.

[Traduction.]

I.

La distinction entre la responsabilité de l'Etat selon le droit interne et selon le droit international est indiquée par les autorités suivantes:

En droit interne, l'Etat n'est pas actionnable. Dans un avis de la Cour Suprême, le juge Holmes s'exprime de la façon suivante:

« Aucune autorité souveraine ne peut être citée en justice, non en raison d'une conception formelle ou d'une théorie désuète, mais pour le motif logique et pratique qu'il ne peut exister de droit contre l'autorité qui fait la loi sur laquelle ce droit est fondé..... »

X.

The international obligations relating to a given territory must be performed by that authority which, with respect to that territory, is internationally recognised in relation to the obligation alleged to have been violated.

XI (a).

The conditions of liability are the same as in the case of insurrections (see answer to VIII).

XI (b).

Reprisals are justified only in the absence of any arrangement for the judicial settlement of the dispute.

XI (c).

See answer to III (2).

XI (d).

Only when such a contracting out is allowed by the laws of the State of which the individual is a national.

XII.

Yes, provided adequate and effective remedies exist.

XIII (1).

It is necessary that nationality should be retained only until the claim is presented through the diplomatic channel. It may thereafter be proceeded with if the claimant State so desires, notwithstanding a subsequent change of nationality, subject, however, to the condition that no claim should be made or proceeded with by any State in respect of an injury sustained by a person who is, or becomes, a national of the State against which the claim is made.

XIII (2).

The last answer does not apply to an international claim based on personal injuries; the State of which such an injured person is a national may prefer a claim based on his injuries, notwithstanding that before the claim is presented through the diplomatic channel the injured person has died and left heirs of some other nationality.

XIII (3).

On the assumption that this question is consequent on the next preceding question, each of the States including heirs among its nationals would be entitled separately to claims where the injury was to property and the injured person had died before the claim was presented through the diplomatic channel.

XIV.

It is not considered desirable that this point should form the subject of a provision of the agreement to be reached.

XV.

This is a political rather than a legal subject, and should not form the object of a provision of the agreement to be reached.

UNITED STATES OF AMERICA

LETTER OF MAY 22ND, 1929.

I.

The distinction between State responsibility in municipal law and international law is indicated by the following authorities:

In municipal law, the State is immune from suits. Mr. Justice Holmes wrote, in the course of a Supreme Court opinion:

“ A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends

« Le dit motif étant ainsi d'ordre logique et pratique, cette doctrine ne s'applique pas seulement aux pouvoirs qui sont souverains au sens absolu de la théorie juridique, mais elle s'étend naturellement aux pouvoirs qui, dans l'exercice effectif de fonctions administratives, créent et modifient à leur gré la législation, applicable aux contrats et aux biens, sur laquelle reposent les droits des personnes relevant de ladite juridiction. Une action présuppose que les défendeurs sont régis par la loi invoquée. L'action ne peut, bien entendu, être maintenue qu'à cette condition. » *Kawananakoa c. Polyblank*, 205 E.U. 353.

« Aux termes de la loi des Etats-Unis et des Etats respectifs qui constituent l'Union, ni la souveraineté de la Confédération ni celle de l'une quelconque de ses parties constitutives ne peuvent faire l'objet d'un procès devant les tribunaux, sur l'instance d'un particulier, sans le consentement du pouvoir souverain intéressé; si ce dernier donne son consentement, il lui est loisible de déterminer les conditions dans lesquelles l'action sera intentée et conduite. » *M. Findlay, Commissaire, Aspinwall, exécuteur testamentaire de Howland, et autres (Etats-Unis) c. Venezuela, Moore's Arb.* 3642.

Toutefois, l'Etat peut renoncer à son immunité et fournir à un particulier un moyen de recours contre le souverain. *Smith C. Reeves*, 178 E. U. 436. Voir Loi du 30 avril 1900, C. 339, Sec. 96; 31 U.S. Stats. passim 141, 160. Les actions, concernant des contrats, qui sont intentées contre les Etats-Unis peuvent être portées devant la « Court of Claims », Code judiciaire, section 145, « Code of Laws of United States of America », 6 décembre 1926, titre 28, section 250, page 897.

D'autre part, selon le droit international, lorsque la responsabilité d'un Etat est invoquée par un autre Etat en cas de dommages causés à ses citoyens dans ledit Etat, l'Etat défendeur est tenu de remplir ses obligations internationales, et il ne peut éluder la responsabilité qui lui incombe, en invoquant les dispositions de son droit interne, si ce droit n'est pas en conformité avec le droit international.

En 1796, le juge Wilson s'exprimait de la façon suivante:

« Lorsque les Etats-Unis ont déclaré leur indépendance, ils étaient tenus de reconnaître le droit des gens dans ses conditions modernes de pureté et de perfectionnement. » *Ware, Adm. of Jones, c. Hylton* 3 Dallas, 199, 281, 1. L. Ed. 568.

« Le droit des gens exige que chaque gouvernement national fasse dûment diligence en vue d'empêcher qu'il soit porté préjudice, dans les limites de sa propre souveraineté, à une autre nation avec laquelle il se trouve en état de paix ou aux ressortissants de cette nation. » *Etats-Unis c. Arjona* (1887), 120 E. U., 479, 484, 30 L. Ed. 728.

C'est pour ces motifs que le Congrès a été expressément autorisé par la Constitution à « définir et à punir... les atteintes au droit des gens » (article I, section 8, clause 10).

Afin que l'Etat remplisse ses obligations internationales, autant qu'il est possible, en faisant administrer la justice par ses tribunaux nationaux, de nombreuses décisions formulées aux Etats-Unis ont estimé que le droit des gens, « dans toute son étendue, constitue partie intégrante de la loi des Etats-Unis et doit être tiré de la pratique des différentes nations, ainsi que des ouvrages des jurisconsultes qui font autorité en la matière ». *Republica c. De Longchamps* (1784), 1. Dallas, 111, 116, 1. L. Ed. 59; *Hilton c. Guyot*, 159 E. U. 113, 163; *The Paquete Habana* (1899), 175 E. U. 677, 700, 44 L. Ed. 320; *Sears c. The Scotia* (1871), 14 Wall, 170, 20 L. Ed. 822. Voir aussi *Thirty Hogsheads of Sugar c. Boyle* (1815), 9 Cranch, 191, 3 L. Ed. 701; *Etats-Unis c. The Active* (1814), 24 Fed. Cas. 757; *The Nereide* (1815), 9 Cranch, 388, 3 L. Ed. 769; *The New York* (1899), 175 E. U. 187, 44 L. Ed. 126.

Dans l'affaire précitée du *Paquete Habana*, page 708, la Cour Suprême des Etats-Unis a considéré qu'elle serait « dans l'obligation de tenir compte, au point de vue judiciaire, d'une règle de droit international, et de donner effet à cette règle », « en l'absence de tout traité, ou autre acte public du Gouvernement, se rapportant à cette affaire ».

M. Fish, Secrétaire d'Etat, protestant contre une loi mexicaine qui exigeait l'enregistrement des étrangers comme condition préalable à l'intervention diplomatique, déclarait ce qui suit:

« En fait, une telle acceptation équivaldrait à admettre, pour notre part, qu'en vertu de lois d'ordre interne, le Gouvernement mexicain peut priver des citoyens des Etats-Unis des droits que ceux-ci possèdent en vertu de traités et en vertu du droit international, thèse qui ne peut être admise dans les cas d'aucun gouvernement. » M. Fish, Secrétaire d'Etat, à M. Foster, Ministre à Mexico, 15 juillet 1875; *Moore, Digest*, VI, 310.

M. Bayard, Secrétaire d'Etat, au sujet d'une loi de la Colombie visant à limiter l'intervention diplomatique en faveur d'étrangers, a déclaré ce qui suit:

« C'est un principe bien établi de droit international qu'un souverain ne peut être autorisé à invoquer l'une de ses propres lois d'ordre interne, comme fin de non-recevoir dans le cas d'une demande en dédommagement présentée par un souverain étranger pour des préjudices causés aux sujets de ce dernier. » M. Bayard, Secrétaire d'Etat, à M. King, 13 octobre 1886; *For. Rel.*, 1887, 247.

Dans l'affaire *Janes*, le Commissaire Nielsen s'est exprimé ainsi:

« Le droit international est un droit régissant la façon dont doivent se conduire les nations. Il est fondé sur l'assentiment général des nations. Ce droit est donc identique pour tous les membres de la famille des nations. De toute évidence, il ne peut être modifié que par le même processus qui a été suivi pour le formuler, c'est-à-dire en vertu de l'assentiment général des nations. Il ne semble pas possible d'imaginer le cas d'une nation isolée qui, pour se dispenser de réparer des dommages résultant de la non-observation d'une règle de droit international, pourrait promulguer une loi d'ordre interne refusant à l'intéressé le droit

"As the ground is thus logical and practical, the doctrine is not confined to powers that are sovereign in the full sense of juridical theory, but naturally is extended to those that in actual administration originate and change at their will the law of contract and property, from which persons within the jurisdiction derive their rights. A suit presupposes that the defendants are subject to the law invoked. Of course it cannot be maintained unless they are so." *Kawananakoa v. Polyblank*, 205 U.S. 353.

"It is the law of the United States and the respective States composing that Union that neither the sovereignty of the federation nor of any of its constituent parts can be brought into court at the suit of a private individual without its consent, and in giving this consent the sovereignty is at liberty to prescribe the conditions under which the suit shall be instituted and conducted." Mr. Findlay, Commissioner, Aspinwall, executor of Howland, *et al. (U.S.) v. Venezuela*, Moore's Arb., 3642.

The State, however, may waive immunity and give an individual a remedy against the sovereign. *Smith v. Reeves*, 178 U.S. 436. See Act of April 30th, 1900, C. 339, Sec. 96; 31 U.S. Stats. at Large, 141, 160. Suits based upon contract claims against the United States may be brought in the Court of Claims, Judicial Code, Sec. 145, Code of Laws of United States of America, December 6th, 1926, Title 28, Sec. 250, page 897.

On the other hand, under international law, when State responsibility is invoked by one State for injuries to its citizens in another State, the respondent State is bound to fulfil its international obligations, and it may not escape responsibility by appealing to the provisions of its municipal law if that law is not in consonance with international law.

In 1796, Mr. Justice Wilson said:

"When the United States declared their independence, they were bound to receive the law of nations in its modern state of purity and refinement." *Ware, Adm. of Jones, v. Hylton*, 3 Dallas, 199, 281, 1 L. Ed. 568.

"The law of nations requires every national Government to use 'due diligence' to prevent a wrong being done within its own dominion to another nation with which it is at peace or to the people thereof." *United States v. Arjona* (1887), 120 U.S. 479, 484, 30 L. Ed. 728.

For this reason, Congress was expressly authorised by the Constitution "to define and punish . . . offences against the law of nations" (Article I, Section 8, Clause 10).

In order to fulfil its international obligations as far as possible through the administration of justice by local courts, numerous decisions in the United States have held that the law of nations, "in its full extent, is part of the law of this State, and is to be collected from the practice of different nations and the authority of writers". *Respublica v. De Longchamps* (1784), 1 Dallas, 111, 116, 1 L. Ed. 59; *Hilton v. Guyot*, 159 U.S. 113, 163; *The Paquete Habana* (1899), 175 U.S. 677, 700, 44 L. Ed. 320; *Sears v. The Scotia* (1871), 14 Wall, 170, 20 L. Ed. 822. See also *Thirty Hogsheads of Sugar v. Boyle* (1815), 9 Cranch, 191, 3 L. Ed. 701; *United States v. The Active* (1814), 24 Fed. Cas. 757; *The Nereide* (1815), 9 Cranch, 388, 3 L. Ed. 769; *The New York* (1899), 175 U.S. 187, 44 L. Ed. 126.

In the case of the *Paquete Habana*, *supra*, page 708, the United States Supreme Court held that it would be bound "to take judicial notice of, and to give effect to," a rule of international law, "in absence of any treaty or other public act of their Government in relation to the matter".

Mr. Fish, Secretary of State, in protesting against a Mexican law requiring the registration of aliens as a condition precedent to diplomatic intervention, stated that:

"Indeed, such an acquiescence would imply an acknowledgment on our part that by municipal laws the Mexican Government can deprive citizens of the United States of their rights under treaties and international law, a pretension which cannot be allowed to any Government." Mr. Fish, Secretary of State, to Mr. Foster, Minister to Mexico, July 15th, 1875; Moore, Digest, VI, 310.

Mr. Bayard, Secretary of State, in dealing with a law of Colombia, designed to limit diplomatic interposition on behalf of foreigners, stated:

"It is a settled principle of international law that a sovereign cannot be permitted to set up one of his own municipal laws as a bar to a claim by a foreign sovereign for a wrong done to the latter's subjects." Mr. Bayard, Secretary of State, to Mr. King, October 13th, 1886; For. Rel., 1887, 247.

In the *Janes Case*, Commissioner Nielsen stated:

"International law is a law for the conduct of nations grounded on the general assent of the nations of the world. The law is therefore, of course, the same for all members of the family of nations. Obviously, it can only be modified by the same processes by which it is formulated, namely, by general assent of the nations. It does not seem possible to conceive of a situation in which a single nation could, by a municipal enactment denying a right of redress, relieve itself from making compensation for failure to observe a rule of international

d'obtenir réparation. » *Janes (E. U.) c. Mexique*, Opinions des Commissaires nommés en vertu de la Convention, 8 septembre 1923, E. U. et Mexico 108, 131.

« La thèse selon laquelle un souverain peut être internationalement responsable de décisions prises par ses tribunaux en violation du droit international a été adoptée par nous, au début des guerres provoquées par la Révolution française, et a été finalement admise par le Gouvernement britannique, contre lequel elle avait été soutenue. Cette même thèse a également été acceptée par nous comme défenseurs, après la dernière guerre civile, alors que les relations entre les parties étant renversées, nous avons reconnu l'impossibilité, pour nous, d'opposer à une demande britannique de dédommagements pour une saisie illégale, une décision de nos propres tribunaux affirmant la légalité de cette saisie. Il nous est impossible de céder au Mexique sur un principe que nous avons défendu avec succès contre la Grande-Bretagne lorsqu'elle était belligérante et sur lequel nous lui avons cédé lorsqu'elle était neutre. » M. Bayard, Secrétaire d'Etat, à M. Jackson, le 7 septembre 1886, Moore, Digest VI, 680.

II.

M. Hughes, Secrétaire d'Etat, a déclaré que « ... la question essentielle, en matière de reconnaissance d'un gouvernement, est de savoir si ce dernier peut et veut remplir des obligations internationales ». Discours du 21 mars 1923, A. J. I. L. 17, 296.

Le « Gouvernement des Etats-Unis a pour règle d'ajourner la reconnaissance d'un autre gouvernement..... jusqu'au moment où il apparaît que..... ce dernier est en mesure de remplir toutes les obligations et responsabilités d'ordre international qui incombent à un Etat souverain, en vertu de traités et en vertu du droit international ». M. Hill, Secrétaire d'Etat par intérim, à M. Hart, Ministre des Etats-Unis à Bogota, 8 septembre 1900, For. Rel. 1900, 410; Moore, Digest, I, 138; M. Evarts, Secrétaire d'Etat, à M. Baker, 14 juin 1879, Moore, Digest I, 151; M. Hay, Secrétaire d'Etat, à lord Pauncefoot, Ambassadeur de Grande-Bretagne, 16 novembre 1899, For. Rel. 1899, 344; Moore, Digest, I, 155; M. Hay, Secrétaire d'Etat, à M. Powell, Ministre à Saint-Domingue, 19 octobre 1899, For. Rel. 1899, 248; Moore, Digest, I, 163.

« Toute nation, lorsqu'elle est admise, sur sa propre demande, parmi les Etats civilisés, doit comprendre que non seulement elle acquiert des droits de souveraineté et la dignité d'une entité nationale, mais qu'elle s'engage aussi à observer strictement et fidèlement tous les principes, lois et coutumes qui ont cours parmi les Etats civilisés, et qui ont pour objet d'adoucir les misères de la guerre.

« Aucune collectivité ne peut être autorisée à jouir des avantages que lui confère son titre de nation, dans les temps modernes, sans accepter toutes les obligations que lui impose ce titre. Un peuple chrétien qui exerce la souveraineté, qui conclut des traités, qui entretient des relations diplomatiques avec d'autres Etats, mais qui se refuserait néanmoins à conduire ses opérations militaires conformément aux usages universellement suivis par ces Etats adopterait une attitude singulièrement illogique et anormale. » M. Webster, Secrétaire d'Etat, à M. Thompson, Ministre à Mexico, 15 avril, 1842, Webster's Works, VI, 437; Moore, Digest, I, 5.

Si un gouvernement « reconnaît qu'il ne peut pas ou qu'il ne veut pas se conformer aux obligations internationales qui doivent nécessairement exister entre les gouvernements établis d'Etats qui entretiennent, les uns avec les autres, des relations amicales, il avoue par là qu'il ne peut prétendre à être considéré ou reconnu comme Puissance souveraine et indépendante ». M. Evarts, Secrétaire d'Etat, à M. Foster, 2 août 1877, MS. Instru., Mexico, XIX, 357; Moore, Digest, I, 6.

M. Hughes, Secrétaire d'Etat, en donnant les raisons du refus de reconnaître le Gouvernement des Soviets de Russie, s'est exprimé dans les termes suivants:

« Dans le cas de la Russie, il existe un critère très simple d'une condition dont l'importance est essentielle, je veux dire la bonne foi dans l'accomplissement des obligations internationales. Je répète que la bonne foi est une question d'importance fondamentale, car les promesses sont faciles à donner. Que sert-il de parler d'assurances quelconques, lorsque l'on répudie des obligations et des droits ayant pleine validité, et que l'on confisque des biens ?

« Or, comment ont agi les autorités des Soviets ? Dans leur décret du 21 janvier 1918, elles ont simplement déclaré que tous les emprunts étrangers sont annulés, d'une manière absolue et sans aucune exception. » Discours du 21 mars 1923, A. J. I. L. 17, 297.

Lorsqu'un gouvernement ne protège pas efficacement les étrangers qu'il consent à admettre sur son territoire, « il doit accorder la seule réparation possible, c'est-à-dire verser une indemnité à la partie lésée ». *The Montijo (E. U.) c. Colombia*, 17 août 1874, Moore's Arb. 1420, 1444. Les questions relatives à la réparation des dommages qui s'impose à un Etat ne remplissant pas ses obligations internationales sont discutées à la section XIV ci-après.

III.

I. L'adoption de dispositions législatives d'ordre interne est, en général, une question d'ordre national.

« Le souverain étranger, avec lequel les Etats-Unis ont conclu un traité, est en droit d'attendre et d'exiger que les stipulations de ce traité soient observées scrupuleusement

law. " *Janes (U.S.) v. Mexico*, Opinions of Commissioners under Convention, September 8th, 1923, U.S. and Mexico, 108, 131.

" The position that a sovereign is internationally liable for rulings of his courts, in violation of international law, was taken by us early in the wars growing out of the French Revolution, and was finally acceded to by the British Government, against whom it was advanced. It was also accepted by us, as respondents, after the late civil war, when, the relations of the parties being reversed, we agreed that we could not set up as a bar to a British claim for damages for illegal seizure a decision of our courts that the seizure was legal. It is impossible for us to yield to Mexico a principle that we successfully maintained against Great Britain when she was belligerent and which we yielded to her when she was neutral. " Mr. Bayard, Secretary of State, to Mr. Jackson, September 7th, 1886, Moore, Digest, VI, 680.

II.

Mr. Hughes, Secretary of State, said " . . . the fundamental question in the recognition of a Government is whether it shows ability and a disposition to discharge international obligations ". Address, March 21st, 1923, A.J.I.L. 17, 296.

The " rule of the United States is to defer recognition of another executive . . . until it shall appear that . . . it is in a position to fulfil all the international obligations and responsibilities incumbent upon a sovereign State under treaties and international law ". Mr. Hill, Acting Secretary of State, to Mr. Hart, American Minister at Bogota, September 8th, 1900, For. Rel. 1900, 410; Moore, Digest, I, 138; Mr. Evarts, Secretary of State, to Mr. Baker, June 14th, 1879, Moore, Digest I, 151; Mr. Hay, Secretary of State, to Lord Pauncefote, British Ambassador, November 16th, 1899, For. Rel. 1899, 344; Moore, Digest, I, 155; Mr. Hay, Secretary of State, to Mr. Powell, Minister to Santo Domingo, October 19th, 1899, For. Rel. 1899, 248, 249; Moore, Digest, I, 163.

" Every nation, on being received, at her own request, into the circle of civilised Governments, must understand that she not only attains rights of sovereignty and the dignity of national character, but that she binds herself also to the strict and faithful observance of all those principles, laws, and usages which have obtained currency among civilised States, and which have for their object the mitigation of the miseries of war.

" No community can be allowed to enjoy the benefit of national character in modern times without submitting to all the duties which that character imposes. A Christian people who exercise sovereign power, who make treaties, maintain diplomatic relations with other States, and who should yet refuse to conduct their military operations according to the usages universally observed by such States, would present a character singularly inconsistent and anomalous. " Mr. Webster, Secretary of State, to Mr. Thompson, Minister to Mexico, April 15th, 1842, Webster's Works, VI, 437; Moore, Digest I, 5.

If a Government " confesses itself unable or unwilling to conform to those international obligations which must exist between established Governments of friendly States, it would thereby confess that it is not entitled to be regarded or recognised as a sovereign and independent Power ". Mr. Evarts, Secretary of State, to Mr. Foster, August 2nd, 1877, MS. Instru., Mexico, XIX, 357; Moore, Digest, I, 6.

Mr. Hughes, Secretary of State, in giving reasons for the refusal of recognition to the Soviet Government of Russia, said:

" . . . In the case of Russia, we have a very easy test of a matter of fundamental importance, and that is of good faith in the discharge of international obligations. I say that good faith is a matter of essential importance because words are easily spoken. Of what avail is it to speak of assurances if valid obligations and rights are repudiated and property is confiscated ?

" . . . Now what did the Soviet authorities do ? In their Decree of January 21st, 1918, they made this simple statement: ' Unconditionally, and without any exceptions, all foreign loans are annulled '. " Address, March 21st, 1923, A.J.I.L. 17, 297.

If a Government does not afford effective protection to foreigners, whom it consents to admit to its territory, " it must make the only amends in its power, viz., compensate the sufferer ". *The Montijo (U.S.) v. Colombia*, August 17th, 1874, Moore's Arb., 1420, 1444. Matters relating to the duty to make reparation for failure to comply with international obligations are discussed under Section XIV, below.

III.

I. The enactment of municipal legislation is ordinarily a question of domestic concern.

" The foreign sovereign between whom and the United States a treaty has been made has a right to expect and require its stipulations to be kept with scrupulous good faith; but through

en toute bonne foi. Quant aux moyens législatifs d'ordre interne qui devront être utilisés à cet effet, c'est aux Etats-Unis seuls qu'il appartient de prendre une décision..... S'il arrivait que le peuple des Etats-Unis annulât la partie de sa Constitution en vertu de laquelle les traités font partie intégrante de son droit interne, aucun souverain étranger, lié par un traité avec les Etats-Unis, ne pourrait élever de plaintes justement motivées, car c'est là une question qui ne le regarde à aucun titre. » Taylor et autres c. Morton, 2 Curtis, 454, 23 Fed. Cas. 784, 785.

« Les lois intérieures d'un pays ne sauraient modifier le droit des gens de manière à lier les ressortissants d'un autre Etat. » Affaire de la Résolution, Cour d'Appel fédérale (1781), 2 Dallas, I, 4; Moore, Digest, I, 4.

Dans l'affaire Cutting, a été formulé la déclaration suivante:

« Si un gouvernement pouvait ériger sa propre législation intérieure en critère définitif de ses droits et obligations internationaux, les règles du droit international ne seraient plus qu'une fiction verbale et ne fourniraient plus aucune protection ni aux Etats ni aux particuliers. Il a été constamment soutenu et également reconnu par le Gouvernement des Etats-Unis qu'un gouvernement ne peut arguer de ses dispositions législatives d'ordre interne lorsqu'on lui demande de remplir des obligations d'ordre international. Il se peut que le droit interne de ce pays comporte des obligations plus rigoureuses ou moins rigoureuses que celles du droit international; dans un cas comme dans l'autre, c'est le droit international qui constitue le critère des obligations de ladite nation, et non la législation intérieure de celle-ci. Ce principe semble actuellement si bien compris et si généralement reconnu qu'il paraît inutile de fournir des citations ou d'invoquer des précédents à l'appui. » M. Bayard, Secrétaire d'Etat, à M. Connery, Chargé d'affaires au Mexique, 1^{er} novembre 1887. For. Rel. 1887, 751; Moore, Digest, II, 235.

« Nos propres lois ne constituent une obligation que pour notre propre gouvernement et pour nos propres citoyens. Si elles nous imposent des devoirs plus étendus que ne le fait le droit international, elles n'augmentent pas, dans une mesure équivalente, nos obligations à l'égard des nations étrangères et, d'autre part, elles ne restreignent pas ces obligations si elles établissent, pour notre législation interne, une norme moins stricte que celle qui est instituée par le droit international. » M. Bayard, Secrétaire d'Etat, à M. Hall, le 6 février 1886. For. Rel. 1886, 51; Moore, Digest, VII, 878.

M. Bayard a déclaré:

« En cas de rupture de neutralité, un gouvernement ne saurait diminuer sa responsabilité en adoptant pour sa législation nationale un critère peu élevé. » M. Bayard, Secrétaire d'Etat, à M. Smithers, Chargé d'Affaires en Chine, 1^{er} juin 1885. For. Rel. 1885, 172; Moore, Digest, VII, 878.

Dans l'arbitrage relatif à l'*Alabama*, l'exposé des faits par les Etats-Unis contenait le passage suivant:

« Il ne faut pas oublier, lorsque l'on considère les lois intérieures de la Grande-Bretagne, que ces dernières, qu'elles soient efficaces ou défectueuses, ne sont autre chose qu'un instrument destiné à permettre au gouvernement de remplir les obligations internationales qu'il reconnaît ou qui peuvent lui incomber en raison de la situation qu'il occupe dans la famille des nations. L'obligation, pour un Etat neutre, d'empêcher que la neutralité de son territoire soit violée, est indépendante de toute loi d'ordre interne ou national. Le droit interne peut et doit reconnaître cette obligation, mais il ne peut ni la créer, ni la détruire, attendu qu'elle résulte directement du droit international qui interdit l'usage d'un territoire neutre pour des fins hostiles.

« La loi nationale pourrait même être considérée, à juste titre, comme critère, dans la mesure de son champ d'application, de la manière dont cette nation considère ses obligations internationales, mais elle ne peut être adoptée comme constituant la limite de ces obligations au point de vue international. » Documents relatifs au Traité de Washington (Washington 1872), vol. I, Arbitrage de Genève, page 47.

La thèse présentée dans l'exposé américain a été adoptée par les arbitres dans la sentence arbitrale de Genève et formulée comme suit:

« et considérant que le Gouvernement de Sa Majesté britannique ne peut faire valoir l'insuffisance des moyens législatifs dont il dispose, pour se justifier de n'avoir pas agi avec toute la diligence nécessaire..... » Sentence arbitrale de Genève, Moore, Digest, VII, 1061.

Afin d'éviter d'avoir à prendre des mesures extraordinaires pour permettre aux Etats-Unis de remplir leurs obligations internationales, le Président McKinley a demandé que des mesures législatives fussent adoptées à cet effet. Il a déclaré notamment ce qui suit:

« Je réitère les recommandations urgentes que j'ai formulées l'an dernier, afin que le Congrès confère d'une manière adéquate aux tribunaux fédéraux la compétence nécessaire dans cette catégorie d'affaires internationales où la responsabilité du Gouvernement fédéral peut être finalement impliquée, et j'invite le Congrès à donner aux projets de loi y relatifs présentés au Sénat et à la Chambre des Représentants, la suite qu'ils comportent. Nous sommes tenus de remédier à cette lacune de notre législation, qui a provoqué et pourrait encore provoquer à l'avenir des résultats si fâcheux. J'ai signalé la nécessité de ces mesures

what internal arrangements this shall be done is exclusively for the consideration of the United States. . . . If the people of the United States were to repeal so much of their constitution as makes treaties part of their municipal law, no foreign sovereign with whom a treaty exists could justly complain, for it is not a matter with which he has any concern." Taylor *et al. v. Morton*, 2 Curtis, 454; 23 Fed. Cas. 784, 785.

"The municipal laws of a country cannot change the law of nations so as to bind the subjects of another nation." Case of the Resolution, Federal Court of Appeals (1781), 2 Dallas, 1, 4; Moore, Digest, I, 4.

In the Cutting case, the following statement was made:

" . . . If a Government could set up its own municipal laws as the final test of its international rights and obligations, then the rules of international law would be but the shadow of a name and would afford no protection either to States or to individuals. It has been constantly maintained and also admitted by the Government of the United States that a Government cannot appeal to its municipal regulations as an answer to demands for the fulfilment of international duties. Such regulations may either exceed or fall short of the requirements of international law and in either case that law furnishes the test of the nation's liability and not its own municipal rules. This proposition seems now to be so well understood and so generally accepted that it is not deemed necessary to make citations or to adduce precedents in its support." Mr. Bayard, Secretary of State, to Mr. Connery, Charge to Mexico, November 1st, 1887, For. Rel. 1887, 751; Moore, Digest, II, 235.

"Our own statutes bind only our own Government and citizens. If they impose on us a larger duty than is imposed on us by international law, they do not correspondingly enlarge our duties to foreign nations, nor do they abridge our duties if they establish for our municipal regulation a standard less stringent than that established by international law." Mr. Bayard, Secretary of State, to Mr. Hall, February 6th, 1886, For. Rel. 1886, 51; Moore, Digest, VII, 878.

Mr. Bayard wrote:

"A Government cannot diminish its liability for breach of neutrality by fixing a low statutory standard". Mr. Bayard, Secretary of State, to Mr. Smithers, Chargé in China, June 1st, 1885, For. Rel. 1885, 172; Moore, Digest, VII, 878.

In the Alabama Claims Arbitration, the case of the United States stated:

"It must be borne in mind, when considering the municipal laws of Great Britain, that, whether effective or deficient, they are but machinery to enable the Government to perform the international duties which they recognise, or which may be incumbent upon it from its position in the family of nations. The obligation of a neutral State to prevent the violation of the neutrality of its soil is independent of all interior or local law. The municipal law may and ought to recognise that obligation; but it can neither create nor destroy it, for it is an obligation resulting directly from international law, which forbids the use of neutral territory for hostile purpose.

"The local law, indeed, may justly be regarded as evidence, as far as it goes, of the nation's estimate of its international duties; but it is not to be taken as the limit of those obligations in the eye of the law of nations." Papers relating to the Treaty of Washington (Wash. 1872), Volume I, Geneva Arbitration, page 47.

The point of view presented in the American case was adopted by the arbitrators in the Geneva Award in the following language:

"And whereas the Government of Her Britannic Majesty cannot justify itself for a failure in due diligence on the plea of insufficiency of the legal means of action which it possessed." Geneva Award, Moore, Digest, VII, 1061.

To avoid the necessity of extraordinary measures to enable the United States to meet its international obligations, President McKinley requested the enactment of legislation. He said in part:

"I renew the urgent recommendations I made last year that the Congress appropriately confer upon the Federal courts jurisdiction in this class of international cases where the ultimate responsibility of the Federal Government may be involved, and I invite action upon the bills to accomplish this which were introduced in the Senate and House. It is incumbent upon us to remedy the statutory omission which has led, and may again lead, to such untoward results. I have pointed out the necessity and the precedent for legislation

et les précédents pertinents. L'adoption desdits projets de loi n'est autre chose qu'une mesure de justice préalable envers les nations avec lesquelles nous concluons, en qualité de Puissance souveraine, sur un pied d'égalité, des traités comportant des obligations réciproques. » Message annuel du Président McKinley, 3 décembre 1900, Moore, Digest, VI, 847.

Les lois intérieures doivent être interprétées, du point de vue judiciaire, en tenant dûment compte des obligations d'ordre international. Le « Chief Justice » Marshall a posé en principe que :

« Une loi du Congrès ne devrait jamais être interprétée comme violant le droit des gens, tant qu'elle demeure susceptible d'une autre interprétation. » Murray c. Schooner *Charming Betsy* (1804), 2 Cranch 64, 118, 2 L. Ed. 208; Talbot c. Seeman I, Cranch I, 2 L. Ed. 15.

2. M. Cass, Secrétaire d'Etat, a formulé, dans les termes reproduits ci-après, une déclaration d'ordre général relative aux conditions dans lesquelles se pose la responsabilité de l'Etat dans les affaires intéressant des contrats :

« ...De même, encore, la situation est tout autre lorsque le gouvernement étranger devient lui-même partie à des contrats importants, et que, non seulement il refuse ensuite de remplir les conditions de ces contrats, mais qu'en outre, il les annule selon son bon plaisir, causant ainsi un grave préjudice à ceux qui, se fiant à sa bonne foi et à sa justice, ont placé leurs capitaux dans cette affaire et y ont consacré leur temps et leur labeur. » M. Cass, Secrétaire d'Etat, à M. Dimitry, 3 mai 1860, Moore, Digest, VI, 287.

Dans une autre instruction, M. Cass a écrit ce qui suit :

« Ce que demandent les Etats-Unis, c'est que, dans toutes les occasions où leurs citoyens ont conclu des contrats avec les autorités compétentes du Nicaragua et dans tous les cas où l'exécution scrupuleuse de ces contrats a provoqué ou provoquera à l'avenir des différends, une notification de saisie, actuelle ou éventuelle, n'ait force exécutoire qu'à condition d'être formulée conformément aux dispositions du contrat, s'il en existe; ou — s'il n'existe pas de dispositions à cet égard — à condition qu'il soit procédé à une enquête équitable et impartiale, de nature à convaincre les Etats-Unis que la procédure était juste et que la décision intervenue doit être acceptée. A défaut d'une garantie de ce genre, le Gouvernement des Etats-Unis se considérera comme fondé, dans chaque litige de cette catégorie, à intervenir par les moyens qu'il estimera justifiées, en faveur de ses citoyens qui auront été lésés ou qui pourraient être lésés par un tel abus de pouvoir. » M. Cass, Secrétaire d'Etat, à M. Lamar, Ministre dans l'Amérique centrale, 25 juillet 1858, Moore, Digest, VI, 723-724.

« Le 25 octobre 1887, les autorités législatives du Pérou ont ordonné aux autorités exécutives de prendre immédiatement possession de certaines voies ferrées exploitées en vertu de concessions accordées par l'Etat. La Légation des Etats-Unis à Lima, conformément aux instructions reçues par elle, a protesté contre cette mesure, en déclarant que les Etats-Unis ne pouvaient que considérer comme extrêmement grave la confiscation par le Gouvernement péruvien de droits de propriété appartenant à des citoyens américains au Pérou et qu'ils se verraient dans l'obligation, si lesdits biens étaient effectivement confisqués, de réclamer le versement d'une indemnité pour tout dommage causé par cette mesure à des citoyens des Etats-Unis. » M. Bayard, Secrétaire d'Etat, à M. Neill, Chargé d'Affaires à Lima, le 17 décembre 1887, Moore, Digest, VI, 253; McMurdo c. Portugal, 13 juin 1891, Moore's Arb., Vol. II, 1865.

Toutefois, le droit pour une nation de prendre des mesures de police ne se trouve aucunement affecté. Ce droit de police :

« ... est considéré universellement comme s'appliquant à tout ce qui est essentiel pour la sécurité publique, l'hygiène et les bonnes mœurs, et comme justifiant la destruction ou l'atténuation par voie de procédure sommaire, de tout ce qui peut être considéré comme portant préjudice au public en général. ... Pour que le droit de l'Etat à intervenir ainsi dans l'intérêt public soit justifié, il faut, en premier lieu, que les intérêts généraux du public, en tant qu'ils se distinguent de ceux d'une catégorie particulière, exigent cette intervention, et, en second lieu, que les mesures d'application nécessaires soient raisonnables et ne lésent pas indûment des particuliers. La loi ne peut pas, sous prétexte de protéger l'intérêt public, intervenir arbitrairement dans les affaires privées ou imposer à des activités légitimes, des restrictions exceptionnelles et inutiles. » Lawton c. Steele, 152, U.S., 133, 136, 137.

3. Le Traité entre les Etats-Unis et l'Allemagne, signé le 8 décembre 1923, porte que les biens des ressortissants de chaque partie « ne pourront pas être saisis, sans qu'il soit recouru à la procédure légale appropriée, et sans paiement d'une indemnité équitable ». Article 1, *Recueil des Traités des Etats-Unis*, N° 725.

Au sujet de la loi mexicaine sur les biens fonciers appartenant à des étrangers, M. Kellogg, Secrétaire d'Etat, a écrit ce qui suit :

« ... Cette conception de ce qui constitue un « intérêt acquis », avec les résultats auxquels aboutit son application pratique, ainsi que je l'ai indiqué, ne saurait être admise par mon Gouvernement. Elle atteint la racine même du système des droits de propriété, sur lequel est fondée toute société civilisée. Elle ôte au terme « acquis » toute signification réelle en ne lui laissant qu'un sens rétrospectif. Ce qui constitue essentiellement un intérêt acquis, c'est qu'il est inviolable et que l'Etat ne peut ni le diminuer ni l'annuler, sauf pour des fins d'utilité publique et à condition de verser une juste indemnité. Aucun titre de propriété n'est garanti, si par « acquis », on entend seulement qu'on en a joui dans le passé et qu'il peut, par conséquent, être diminué ou détruit par l'application de lois promulguées postérieurement à l'acquisition

of this character. Its enactment is a simple measure of previsory justice towards the nations with which we as a sovereign equal make treaties requiring reciprocal observance." President McKinley, annual message, December 3rd, 1900, Moore, Digest, VI, 847.

Judicial interpretation of municipal law should be made with due regard to international obligations. Chief Justice Marshall laid down the rule that:

"An Act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." *Murray v. Schooner Charming Betsy* (1804), 2 Cranch, 64, 118, 2 L. Ed. 208; *Talbot v. Seeman*, 1 Cranch, 1, 2 L. Ed. 15.

2. A general statement as to the conditions under which State responsibility arises in contract cases was made by Mr. Cass, Secretary of State, in the following language:

"So, also, the case is widely different when the foreign Government becomes itself a party to important contracts, and then not only fails to fulfil them but capriciously annuls them, to the great loss of those who have invested their time and labour and capital from a reliance upon its own good faith and justice." Mr. Cass, Secretary of State, to Mr. Dimitry, May 3rd, 1860, Moore, Digest, VI, 287.

In another instruction Mr. Cass wrote:

"What the United States demand is that in all cases where their citizens have entered into contracts with the proper Nicaraguan authorities and questions have arisen, or shall arise, respecting the fidelity of their execution, no declaration of forfeiture, either past or to come, shall possess any binding force unless pronounced in conformity with the provisions of the contract, if there are any, or if there is no provision for that purpose, then unless there has been a fair and impartial investigation in such a manner as to satisfy the United States that the proceeding has been just and that the decision ought to be submitted to. Without some security of this kind, this Government will consider itself warranted, whenever a proper case arises, in interposing such means as it may think justifiable, in behalf of its citizens who may have been or who may be injured by such unjust assumption of power." Mr. Cass, Secretary of State, to Mr. Lamar, Minister to Central America, July 25th, 1858, Moore, Digest, VI, 723-724.

On October 25th, 1887, the legislature of Peru directed the executive to take immediate possession of certain railroads operated under Government concessions. Against this measure, the American Legation at Lima, in pursuance of instructions, protested, declaring that the United States could not regard but with grave concern a confiscation of the property rights of American citizens in Peru by the Government of that country, and would be compelled, in case of such confiscation, to claim compensation for any damages to citizens of the United States thereby inflicted. Mr. Bayard, Secretary of State, to Mr. Neill, Chargé at Lima, December 17th, 1887, Moore, Digest, VI, 253; *McMurdo v. Portugal*, June 13th, 1891, Moore's Arb., Vol. II, 1865.

The right of a nation, however, to exercise its police power remains unimpaired. The police power:

"is universally conceded to include everything essential to the public safety, health, and morals, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance. . . . To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations." *Lawton v. Steele*, 152 U.S. 133, 136, 137.

3. The Treaty between the United States and Germany, signed December 8th, 1923, provides that the property of the nationals of each party "shall not be taken without due process of law and without payment of just compensation". Article I, United States *Treaty Series*, No. 725. Regarding the Mexican alien land law, Mr. Kellogg, Secretary of State, wrote:

"The foregoing conception of the nature of a vested interest, with the results to which it leads in practical application, as I have indicated, cannot be accepted by my Government. It strikes at the very root of the system of property rights which lies at the basis of all civilised society. It deprives the term 'vested' of any real meaning by limiting it to a retrospective significance. The very essence of a vested interest is that it is inviolable and cannot be impaired or taken away by the State save for a public purpose, upon rendering just compensation. No title can be secure if it is to be deemed vested only in the sense that it has been enjoyed in the past and that it is therefore subject to curtailment or destruction through

de ce droit. » Note de M. Kellogg, Secrétaire d'Etat, à M. Saenz, Secrétaire d'Etat du Mexique pour les Relations extérieures, 31 juillet 1926.

Dans une note postérieure, sur les lois concernant le pétrole et les biens fonciers étrangers au Mexique, M. Kellogg, Secrétaire d'Etat, écrit :

« 1. Mon Gouvernement constate que le Gouvernement mexicain, tout en soutenant que le caractère rétroactif d'une loi ne peut en lui-même, tant que son application n'a pas abouti à une saisie de fait ou n'a pas eu d'autres effets préjudiciables, donner lieu à des objections ou faire l'objet de représentations diplomatiques, réitère son attachement au principe fondamental selon lequel les droits acquis ne peuvent être touchés par une législation de caractère rétroactif ou ayant pour effet la confiscation.

« 2. Mon Gouvernement note également que le Gouvernement mexicain adhère sans réserve au principe fondamental selon lequel les droits de propriété de toutes catégories, également acquis, doivent être respectés et garantis, conformément aux principes reconnus du droit international et de l'équité.

« ... Mon Gouvernement, pour conclure, affirme à nouveau qu'il compte que le Gouvernement mexicain, conformément au but et à l'objet véritable des négociations de 1923, qui ont abouti à la reconnaissance du Gouvernement mexicain par le Gouvernement des Etats-Unis, respectera intégralement les droits de propriété acquis par des citoyens américains, qui ont fait l'objet de notre discussion, et il compte que le Gouvernement mexicain ne prendra, en vertu des lois en question et des règlements promulgués pour leur donner effet, aucune mesure de nature à priver directement ou indirectement des citoyens américains du droit de propriété plein et entier, de l'usage et de la jouissance desdits biens et droits de propriété. » Note de M. Kellogg, Secrétaire d'Etat, à M. Saenz, Secrétaire d'Etat du Mexique pour les Relations extérieures, en date du 30 octobre 1926.

La discussion mentionnée sous la rubrique III (2) ci-dessus au sujet des pouvoirs de police de l'Etat s'applique également aux lois qui portent atteinte aux droits acquis des étrangers.

4. Un projet de loi avait été soumis à l'Assemblée législative d'Haïti en vue de la conversion d'obligations à un taux qui en aurait déprécié considérablement la valeur. Le Département d'Etat a déclaré, qu'en règle générale, les Etats-Unis ne pouvaient protester à l'avance contre un projet de loi non encore adopté. Néanmoins, tout en refusant d'autoriser une protestation éventuelle contre un projet de loi à l'étude, il a chargé le Ministre américain de suggérer au Ministre des Affaires étrangères que, ces obligations ayant été remises à des citoyens des Etats-Unis contre valeur reçue ou services effectivement rendus, les Etats-Unis pourraient, s'il leur était adressé une plainte concernant des pertes subies, se voir obligés « d'étudier la question et d'intervenir, s'il était établi que la loi portant réduction arbitraire d'un tiers des sommes que le Gouvernement d'Haïti s'est engagé à verser à des citoyens des Etats-Unis, a été mise en vigueur. » M. Sherman, Secrétaire d'Etat, à M. Powell, Ministre à Haïti, le 26 octobre 1897, Moore, Digest, VI, 729.

M. Hughes, Secrétaire d'Etat, en indiquant les motifs pour lesquels les Etats-Unis ont refusé de reconnaître le Gouvernement des Soviets de Russie, s'est exprimé dans les termes suivants :

« Notre Gouvernement, après la première révolution, a avancé environ 187 millions de dollars à la Russie. J'ajouterai que nous avons été les premiers à reconnaître le Gouvernement Kerensky; ce gouvernement n'avait pas déclaré vouloir pratiquer une politique de répudiation des dettes. Or, comment ont agi les autorités des Soviets ? Par leur décret du 21 janvier 1918, elles se sont bornées à déclarer que « tous les emprunts étrangers sont annulés d'une manière absolue et sans aucune exception. »

« Les sommes que nous avons avancées à la Russie sur le produit de nos Emprunts de la Liberté, ainsi que les prêts de guerre obtenus par la Russie, avant la révolution, pour lui permettre de poursuivre la guerre, ont été tout simplement annulés !... Je n'ai pas encore eu connaissance que les autorités des Soviets aient modifié cette déclaration. Les suggestions qui ont été signalées à différentes reprises étaient toujours accompagnées de réserves inadmissibles... » Discours du 21 mars 1923, A. J. I. L. 17, 297.

Dans l'affaire Aspinwall, les Commissaires chargés de régler la question entre les Etats-Unis et le Venezuela ont déclaré que le Venezuela avait diminué, par des mesures législatives, la valeur de sa dette consolidée. La sentence arbitrale a été rendue en faveur des demandeurs. M. Little, dans son exposé de l'avis de la Commission, a déclaré ce qui suit :

« Les dettes ne peuvent être réglées au moyen de lois promulguées par le Congrès. Il ne s'agit pas ici de banqueroute. Il n'existe pas de différence de principe entre le fait d'acquitter une partie d'une dette par voie de décret législatif et le fait de l'annuler totalement par le même moyen, et il n'existe pas non plus de différence entre le fait de déprécier et de diminuer progressivement la valeur d'une obligation par un moyen ou par un autre jusqu'à ce que cette valeur soit détruite et le fait de la détruire complètement en une seule fois. S'il n'existe aucune différence entre ces deux méthodes, elle est en faveur de la seconde, car une mort subite est préférable à la torture. » Aspinwall, exécuteur testamentaire de Howland, et autres (E.-U.) c. Venezuela, Moore's Arbs., IV, 3640-3642.

IV.

1. « Tout traitement discriminatoire portant préjudice à un citoyen américain en raison de sa qualité d'étranger et lui interdisant l'accès aux tribunaux, en cas de dommage subi par lui,

the enforcement of laws enacted subsequent to its acquisition." Note from Mr. Kellogg, Secretary of State, to Mr. Saenz, Mexican Secretary for Foreign Relations, July 31st, 1926.

In a later note regarding the Mexican alien land and petroleum laws, Mr. Kellogg, Secretary of State, wrote:

" 1. My Government observes that the Mexican Government, while contending that the retroactive character of a law may not of itself, in advance of actual confiscatory or otherwise injurious effects when applied, give rise to objection or be the subject of diplomatic representations, reiterates its adherence to the fundamental principle that acquired rights may not be impaired by legislation retroactive in character or confiscatory in effect.

" 2. My Government likewise notes the unqualified adherence of the Mexican Government to the fundamental principle that rights of property of every description legally acquired are to be respected and guaranteed in conformity with the recognised principles of international law and of equity.

" . . . my Government in conclusion reasserts that it expects the Government of Mexico, in accordance with the true intent and purpose of the negotiations of 1923, culminating in the recognition of the Government of Mexico by this Government, to respect in their entirety the acquired property rights of American citizens, which have been the subject of our discussion, and expects the Mexican Government not to take any action under the laws in question and the regulations issued in pursuance thereto, which would operate, either directly or indirectly, to deprive American citizens of the full ownership, use and enjoyment of their said properties and property rights." Note from Mr. Kellogg, Secretary of State, to Mr. Saenz, Mexican Secretary for Foreign Relations, October 30th, 1926.

The discussion under Question III (2) above, relating to the police power of the State, applies to legislation infringing vested rights of foreigners.

4. A bill was introduced in the Haitian Legislative Assembly to convert bonds at a rate greatly depreciatory of their value. The Department of State said that, as a general rule, the United States could not protest in advance against a pending bill; but, while declining to authorise a contingent protest pending the legislative consideration of the matter, instructed the American Minister that he might suggest to the Minister of Foreign Affairs that, as bonds had been issued to citizens of the United States for value received or effective service performed, the United States might, "in case of due complaint of damage, be constrained to consideration and action, if it be established that the arbitrary reduction of one-third from sums which the Haitian Government has contracted to pay to citizens of the United States is enforced." Mr. Sherman, Secretary of State, to Mr. Powell, Minister to Hayti, October 26th, 1897, Moore, Digest, VI, 729.

Mr. Hughes, Secretary of State, in giving reasons for the refusal of the United States to recognise the Soviet Government of Russia, said:

" Our own Government, after the first revolution, loaned about \$187,000,000 to Russia. I may say that we were the first to recognise the Kerensky Government; that Government did not profess a policy of repudiation. Now what did the Soviet authorities do? In their Decree of January 21st, 1918, they made this simple statement: 'Unconditionally, and without any exceptions, all foreign loans are annulled'.

" What was loaned to Russia out of our Liberty Bond proceeds, and the war loans obtained by Russia before the revolution to enable Russia to continue the war, were simply annulled! . . . I have yet to hear of any change in this announcement of the Soviet authorities. Suggestions which have been reported have always been coupled with impossible qualifications . . ." Address, March 21st, 1923, A.J.I.L. 17, 297.

In the Aspinwall case, the United States and Venezuela Claims Commissioners found that Venezuela had by legislation impaired its bonded debt. An award was made to the claimants. Mr. Little, in rendering the opinion of the Commission, said:

" Debts cannot be paid by Acts of Congress. This is not a case of bankruptcy. There is no difference in principle between discharging a part of a debt by legislative decree and wiping out the whole of it by the same means, as there is none between paring off and diminishing the value of an obligation by degrees, in one way and another, until that value is destroyed, and there is an out-and-out destruction at once. If there be any difference it is in favour of the latter, as a quick death is preferable to torture." Aspinwall, executor of Howland, *et al.* (U.S.) *v.* Venezuela, Moore's Arbs., IV, 3640-3642.

IV.

1. " Discrimination against an American citizen on the ground of alienage, by which he is excluded from redress in courts of justice for injuries inflicted on him, is a ground for diplomatic

constitue un motif d'intervention diplomatique. » M. Porter, Secrétaire d'Etat par intérim, à M. Phelps, Ministre au Pérou, le 4 juin 1885, Moore, Digest, VI, 253.

M. Bayard, Secrétaire d'Etat, a écrit ce qui suit :

« Si les tribunaux d'un Etat étranger ne peuvent pas ou ne veulent pas connaître des griefs d'un étranger ou se prononcer sur ces griefs, une intervention se justifie.

« Il peut y avoir déni de justice international de plusieurs manières : 1^o Une nation peut refuser de recevoir la plainte ou refuser d'autoriser l'intéressé à faire valoir son droit devant ses tribunaux. » M. Bayard, Secrétaire d'Etat, à M. McLane, Ministre en France, 23 juin 1886, Moore, Digest, VI, 266.

M. Marcy, Secrétaire d'Etat, a déclaré :

« C'est ... lorsque nos citoyens ne peuvent avoir accès aux tribunaux judiciaires... que le Gouvernement des Etats-Unis est prié d'intervenir en leur faveur. » M. Marcy, Secrétaire d'Etat, à M. Clay, Ministre au Pérou, 24 mai 1855, Moore, Digest, VI, 659; Swinney (E. U.) c. Mexico, Opinions des Commissaires nommés en vertu de la Convention, 8 septembre 1923, 131, 134.

« Les Etats sont tenus de maintenir des tribunaux inspirant le respect, et auxquels les sujets des Etats qui entretiennent avec l'Etat intéressé des relations pacifiques peuvent avoir recours pour obtenir réparation des dommages subis par eux et pour défendre leurs droits. » M. Webster, Secrétaire d'Etat, au Chevalier d'Argaiz, Ministre d'Espagne, 21 juin 1842, Moore, Digest, II, 5.

Les Tribunaux fédéraux des Etats-Unis ont reconnu depuis longtemps l'obligation qui leur incombe de protéger les droits des étrangers estant en justice. Dans l'affaire Taylor c. Carpenter (1846), 23 Fed. Cases, 745, 749, n^o 13-785, le tribunal a déclaré :

« Une personne originaire de l'étranger, estant en justice dans ce pays, doit jouir de droits qui ne sont ni supérieurs ni inférieurs à ceux dont jouissent les citoyens américains. »

La Cour suprême, en affirmant qu'une loi d'ordre interne, accordant aux autorités municipales le pouvoir arbitraire de réglementer l'exploitation des blanchisseries publiques, était inconstitutionnelle, a déclaré ce qui suit :

« Le quatorzième Amendement à la Constitution ne vise pas seulement la protection des citoyens; il porte que nul Etat américain ne pourra priver une personne de sa vie, de sa liberté ou de ses biens, sans procédure légale adéquate ni refuser à qui que ce soit, dans les limites de son ressort, la protection, égale pour tous, de la loi. Ces dispositions s'appliquent universellement à toutes les personnes se trouvant dans cette juridiction territoriale, sans distinction de race, de couleur ou de nationalité, et la protection égale des lois à l'égard de tous est un gage de la protection accordée par des lois égales. » Yick Wo c. Hopkins, 118, U. S. 356, 369.

La loi fédérale garantit à tous des droits égaux devant les tribunaux :

« Toutes les personnes se trouvant dans la juridiction des Etats-Unis auront le même droit, dans chaque Etat et Territoire de l'Union, pour conclure des contrats, les mettre à exécution, engager des poursuites, ester en justice et fournir des témoignages; elles bénéficieront aussi, pleinement et également, de toutes les lois et procédures destinées à garantir la sécurité des personnes et des biens dont jouissent les citoyens de race blanche, et elles seront passibles des mêmes sanctions, peines, pénalités, taxes, licences et impôts de toutes sortes, à l'exclusion de tous autres. » Code des Etats-Unis, Titre 8, Sec. 41, 44; Statutes at Large, Part I, page 123.

« Un étranger, tout comme un citoyen des Etats-Unis, est protégé du fait qu'il est interdit de lui ôter la vie, de le priver de sa liberté ou de ses biens sans procédure légale, et sans qu'il soit assuré de la protection égale de la loi. Ce principe est d'application universelle. » Whitfield c. Hanges (8^{me} C. C. A. 1915), 222 Fed. 745, 748).

Toutefois, la responsabilité ne s'étend pas au mode de procédure suivi par les tribunaux nationaux, car, ainsi que l'a soutenu l'arbitre dans l'affaire Cotesworth et Powell :

« Aucune instance ne peut être fondée, en règle générale, sur le simple fait d'objections formulées contre les formes de procédure ou contre le mode d'administration de la justice adopté par les tribunaux d'un pays donné, attendu que les étrangers sont présumés avoir pris connaissance de ces formes et modes avant de conclure des contrats dans ce pays. Toutefois, toute infraction manifeste des principes de la justice, naturelle, comme par exemple le refus d'entendre la partie intéressée ou de lui donner l'occasion de produire ses moyens de preuves, équivaut à un déni de justice absolu. » Moore's Arb. 2083; M. Conrad, Secrétaire d'Etat par intérim, à M. Peyton, 12 octobre, 1852, Moore, Digest, VI, 275; M. Bayard, Secrétaire d'Etat, à M. Jackson, *ibid.* 680.

2. Comme les tribunaux nationaux ne sont pas les interprètes, en dernier ressort, du droit international et des droits dérivant des traités, il s'ensuit que la responsabilité d'un Etat, au point de vue international, peut découler du fait que les tribunaux nationaux n'auraient pas convenablement interprété des obligations d'ordre international.

interposition." Mr. Porter, Acting Secretary of State, to Mr. Phelps, Minister to Peru, June 4th, 1885, Moore, Digest, VI, 253.

Mr. Bayard, Secretary of State, wrote:

" If the tribunals of a foreign State ' are unable or unwilling to entertain and adjudicate upon the grievances of a foreigner, the ground for interference is fairly laid '.

" ' International justice may be denied in several ways: (1) by the refusal of a nation either to entertain the complaint at all or to allow the right to be established before its tribunals.' " Mr. Bayard, Secretary of State, to Mr. McLane, Minister to France, June 23rd, 1886, Moore, Digest, VI, 266.

Mr. Marcy, Secretary of State, wrote:

" It is . . . when the judicial tribunals are not accessible . . . to . . . our citizens . . . that cases are presented for the interference of this Government in their behalf." Mr. Marcy, Secretary of State, to Mr. Clay, Minister to Peru, May 24th, 1855, Moore, Digest, VI, 659; *Swinney (U.S.) v. Mexico*, Opinions of Commissioners under Convention, September 8th, 1923, 131, 134.

" Nations are bound to maintain respectable tribunals, to which the subjects of States at peace may have recourse for the redress of injuries and the maintenance of their rights." Mr. Webster, Secretary of State, to the Chevalier d'Argaiz, Spanish Minister, June 21st, 1842, Moore, Digest, II, 5.

The Federal courts in the United States have long recognised the obligation to protect the rights of aliens in the courts. In *Taylor v. Carpenter* (1846), 23 Fed. Cases, 745, 749, No. 13,785, the Court said:

" A person from abroad suing in this country is to enjoy no greater nor less rights than citizens. "

The Supreme Court, in holding that a municipal statute giving the municipal authorities arbitrary power to regulate the carrying on of public laundries was unconstitutional, said:

" The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: ' Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws ' . These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any difference of race, of colour, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws." *Yick Wo v. Hopkins*, 118 U. S. 356, 369.

Equal legal rights are secured by Federal Statute to all persons:

" All persons within the jurisdiction of the United States shall have the same right in every State and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licences, and exactions of every kind, and to no other." U. S. Code, Title 8, Sec. 41; 44 Statutes at Large, Part I, page 123.

" An alien, as well as a citizen, is protected by the prohibition of deprivation of life, liberty or property without due process and the equal protection of the law. This principle is universal." *Whitfield v. Hanges* (8th C.C.A., 1915), 222 Fed. 745, 748.

Responsibility, however, does not extend to the method of procedure of local courts, for, as was held by the umpire in the *Cotesworth and Powell* case:

" No demand can be founded, as a rule, upon mere objectionable *forms* of procedure or the *mode* of administering justice in the courts of a country, because strangers are presumed to consider these before entering into transactions therein. Still, a plain violation of the substance of natural justice, as, for example, refusing to hear the party interested or to allow him opportunity to produce proofs, amounts to the same thing as an absolute denial of justice." Moore's Arb., 2083; Mr. Conrad, Acting Secretary of State, to Mr. Peyton, October 12th, 1852, Moore, Digest, VI, 275; Mr. Bayard, Secretary of State, to Mr. Jackson, *ibid*, 680.

2. Since national courts are not the final interpreter of international law and treaty rights, it follows that international responsibility may be based upon a failure of national courts properly to interpret international obligations.

Dans l'affaire Van Bokkelen, le Tribunal Suprême d'Haïti avait rendu un jugement sur l'affaire. L'arbitre international estima que la décision des tribunaux nationaux était contraire aux droits que possédait le demandeur en vertu des traités:

«l'emprisonnement de M. Charles Adrian Van Bokkelen, citoyen des Etats-Unis, à Haïti, déclare-t-il, constituait une dérogation aux droits qui lui étaient dévolus en qualité de citoyen des Etats-Unis, conformément aux dispositions du traité conclu entre les Etats-Unis et Haïti. » Moore's Arb. 1807, 1852; Parrott (Etats-Unis) c. Mexique, *ibid.* 3009, 3011.

M. Bayard, Secrétaire d'Etat, écrit:

«Quand on adresse au Département une demande en réparation de dommages qui auraient été causés par la décision d'un tribunal judiciaire étranger, cette demande n'est recevable que pour l'un des deux motifs suivants:

« 1^o Discrimination injustifiée au détriment du requérant en tant que citoyen des Etats-Unis, en violation des obligations découlant d'un traité, ou

« 2^o Violation des règles qui sont destinées à garantir la justice au cours d'enquêtes judiciaires et qui sont sanctionnées par le droit international. » M. Bayard, Secrétaire d'Etat, à M. Morrow, 17 février 1886, Moore, Digest, VI, 280, M. Marcy, Secrétaire d'Etat, à M. Fay, 16 novembre 1855, Moore, Digest, VI, 655; Razas (E.U.) c. Espagne, Moore's Arb. 3124; Brig *Diana* (E. U.) c. Grande-Bretagne, *ibid.* 3073).

Le « Chief Justice » Marshall écrit:

« Une nation serait considérée à juste titre comme manquant à ses engagements, — quand bien même elle n'aurait pas expressément engagé sa responsabilité à cet égard, — si, soudainement, et sans préavis, elle exerçait ses pouvoirs territoriaux d'une façon incompatible avec les usages et obligations reconnus par le monde civilisé. » The Exchange, 7 Cranch, 116, 137.

Les Etats-Unis ont soumis à l'arbitrage international des affaires au sujet desquelles était intervenue une décision de la Cour suprême. Dans les affaires suivantes, la Commission internationale a abouti aux mêmes conclusions que la Cour Suprême des Etats-Unis:

Isabella Thompson, 3 Wallace, 155, Moore's Arb. 3159; *The Peterhoff*, 5 Wallace, 28, Moore's Arb. 3838; *The Dashing Wave*, 5 Wallace, 170, Moore's Arb. 3948; *The Pearl*, 5 Wallace, 574, Moore's Arb. 3159; *The Adela*, 6 Wallace, 266, Moore's Arb. 3159; *The Georgia*, 7 Wallace, 32, Moore's Arb. 3957.

Dans les affaires suivantes, la Commission internationale a abouti à des conclusions différentes:

The Hiawatha, 2 Black, 635, Moore's Arb. 3902; *The Circassian*, 2 Wallace, 135, Moore's Arb. 3911; *The Springbok*, 5 Wallace, 1, Moore's Arb. 3928; *The Science*, 5 Wallace, 178, Moore's Arb. 3950; *The Volant*, 5 Wallace, 179; Moore's Arb. 3950; *The Sir William Peel*, 5 Wallace, 517, Moore's Arb. 3935.

Toutefois, les actes d'une juridiction inférieure n'engagent pas, en général, la responsabilité de l'Etat, au point de vue international, lorsque le demandeur n'a pas épuisé tous les recours légaux par voie d'appels judiciaires ou autrement. Blumhardt (E. U.) c. Mexique, 4 juillet 1868, Moore's Arb. 3146; Burn (E. U.) c. Mexique, *ibid.* 3140; Jennigs et autres (E. U.) c. Mexique, *ibid.* 3135; Brig *Napier* (Grande-Bretagne) c. E. U. 8 mai, 1871; Moore's Arb. 3152-3157. Voir discussion sous question XII.

Toutefois, lorsque, par des intrigues ou des agissements illégaux, l'intéressé a été empêché d'interjeter un appel, il a été déclaré ce qui suit:

« Je suis persuadé que le tribunal mexicain ou que le juge d'Acapulco a agi d'une façon extrêmement irrégulière, et a même fait usage de quelque violence; que, dans ces circonstances, l'affaire du vapeur *Commodore Stockton* n'a pas été pleinement jugée et qu'un appel de la décision du juge d'Acapulco à un tribunal d'appel mexicain a été empêché par des intrigues ou par des agissements illégaux. L'ensemble de l'affaire est extrêmement confus et semble, à juste titre, constituer un cas que pourrait résoudre notre Commission. » Affaire Garrison's, Moore's Arb. 3129.

En l'absence de fraude, de corruption ou d'injustice volontaire, l'Etat n'est pas responsable des interprétations erronées du droit interne par les tribunaux nationaux. Barron, Forbes & Co (Grande-Bretagne). c. E. U., Moore's Arb. 2525.

3. Le retard abusif et inexcusable des tribunaux a été considéré comme engageant la responsabilité de l'Etat. M. Bayard, Secrétaire d'Etat, écrit:

« Il peut y avoir déni de justice internationale de plusieurs manières:2^o ou par suite d'empêchements et de retards délibérés, qui interviennent sans qu'aucun motif valable puisse être donné, et qui équivalent en fait à un refus. » M. Bayard, Secrétaire d'Etat, à M. MacLane, 23 juin 1886, Moore, Digest, VI, 266.

M. Buchanan, Secrétaire d'Etat, a déclaré ce qui suit:

« C'est..... dans les cas où la justice a été déraisonnablement retardée par les tribunaux des pays étrangers..... que les intéressés sont fondés à réclamer l'intervention de leur Gouvernement. » M. Buchanan, Secrétaire d'Etat, à M. Ten Eyck, 28 août 1848, Moore Digest, VI, 273.

M. Frelinghuysen, Secrétaire d'Etat, déclare:

« Les retards injustifiés et inutiles apportés au jugement d'un citoyen à l'étranger constituent un motif d'intervention internationale. » M. Frelinghuysen, Secrétaire d'Etat, à M. Morgan, 5 mars 1884, Moore, Digest, VI, 277; affaire Cotesworth et Powell, Moore's Arb.

In the Van Bokkelen case, the highest court of Haiti had passed on the claim. The international arbitrator held that the decision of the local courts was contrary to the complainant's treaty rights. He said:

" . . . the imprisonment of Mr. Charles Adrian Van Bokkelen, a citizen of the United States in Haiti, was in derogation of the rights to which he was entitled as a citizen of the United States under stipulations contained in the Treaty between the United States and Haiti." Moore's Arb., 1807, 1852; Parrott (U.S.) v. Mexico, *ibid.*, 3009, 3011.

Mr. Bayard, Secretary of State, wrote:

" When application is made to this Department for redress for the supposed injurious actions of a foreign judicial tribunal, such application can only be sustained on one of two grounds:

" (1) Undue discrimination against the petitioner as a citizen of the United States in breach of treaty obligations; or

" (2) Violation of those rules for the maintenance of justice in judicial enquiries which are sanctioned by international law." Mr. Bayard, Secretary of State, to Mr. Morrow, February 17th, 1886, Moore, Digest, VI, 280; Mr. Marcy, Secretary of State, to Mr. Fay, November 16th, 1855, Moore, Digest, VI, 655; Razas (U.S.) v. Spain, Moore's Arb. 3124; Brig *Diana* (U.S.) v. Great Britain, *ibid.*, 3073.

Chief Justice Marshall wrote:

" A nation would justly be considered as violating its faith, although that faith might not be expressly plighted, which should suddenly and without previous notice exercise its territorial powers in a manner not consonant to the usages and received obligations of the civilised world." The Exchange, 7 Cranch, 116, 137.

The United States has submitted cases to international arbitration which had been passed upon by the Supreme Court. In the following cases, the international commission reached the same result as the Supreme Court of the United States:

Isabella Thompson, 3 Wallace, 155, Moore's Arb., 3159; *The Peterhoff*, 5 Wallace, 28; Moore's Arb., 3838; *The Dashing Wave*, 5 Wallace, 170; Moore's Arb., 3948; *The Pearl*, 5 Wallace, 574; Moore's Arb., 3159; *The Adela*, 6 Wallace, 266; Moore's Arb., 3159; *The Georgia*, 7 Wallace, 32; Moore's Arb., 3957.

In the following cases, a different conclusion was reached by the International Commission:

The Hiawatha, 2 Black, 635; Moore's Arb., 3902; *The Circassian*, 2 Wallace, 135; Moore's Arb., 3911; *The Springbok*, 5 Wallace, 1; Moore's Arb., 3928; *The Science*, 5 Wallace, 178; Moore's Arb., 3950; *The Volant*, 5 Wallace, 179; Moore's Arb., 3950; *The Sir William Peel*, 5 Wallace, 517; Moore's Arb., 3935.

However, acts of inferior judges do not ordinarily render the State internationally responsible when the claimant has failed to exhaust his legal means of redress by judicial appeals or otherwise. Blumhardt (U.S.) v. Mexico, July 4th, 1868; Moore's Arb., 3146; Burn (U.S.) v. Mexico, *ibid.*, 3140; Jennigs *et al.* (U.S.) v. Mexico, *ibid.*, 3135; Brig *Napier* (Gt. Britain.) v. U.S., May 8th, 1871; Moore's Arb., 3152-3157. See discussion under Question XII.

Nevertheless, when an appeal was prevented by intrigues or unlawful transactions, it was said:

" No doubt is left on my mind that the Mexican court or judge in Acapulco acted with great irregularity, and even with some violence, and that, as matters went, the case of the steamboat *Commodore Stockton* was by no means fully adjudicated, and that an appeal from the Acapulco judge to a Mexican court of appeal was prevented by intrigues or unlawful transactions. The whole is wrapt in confusion and presents a very fair subject to be adjudicated by our Commission." Garrison's Case, Moore's Arb., 3129.

The State is not responsible for errors of national courts in the interpretation of municipal law, in the absence of fraud, corruption, or wilful injustice. Barron, Forbes & Co. (Gt. Britain) v. United States, Moore's Arb., 2525.

3. Undue and inexcusable court delay has been held to raise State responsibility. Mr. Bayard, Secretary of State, wrote:

" International justice may be denied in several ways: . . . (2) or by studied delays and impediments, for which no good reason can be given, and which are in effect equivalent to a refusal." Mr. Bayard, Secretary of State, to Mr. McLane, June 23rd, 1886, Moore, Digest, VI, 266.

Mr. Buchanan, Secretary of State, wrote:

" It is . . . where justice has been . . . unreasonably delayed by the courts of justice of foreign countries . . . that they are warranted in appealing to their Governments to interpose." Mr. Buchanan, Secretary of State, to Mr. Ten Eyck, August 28th, 1848, Moore, Digest, VI, 273.

Mr. Frelinghuysen, Secretary of State, wrote:

" Undue and needless delay in the trial of a citizen abroad is a ground for international intervention." Mr. Frelinghuysen, Secretary of State, to Mr. Morgan, March 5th, 1884, Moore, Digest, VI, 277; Cotesworth and Powell Case, Moore's Arb., 2083; *The Sally* (U.S.)

1853; *The Sally* (E. U.) c. Grande-Bretagne, *ibid.* 3101, 3115; *Chattin* (E. U.) c. Mexique, *Opinions des Commissions*, 8 septembre 1923, 422, 432.

4. Lorsque les tribunaux des pays étrangers « sont utilisés comme moyen d'opprimer des citoyens américains ou de les priver de leurs justes droits », la responsabilité de l'Etat est engagée. M. Buchanan, Secrétaire d'Etat, à M. Ten Eyck, 28 août 1848, Moore, Digest, VI, 273; M. Bayard, Secrétaire d'Etat, à M. Morrow, 17 février 1886, Moore, Digest, VI, 280. M. Marcy, Secrétaire d'Etat, a écrit :

« C'est..... lorsque les tribunaux..... de pays étrangers sont utilisés comme moyen d'opprimer nos propres citoyens ou de les priver de leurs droits de propriété, qu'une demande d'intervention de l'Etat en leur faveur est adressée au Gouvernement. » M. Marcy, Secrétaire d'Etat, à M. Clay, Ministre au Pérou, 24 mai 1855, Moore, Digest, VI, 659; M. Marcy, Secrétaire d'Etat, à M. Fay, 16 novembre 1885, Moore, Digest, VI, 655; *Affaire Cotesworth et Powell*, Moore's Arb. 2081; M. Marcy, Secrétaire d'Etat, au baron de Kalb, 20 juillet 1855, Wharton, Digest, II, 505.

5. Dans l'affaire *Jonan* (E. U.) c. Mexique, en date du 4 juillet 1868, le Gouvernement mexicain était tenu responsable de ne pas avoir empêché ses tribunaux de se considérer comme compétents, alors qu'ils n'en avaient pas le droit, après représentations du Ministre des Etats-Unis, dans une affaire pendant laquelle, « du commencement jusqu'à la fin, toutes les formalités légales avaient été violées au préjudice de l'accusé ». Moore's Arb., 3251.

Dans le cas où des poursuites criminelles ont été engagées par les tribunaux inférieurs au point de constituer une persécution, l'Etat intéressé a été considéré comme responsable, bien que les poursuites n'aient pas abouti devant les tribunaux supérieurs. *Baldwin* (E. U.) c. Mexique, Moore's Arb., 3235.

Lorsque les actes illégaux d'un juge ont été effacés par suite d'une amnistie qui a privé le demandeur de la possibilité d'interjeter appel, l'Etat intéressé a été considéré comme responsable au point de vue international. *Affaire Cotesworth et Powell*, Moore's Arb., 2085.

Toutefois, en règle générale, le fait pour un tribunal de se déclarer compétent alors qu'il n'en a pas le droit n'engage pas la responsabilité de l'Etat, tant que tous les moyens de recours locaux n'ont pas été épuisés. M. Marcy, Secrétaire d'Etat, au chevalier Bertinatti, Ministre de Sardaigne, 1^{er} décembre 1856, Moore, Digest, VI, 659. Lorsque le tribunal s'est déclaré compétent par erreur et que, par la suite, il reconnaît qu'il ne possède pas la compétence nécessaire, on a soutenu que la responsabilité de l'Etat n'était pas engagée. *Trumbull* (Chili) c. Etats-Unis, Moore, Arb. 3255-3261.

En cas de déni de justice résultant du fait que les tribunaux sont soumis à l'arbitraire du Gouvernement, l'Etat a été considéré comme responsable. *Idler* (E. U.) c. Venezuela, 5 décembre 1885, Moore's Arb., 3217; M. Cass, Secrétaire d'Etat, à M. Dimitry, 3 mai 1860, Moore, Digest, VI, 287.

« Les actes du pouvoir judiciaire qui entraînent une responsabilité, soit directe, soit indirecte (cas de déni de justice proprement dit), ne sont pas considérés comme « insuffisants » (insuffisant), à moins que le préjudice causé ne constitue un outrage, un acte de mauvaise foi, une négligence volontaire dans l'accomplissement d'un devoir ou une carence manifeste aux yeux d'une personne impartiale. » *Chattin* (E. U.) c. Mexique, *Avis des Commissaires*, nommés en vertu de la Convention, 8 septembre 1923, E. U. et Mexique, 427.

« On peut admettre comme règle générale de droit international qu'un déni de justice constitue un juste motif d'intervention diplomatique. C'est là, toutefois, une simple déclaration de principe qui ne résout pas la question de savoir, dans chaque cas d'espèce, si ce déni de justice doit faire l'objet d'une application des règles de droit international. » M. Bayard, Secrétaire d'Etat, à M. Hall, 29 novembre 1886; *For. Rel.* 1887, 81.

Un déni de justice peut résulter d'une injustice manifeste au cours de la conduite d'un procès. M. Evarts, Secrétaire d'Etat, à M. Langston, 12 avril 1887, Wharton, Digest, II, 623; M. Bayard, Secrétaire d'Etat, à M. Jackson, 7 septembre 1886, Moore, Digest, VI, 680; M. Fish, Secrétaire d'Etat, à M. Cushing, 27 décembre 1875, Wharton, Digest, II, 621.

« Si le tribunal est compétent, s'il est libre de toute influence injuste, s'il est impartial et indépendant, si la cause lui a été présentée intégralement et équitablement, le jugement de ce tribunal doit constituer une solution décisive de l'affaire qui lui a été soumise. Ce principe vaut pour les décisions des tribunaux de droit commun, des tribunaux d'équité, et notamment pour les décisions des tribunaux de prises, où les poursuites engagées affectent si souvent les droits et les intérêts de citoyens d'Etats et de gouvernements étrangers. » M. Webster, Secrétaire d'Etat, au chevalier d'Argaiz, Ministre d'Espagne, 21 juin 1842, Moore, Digest, II, 5-6.

V.

a) M. Cass, Secrétaire d'Etat, après avoir constaté qu'habituellement le citoyen américain est soumis, dans un pays étranger, à la juridiction de la loi nationale, a déclaré ce qui suit :

« ... le cas est très différent lorsque le gouvernement étranger devient lui-même partie à des contrats importants et non seulement s'abstient de les exécuter, mais encore les annule arbitrairement, au grand détriment de ceux qui, se fiant à la bonne foi et à l'équité de ce gouvernement, ont consacré leur temps et leur travail à l'affaire et y ont placé leurs capitaux. » M. Cass, Secrétaire d'Etat, à M. Dimitry, 3 mai 1860, Moore, Digest, VI, 287.

v. Gt. Britain, ibid., 3101, 3115; *Chattin (U.S.) v. Mexico*, Opinions of Commissioners September 8th, 1923, 422, 432.

4. When courts of justice of foreign countries "are used as instruments to oppress American citizens or to deprive them of their just rights", State responsibility arises. Mr. Buchanan, Secretary of State, to Mr. Ten Eyck, August 28th, 1848, Moore, Digest, VI, 273; Mr. Bayard, Secretary of State, to Mr. Morrow, February 17th, 1886, Moore, Digest, VI, 280. Mr. Marcy, Secretary of State, wrote:

"It is . . . when the judicial tribunals . . . are used as instruments to oppress our citizens, or deprive them of their rights of property, that cases are presented for the interference of this Government in their behalf." Mr. Marcy, Secretary of State, to Mr. Clay, Minister to Peru, May 24th, 1855, Moore, Digest, VI, 659; Mr. Marcy, Secretary of State, to Mr. Fay, November 16th, 1885, Moore, Digest, VI, 655; *Cotesworth and Powell Case*, Moore's Arb., 2081; Mr. Marcy, Secretary of State, to Baron de Kalb, July 20th, 1855, Wharton, Digest II, 505.

5. In *Jonan (U.S.) v. Mexico*, July 4th, 1868, the Mexican Government was held responsible for a failure to prevent illegal assumption of jurisdiction by its courts, after remonstrance by the American Minister, where "from the beginning to the end of the proceedings the forms of law were infringed to the prejudice of the accused". Moore's Arb., 3251.

Where criminal prosecutions were carried on by the lower courts so as to amount to persecution, a State has been held responsible, although the prosecutions failed in the upper courts. *Baldwin (U.S.) v. Mexico*, Moore's Arb., 3235.

When illegal acts of a judge have been condoned by an amnesty which deprived the claimant of recourse to appeal, a State has been held internationally responsible. *Cotesworth and Powell Case*, Moore's Arb., 2085.

However, the unlawful assumption of jurisdiction ordinarily does not make the State responsible, unless local remedies are exhausted. Mr. Marcy, Secretary of State, to Chevalier Bertinatti, Sardinian Minister, December 1st, 1856, Moore, Digest, VI, 659. Where there is an erroneous assumption of jurisdiction, resulting in the court finding that it is without jurisdiction, it has been held that State responsibility does not arise. *Trumbull (Chile) v. United States*, Moore, Arb. 3255-3261.

Where there is a denial of justice due to the fact that courts are under the arbitrary control of the Government, the State has been held responsible. *Idler (U.S.) v. Venezuela*, December 5th, 1885, Moore's Arb. 3217; Mr. Cass, Secretary of State, to Mr. Dimitry, May 3rd, 1860, Moore's Digest, VI, 287.

"Acts of the *judiciary*, either entailing direct responsibility or indirect liability (the latter called denial of justice proper), are not considered insufficient unless the wrong committed amounts to an outrage, bad faith, wilful neglect of duty, or insufficiency of action apparent to any unbiased man." *Chattin (U.S.) v. Mexico*, Opinions of Commissioners under Convention, September 8th, 1923, U.S. and Mexico, 427.

"It may be admitted as a general rule of international law that a denial of justice is the proper ground of diplomatic intervention. This, however, is merely the statement of a principle and leaves the question in each case whether there has been such denial to be determined by the application of the rules of international law." Mr. Bayard, Secretary of State, to Mr. Hall, November 29th, 1886; For. Rel. 1887, 81.

A denial of justice may result from palpable injustice in the conduct of a trial. Mr. Evarts, Secretary of State, to Mr. Langston, April 12th, 1887, Wharton, Digest, II, 623; Mr. Bayard, Secretary of State, to Mr. Jackson, September 7th, 1886, Moore, Digest, VI, 680; Mr. Fish, Secretary of State, to Mr. Cushing, December 27th, 1875, Wharton, Digest, II, 621.

"If the tribunal be competent, if it be free from unjust influence, if it be impartial and independent, and if it have heard the case fully and fairly, its judgment is to stand as decisive of the matter before it. This principle governs in regard to the decisions of courts of common law, courts of equity, and especially courts of admiralty, where proceedings so often affect the rights and interests of citizens of foreign States and Governments." Mr. Webster, Secretary of State, to the Chevalier d'Argaiz, Spanish Minister, June 21st, 1842, Moore, Digest, II, 5-6.

V.

(a) Mr. Cass, Secretary of State, after stating that ordinarily an American citizen in a foreign country is subject to the jurisdiction of the local law, said:

" . . . the case is widely different when the foreign Government becomes itself a party to important contracts, and then not only fails to fulfil them, but capriciously annuls them, to the great loss of those who have invested their time and labour and capital from a reliance upon its own good faith and justice." Mr. Cass, Secretary of State, to Mr. Dimitry, May 3rd, 1860, Moore, Digest, VI, 287.

Dans l'affaire Rudloff (Etats-Unis) c. Venezuela, relative à un contrat conclu par des fonctionnaires fédéraux du Venezuela, la Commission a formulé son avis comme suit :

« Il est évident que le Gouvernement du Venezuela doit réparation au demandeur pour avoir brusquement mis fin au contrat dont le délégué de ce gouvernement, Henri F. Rudloff, assurait l'exécution..... » Arbitrages relatifs au Venezuela, 1903, Rapport Ralston, pages 183, 200.

Dans les affaires suivantes, il a été déclaré que le pouvoir exécutif ne devait pas priver des citoyens américains des concessions qu'ils détiennent sans que le cas soit soumis à une procédure judiciaire régulière et à un examen équitable, effectué par un tribunal impartial. M. Cass, Secrétaire d'Etat, à M. Lamar, 25 juillet 1858, Moore, Digest, VI, 723-724; M. Cass, Secrétaire d'Etat, à M. Jerez, 5 mai 1859, *idem*, 724; M. Evarts, Secrétaire d'Etat, à M. Langston, 13 décembre 1877, *idem*; M. Bayard, Secrétaire d'Etat, à M. Scott, 23 juin 1887, *idem*, 725; *idem*, 12 août 1887, *idem*, (demande d'indemnité).

Les Etats-Unis sont intervenus par la voie diplomatique dans des affaires concernant l'annulation de concessions ou de contrats effectués arbitrairement ou par confiscation. Règlements des réclamations de la « United States and Venezuela Co » c. Venezuela, For. Rel., 1909, p. 625; Arbitrage dans l'affaire du Chemin de fer de la baie de Delagoa, McMurdo c. Portugal, For. Rel., 1900, 903 et 1902, 848-852; Réclamation d'Emery (Etats-Unis) c. Nicaragua, For. Rel., 1909, 460-467. M. Bayard, Secrétaire d'Etat, à M. Buck, 19 janvier 1888, Moore, Digest, VI, 253-255; Cheek (Etats-Unis) c. Siam, Moore's Arb., 1899-1908; Affaire El Triunfo, Salvador Commercial Co. (Etats-Unis) c. Salvador, For. Rel., 1902, 838-880.

b) Dans un décret du 21 janvier 1918, le Gouvernement des Soviets de Russie a déclaré que « tous les emprunts étrangers sont annulés, d'une manière absolue et sans exception ». Ce refus, par le Gouvernement des Soviets, de remplir ses obligations financières internationales a été l'une des principales raisons pour lesquelles les Etats-Unis ont refusé de reconnaître ce gouvernement. M. Hughes, Secrétaire d'Etat, discours du 21 mars 1923, A. J. I. L. 17, p. 297.

c) Le traité entre les Etats-Unis et l'Allemagne, signé le 8 décembre 1923, stipule ce qui suit :

« Les ressortissants de chacune des Hautes Parties contractantes jouiront, sur les territoires de l'autre Partie, en se soumettant aux conditions imposées aux ressortissants de cette Partie, de la protection et de la sécurité les plus constantes pour leurs personnes et leurs biens, et jouiront à cet égard du degré de protection requis par le droit international. » Article I, U.S. Treaty Series, N° 725.

Lorsqu'un gouvernement « promet sa protection aux personnes qu'il consent à admettre sur son territoire, il est tenu de trouver les moyens de rendre cette protection effective ». *The Montijo* (Etats-Unis) c. Colombie, 17 août 1874, Moore's Arb., 1420, 1444.

Dans l'affaire Ruden, l'arbitre a formulé l'avis « qu'un gouvernement et son agent ne pouvaient, sans engager leur responsabilité, refuser leur protection à des étrangers ou négliger de punir ceux qui leur causaient un préjudice. » Ruden (Etats-Unis) c. Pérou, Moore's Arb., 1653-1654; Johnson (Etats-Unis) c. Pérou, *ibid.* 1656-1657.

La sentence prononcée dans l'affaire de l'Alabama (Etats-Unis) c. Grande-Bretagne (1872) stipule ce qui suit :

« Et attendu que le Gouvernement de Sa Majesté Britannique ne peut, en alléguant l'insuffisance des moyens d'action légaux dont il disposait, se justifier de n'être pas intervenu avec une diligence suffisante. » Moore's Arb., 656.

Dans l'affaire du trois-mâts *Jones*, relative à une saisie et à un jugement irréguliers, le Commissaire Upham, dans son opinion, s'est exprimé comme suit :

« En outre, l'attitude du Gouvernement britannique, non seulement en refusant toute réparation dans cette affaire, mais aussi en retardant l'ouverture d'une prompte enquête et en ne rendant pas ses fonctionnaires et ses tribunaux responsables de l'application de ses propres lois et règlements, importants pour la protection du commerce américain, constitue, pour les parties en cause, un motif de réclamation grave et sérieux. » Trois mâts *Jones* (Etats-Unis) c. Grande-Bretagne, Moore's Arb. 3051.

Les textes suivants se rapportent à l'obligation de protéger les étrangers revêtus d'un caractère officiel reconnu par l'Etat :

« Toutes les raisons qui déterminent l'indépendance et l'inviolabilité de la personne d'un ministre s'appliquent également à la garantie de l'immunité de son domicile. Celui-ci doit être défendu contre toute atteinte, et se trouve placé sous la protection particulière des lois; le fait d'en violer l'immunité constitue un crime contre l'Etat et toutes les autres nations.

« Les personnes qui accompagnent un ministre ou composent sa suite, participent à son inviolabilité. L'indépendance d'un ministre s'étend à tous ceux qui vivent sous son toit; en raison de la nature des liens qui les unissent à lui, lesdites personnes bénéficient de ses privilèges et partagent son sort. » *Respublica* c. De Longchamps, I Dallas, 113, 116; Avis de Bradford, Attorney-General, 17 septembre 1794, I Op. 52; Randolph à M. Harrison, 18 septembre 1794, Moore, Digest, IV, 629.

« On a soulevé la question de savoir si les consuls ont droit à une « protection spéciale » de leur personne. La réponse dépend du sens donné à ces deux mots. S'ils devaient signifier qu'en dehors des prérogatives étendues aux consuls soit par des traités, soit par la loi non écrite, le gouvernement dont relève leur résidence temporaire est tenu de leur accorder d'autres prérogatives non reconnues aux habitants (nationaux ou étrangers), la réponse est négative.

In the case of *Rudloff (U. S.) v. Venezuela*, involving a contract entered into by Federal officials of Venezuela, the Commission held that:

“ It is evident that the Government of Venezuela owes the claimant an indemnification for having suddenly put a stop to the contract which their legator, Henry F. Rudloff, was carrying out ” *Venezuela Arbitrations 1903, Ralston's Report, pages 183, 200.*

In the following cases, it was stated that American citizens should not be deprived of concessions by the executive, without due process of law and a fair examination by an impartial tribunal. Mr. Cass, Secretary of State, to Mr. Lamar, July 25th, 1858, Moore, Digest, VI, 723-724; Mr. Cass, Secretary of State, to Mr. Jerez, May 5th, 1859, *ibid.*, 724; Mr. Evarts, Secretary of State, to Mr. Langston, December 13th, 1877, *ibid.*, Mr. Bayard, Secretary of State, to Mr. Scott, June 23rd, 1887, *ibid.*, 725; *ibid.*, August 12th, 1887, *ibid.* (compensation demanded).

The United States has interposed diplomatically in cases involving the arbitrary or confiscatory annulments of concession or contracts. Settlements of the claims of the United States and *Venezuela Co. v. Venezuela*, For. Rel., 1909, p. 625; Arbitration in the matter of the Delagoa Bay Railway, *McMurdo v. Portugal*, For. Rel., 1900, 903; 1902, 848-852; Claim of Emery (U.S.) *v. Nicaragua*, For. Rel., 1909, 460-467. Mr. Bayard, Secretary of State, to Mr. Buck, January 19th, 1888, Moore, Digest, VI, 253-255; *Cheek (U.S.) v. Siam*, Moore's Arb., 1899-1908; *El Triunfo Case, Salvador Commercial Co. (U.S.) v. Salvador*, For. Rel. 1902, 838-880.

(b) In a Decree of January 21st, 1918, the Soviet Government of Russia stated: “ Unconditionally, and without any exception, all foreign loans are annulled. ” This refusal by the Soviet Government to fulfil its international financial obligations formed one of the principal reasons for refusal of recognition by the United States. Mr. Hughes, Secretary of State, Address March 21st, 1923, A.J.I.L. 17, page 297.

(c) The Treaty between the United States and Germany, signed December 8th, 1923, provides:

“ The nationals of each High Contracting Party shall receive within the territories of the other, upon submitting to conditions imposed upon its nationals, the most constant protection and security for their persons and property, and shall enjoy in this respect that degree of protection that is required by international law. ” Article I, U. S. *Treaty Series*, No. 725.

If a Government “ promises protection to those whom it consents to admit to its territory, it must find means of making it effective. ” *The Montijo (U.S.) v. Colombia*, August 17th, 1874, Moore's Arb., 1420, 1444.

In the Ruden case, the umpire held that “ a Government and its agent could not, without incurring responsibility, refuse to protect foreigners or omit to punish those who injured them. ” *Ruden (U.S.) v. Peru*, Moore's Arb., 1653-1654; *Johnson (U.S.) v. Peru*, *ibid.*, 1656-1657.

The *Alabama Award (U.S.) v. Gt. Britain (1872)* reads:

“ And whereas the Government of Her Britannic Majesty cannot justify itself for failure in due diligence on the plea of insufficiency of the legal means of action which it possessed. ” Moore's Arb., 656.

In the case of the bark *Jones*, involving an irregular seizure and trial, Commissioner Upham said in his opinion:

“ The course of the British Government, also, not only in not affording redress in this matter, but in delaying prompt enquiry and investigation, and in not holding its officers and tribunals responsible for the enforcement of their own laws and rules important to the protection of American commerce, is a ground of grave and serious complaint by the parties in this case. ” *Bark Jones (U.S.) v. Gt. Britain*, Moore's Arb. 3051.

The following authorities deal with the obligation to protect foreigners invested with a public character recognised by the State:

“ All the reasons, which establish the independency and inviolability of the person of a Minister, apply likewise to secure the immunities of his house. It is to be defended from all outrage; it is under a peculiar protection of the laws; to invade its freedom is a crime against the State and all other nations.

“ The *comités* of a Minister, or those of his train, partake also of his inviolability. The independence of a Minister extends to all his household; these are so connected with him that they enjoy his privileges and follow his fate. ” *Republica v. De Longchamps*, 1 Dallas, 113, 116; Opinion of Bradford, Attorney-General, September 17th, 1794, 1 Op. 52; Mr. Randolph to Mr. Harrison, September 18th, 1794, Moore, Digest, IV, 629.

“ The question has been raised whether consuls are entitled to a ‘ special protection ’ for their persons. The answer depends upon the meaning given these two words. If they should indicate that, apart from prerogatives extended to consuls either by treaty or by unwritten law, the Government of their temporary residence is bound to grant them other prerogatives not enjoyed by common residents (be it citizens or aliens), the answer is in the

Mais si, par « protection spéciale », on entend que dans l'exécution des lois du pays, notamment celles qui concernent la police et les lois pénales, le gouvernement devrait tenir compte de la susceptibilité des gouvernements étrangers quant au traitement accordé à leurs représentants et qu'en conséquence, le gouvernement de la résidence du consul devrait exercer une vigilance particulière en ce qui concerne la sécurité et la sûreté des intéressés, la réponse doit évidemment être affirmative. De nombreux codes pénaux contiennent des dispositions spéciales concernant les crimes déterminés commis à l'égard de diplomates étrangers; personne ne maintiendra que des dispositions de cette nature représentent le maximum de la vigilance que le gouvernement dont relève la résidence de ces diplomates est tenu d'exercer quant à leur sécurité et à leur bien-être. En ce sens, on pourrait même dire que, dans les pays où le traitement accordé aux citoyens par leurs propres autorités est assez indéterminé, une protection spéciale devrait être étendue aux étrangers, pour la raison que leur gouvernement ne se contenterait pas de l'excuse suivant laquelle ils ont été traités comme l'auraient été des nationaux (voir § 8 de l'avis de la Commission de l'affaire Roberts, rôle N° 185, rendu le 2 novembre 1926, et §§ 13 et 16 de son avis dans l'affaire Hopkins, rôle N° 39, rendu le 31 mars 1926). En ce qui concerne cette deuxième interprétation, le Président Fillmore, dans son message annuel du 2 décembre 1851, déclarait à juste titre ce qui suit: « Les ministres et les consuls de nations étrangères étant les moyens et les agents de communication entre nous-mêmes et ces nations, il est extrêmement important que, pendant leur séjour dans notre pays, ils aient le sentiment d'une sécurité parfaite aussi longtemps qu'ils s'acquittent loyalement de leurs fonctions respectives et ne violent pas nos lois.... Les ambassadeurs, les ministres officiels et les consuls chargés d'assurer les relations amicales entre nations doivent être l'objet d'une protection et d'un respect particuliers correspondant, pour chacun d'eux, aux droits qui se rattachent à son rang et à son poste. » VI Moore, Digest 813. *Mallen (Mexique) c. Etats-Unis*, Avis des Commissaires nommés aux termes de la Convention, 8 septembre 1923, *Etats-Unis et Mexique*, 257-258; M. Frelinghuysen, Secrétaire d'Etat, à M. Matthews, 16 janvier 1883, Moore, Digest, VI, 792; M. Frelinghuysen, Secrétaire d'Etat, à M. Baker, Ministre au Venezuela, 12 mai 1884, Moore, Digest V, 41; M. Gresham, Secrétaire d'Etat, à M. Hicks, Ministre au Pérou, tel. 6 avril 1893; For. Rel., 1893, 510; M. Hay, Secrétaire d'Etat, à M. Loomis, Ministre au Venezuela, 7 juin 1900, *idem*, 1900, 952.

La Constitution et les lois des Etats-Unis contiennent des dispositions spéciales visant la protection des étrangers revêtus d'un caractère public. C'est ainsi que l'article III, section 2 de la Constitution dispose:

« Le pouvoir judiciaire s'étendra... à toutes les affaires qui concernent les ambassadeurs, les autres ministres officiels et les consuls... »

« Dans toutes les affaires qui concernent les ambassadeurs, les autres ministres officiels et les consuls..., la Cour Suprême aura la juridiction du premier degré. »

Le Code de justice stipule ce qui suit:

« La Cour Suprême... aura... la juridiction du premier degré, mais non exclusive, en toute action intentée par des ambassadeurs ou d'autres ministres officiels ou à laquelle est partie un consul ou un vice-consul. » Code des Etats-Unis, Titre 28, Sec. 341, 44, Stat. at large, Partie I, 905-906.

« La juridiction conférée aux tribunaux des Etats-Unis dans les cas et procédures mentionnés ci-après sera exclusive des tribunaux des Etats particuliers:

« I. De tous les crimes et délits ressortissant à l'autorité des Etats-Unis. » Code des Etats-Unis, Titre 28, Sec. 371, 44, Stat. at Large, Partie I, 907.

La Constitution des Etats-Unis dispose à l'article I, section 8: « Le Congrès aura le pouvoir... de définir et de punir les délits contre le droit des gens. » Toute agression contre un ambassadeur ou un ministre officiel constitue un crime ressortissant aux tribunaux fédéraux. Code des Etats-Unis, Titre 22, Ch. 6, Sec. 255, 44, Stat. at Large, Partie I, 661.

1 d) Lorsqu'un citoyen américain est privé de sa liberté « sans qu'aucun délit soit allégué » et maintenu « en état d'arrestation sans espoir d'être jugé et sans perspectives d'élargissement, le président est tenu de procéder à une enquête sur les motifs de cette situation. » M. Frelinghuysen, Secrétaire d'Etat, à M. Lowell, Ministre en Angleterre, 25 avril 1882, Moore, Digest, VI, 277; M. Bayard, Secrétaire d'Etat, à M. Jackson, Ministre au Mexique, 19 juillet 1886, *ibid.*, 281.

L'Etat a été tenu pour responsable de détentions effectuées en violation des lois nationales. *The Jane (Etats-Unis) c. Mexique*, 11 avril 1839, Moore's Arb., 3120; M. Foster, Secrétaire d'Etat, à M. Terres, 2 décembre 1892, etc., Moore, Digest, VI, 767-768; affaires citées dans le recueil de Moore, 768-772.

Les arrestations opérées en violation des droits stipulés par les traités engagent la responsabilité de l'Etat. *Affaire van Bokkelen*, Moore, Digest, VI, 772-773, Moore's Arb., 1807-1853.

L'emprisonnement visant à assurer la contribution à des emprunts forcés a été considéré comme engageant la responsabilité de l'Etat. *Moke (Etats-Unis) c. Mexique*, 16 août 1871, Moore's Arb., 3411; *Rose (Etats-Unis) c. Mexique*, 13 septembre 1875, *idem* 3421; *McManus (Etats-Unis) c. Mexique*, *idem* 3422; *Hicks (Etats-Unis) c. Mexique*, *idem* 3422; *Weil (Etats-Unis) c. Mexique*, *idem* 3424.

En temps de guerre, des arrestations fondées sur des soupçons ont été considérées comme n'engageant pas la responsabilité de l'Etat. *Hannum (Etats-Unis) c. Mexique*, 4 juillet 1868, Moore's Arb. 3243; *Cramer (Etats-Unis) c. Mexique*, *idem* 3250.

negative. But if 'special protection' means that in executing the laws of the country, especially those concerning police and penal law, the Government should realise that foreign Governments are sensitive regarding the treatment accorded their representatives, and that therefore the Government of the Consul's residence should exercise greater vigilance in respect to their security and safety, the answer as evidently shall be in the affirmative. Many penal codes contain special provisions regarding special felonies committed as against foreign diplomats; nobody will contend that such provisions exhaust the care which the Government of their residence is bound to observe regarding their security and welfare. In this sense, one might even say that, in countries where the treatment accorded citizens by their own authorities is somewhat lax, a 'special protection' should be extended to foreigners on the ground that their Governments will not be satisfied with the excuse that they have been treated as nationals would have been (see paragraph 8 of the Commission's opinion in the Roberts case, Docket No. 185, rendered November 2nd, 1926, and paragraphs 13 and 16 of its opinion in the Hopkins case, Docket No. 39, rendered March 31st, 1926). In this second sense, President Fillmore of the United States, in his annual message of December 2nd, 1851, rightly said: 'Ministers and consuls of foreign nations are the means and agents of communication between us and those nations, and it is of the utmost importance that while residing in the country they should feel a perfect security so long as they faithfully discharge their respective duties and are guilty of no violation of our laws. . . . Ambassadors, public Ministers and consuls, charged with friendly national intercourse, are objects of especial respect and protection, each according to the rights belonging to his rank and station.' (VI Moore, Digest 813)." *Mallen (Mexico) v. United States*, Opinions of Commissioners under Convention, September 8th, 1923, U.S. and Mexico, 257-258; Mr. Frelinghuysen, Secretary of State, to Mr. Matthews, January 16th, 1883, Moore, Digest VI, 792; Mr. Frelinghuysen, Secretary of State, to Mr. Baker, Minister to Venezuela, May 12th, 1884, Moore, Digest V, 41; Mr. Gresham, Secretary of State, to Mr. Hicks, Minister to Peru, tel. April 6th, 1893, For. Rel. 1893, 510; Mr. Hay, Secretary of State, to Mr. Loomis, Minister to Venezuela, June 7th, 1900, *ibid.*, 1900, 952.

Special provision is made for the protection of foreign persons invested with a public character by the Constitution and laws of the United States. Article III, Section 2, of the Constitution provides:

"The judicial power shall extend . . . to all cases affecting Ambassadors, other public Ministers and consuls"

"In all cases affecting Ambassadors, other public Ministers and consuls . . . the Supreme Court shall have original jurisdiction."

The Judicial Code provides:

"The Supreme Court . . . shall have . . . original, but not exclusive, jurisdiction of all suits brought by Ambassadors, or other public Ministers, or in which a consul or vice-consul is a party." U.S. Code, Title 28, Sec. 341, 44 Stat. at Large, Part 1, 905-906.

"The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned shall be exclusive of the courts of the several States:

"First. Of all crimes and offences cognisable under the authority of the United States." U.S. Code, Title 28, Sec. 371, 44 Stat. at Large, Part 1, 907.

The Constitution of the United States provides in Article 1, Sec. 8, that: "The Congress shall have power . . . to define and punish . . . offences against the Law of Nations." It is a Federal crime to assault an ambassador or a public Minister. U.S. Code, Title 22, Ch. 6, Sec. 255, 44 Stat. at Large, Part 1, 661.

1 (d). When an American citizen is deprived of his liberty "without any allegation of offence" and left "incarcerated without hope of trial or chance of release, it then becomes the duty of the President to enquire why this is done". Mr. Frelinghuysen, Secretary of State, to Mr. Lowell, Minister to England, April 25th, 1882, Moore, Digest, VI, 277; Mr. Bayard, Secretary of State, to Mr. Jackson, Minister to Mexico, July 19th, 1886, *ibid.*, 281.

For detention in violation of municipal law, the State has been held responsible. *The Jane (U.S.) v. Mexico*, April 11th, 1839, Moore's Arb. 3120; Mr. Foster, Secretary of State, to Mr. Terres, December 2nd, 1892, etc., Moore, Digest, VI, 767-768; Cases in Moore, Digest, 768-772.

In case of arrest in violation of treaty rights, the State is responsible. Van Bokkelen's case, Moore, Digest, VI, 772-773; Moore's Arb., 1807-1853.

Imprisonment to secure forced loans has been held to give rise to State responsibility. *Moke (U.S.) v. Mexico*, August 16th, 1871, Moore's Arb. 3411; *Rose (U.S.) v. Mexico*, September 13th, 1875, *ibid.* 3421; *McManus (U.S.) v. Mexico*, *ibid.* 3422; *Hicks (U.S.) v. Mexico*, *ibid.* 3422; *Weil (U.S.) v. Mexico*, *ibid.* 3424.

In time of war, arrests on suspicion have been held not to make the State responsible. *Hannum (U.S.) v. Mexico*, July 4th, 1868, Moore's Arb. 3243; *Cramer (U.S.) v. Mexico*, *ibid.*, 3250.

2 a). La responsabilité de l'Etat à l'égard des actes ou omissions de fonctionnaires subalternes agissant dans les limites de leur compétence, dépend, dans une certaine mesure, de la nature des fonctions et des actes de ces agents.

« La gestion des affaires publiques incombe à deux catégories de fonctionnaires, dont l'une chargée de percevoir les recettes et d'administrer les biens publics, représente les intérêts domaniaux du gouvernement; l'autre catégorie comprend les agents de la société elle-même et le gouvernement ne les nomme qu'en sa qualité de *parens patriae*. Dans de nombreux cas, le gouvernement se tient pour responsable des actes des fonctionnaires de la première catégorie, ces actes étant accomplis dans l'intérêt immédiat du gouvernement, mais aucun gouvernement ne se considère comme pécuniairement responsable des actes des fonctionnaires de la deuxième catégorie. Le gouvernement institue les moyens de les rendre personnellement responsables ou de les punir pour actes irréguliers commis dans l'exercice de leurs fonctions; c'est là tout ce que la nation a demandé au gouvernement dans sa constitution et ses lois ». Cushing Attorney-General, 27 mai 1855, 7 Op. 229, 237, Moore, Digest, VI, 740-741.

La distinction établie par l'Attorney-General Cushing est applicable lorsque le gouvernement s'est enrichi injustement par suite des actes de fonctionnaires représentant ses intérêts domaniaux. L'Etat a été jugé directement responsable en ce qui concerne le remboursement de droits de douane. *Only Son* (Etats-Unis) c. Grande-Bretagne, 8 février 1853, Moore's Arb. 3404; *Turner* (Etats-Unis) c. Mexique, 11 avril 1839, *idem* 3241; *Hammond* (Etats-Unis) c. Mexique, 11 avril 1839, *idem* 3126; *Geodfrey, Pattison and Co.*; (Grande-Bretagne) c. Etats-Unis, Rapport de l'« U.S. and Gt. Britain Claims Comm. » de 1853, 304; *Wirgman* (Grande-Bretagne) c. Etats-Unis, *idem* 312.

La règle générale de procédure appliquée en cas de réparation, à raison d'actes commis par des agents officiels, a été définie comme suit par M. Fish, Secrétaire d'Etat:

« Toute réclamation contre un gouvernement étranger, fondée sur des actes irréguliers commis par ses fonctionnaires nationaux, doit être présentée au Département de la Justice dudit gouvernement, si ce département est doté d'une organisation satisfaisante et si le cas en question ressortit à sa juridiction ». M. Fish, Secrétaire d'Etat, à M. Ruger, 21 octobre 1869, Moore, Digest VI, 660.

M. Seward, Secrétaire d'Etat, a écrit, à ce sujet, ce qui suit:

« Le Département d'Etat ne peut connaître de réclamations qui ressortissent aux tribunaux judiciaires des Etats-Unis ». M. Seward, Secrétaire d'Etat, à lord Lyons, 12 janvier 1863, Moore, Digest VI, 660.

« on présume que tous les gouvernements s'abstiennent en règle générale de toute demande directe d'indemnité en cas de dommage causé à un citoyen ou sujet, lorsque ce dommage est susceptible de réparation par la voie de la procédure judiciaire ordinaire, tout au moins jusqu'à ce que réparation ait été demandée devant les tribunaux judiciaires ». M. Fish, Secrétaire d'Etat, à John Warren, 26 février 1875, Moore, Digest, VI, 661; M. Day, Secrétaire d'Etat p. i., à MM. Lauterbach, etc., 6 avril 1898, *idem* 670; M. Hay, Secrétaire d'Etat, à M. Lombard, 3 octobre 1898, *idem* 671.

Lorsque les actes ou omissions sont contraires aux obligations internationales de l'Etat, ou entachés soit d'illégalité, soit de fautes, l'Etat a fréquemment été considéré comme directement responsable. Dans un cas où des fonctionnaires avaient soumis un navire à des visites et à des exactions répétées, accompagnées de mauvais traitements à l'égard du capitaine et de l'équipage, une commission a formulé l'opinion suivante:

« De l'avis de la Commission, ces faits constituent un motif de réclamation valable contre la République du Mexique. Les actes en question ont été commis par des fonctionnaires publics, par des fonctionnaires des douanes, par des fonctionnaires relevant des Départements de la Guerre et de la Justice, et non par des individus non autorisés; ces actes ont été couverts et sanctionnés par ceux qui détiennent l'autorité au nom du Mexique et ont certainement eu leur origine dans les causes indiquées par le vice-consul des Etats-Unis ». *Eclipse* (Etats-Unis) c. Mexique, 3 mars 1849, Moore's Arb. 3397; *Jonan* (Etats-Unis) c. Mexique 20 novembre 1875, *idem* 3251; *Schooner Hope* (Etats-Unis) c. Brésil, 29 février 1852, *idem* 4615; *Jones* (Etats-Unis) c. Grande-Bretagne, 3 février 1853, *idem* 3050; *William Lee* (Etats-Unis) c. Pérou, *idem* 3405 (refus injustifiable d'autoriser le départ d'un navire); *Sibley* (Etats-Unis) c. Mexique, 11 avril 1839, *idem* 3045; *The Jesse, etc.* (Grande-Bretagne) c. Etats-Unis, *American and British Claims Arb.*, 18 août 1910, rapport Neilsen, 479, 480.

Dans l'affaire « *Union Bridge Co* » (Etats-Unis) contre Grande-Bretagne, la commission a formulé, en ce qui concerne les actes d'un agent de l'Etat, l'opinion suivante:

« L'envoi du matériel à Bloemfontein constituait une intervention injustifiée à l'égard de biens neutres. En tant que directeur du matériel des chemins de fer, M. Harrison avait certainement qualité pour expédier le matériel par voie ferrée, et il a agi ainsi, selon des instructions qui engagent la responsabilité du Gouvernement de Sa Majesté Britannique ». *American and British Claims Arb.*, 18 août 1910, pages 371, 380.

Dans l'affaire *Gage* (Etats-Unis) c. Venezuela, relative aux mauvais traitements infligés à un étranger, après son arrestation, le Commissaire américain a cité Hall en l'approuvant:

« On peut donc présumer que les actes commis par eux ont été sanctionnés par l'Etat et, jusqu'à ce que ces actes soient désavoués et que, si leur gravité est suffisante, leurs auteurs

2 a. For the acts or omissions of subordinate officials acting within the scope of their employment, State responsibility depends somewhat upon the nature of the agents' duties and acts.

" In the transaction of public affairs, there are two classes of officers, one employed in the collection of the revenue and the care of the public property, who represent the proprietary interest of the Government; and another class, who are the agents of society itself, and are appointed by the Government only in its relation or capacity of *parens patriae*. For the acts of the former, the Government holds itself responsible in many cases, because their acts are performed for the immediate interest of the Government. But, for the acts of the latter, no Government holds itself pecuniarily responsible. It provides means to make them personally responsible, or to punish them for malfeasance in office, and in so doing it does all which the people have by their constitution and laws required of the Government." Cushing, Attorney-General, May 27th, 1855, 7 Op. 229, 237; Moore, Digest, VI, 740-741.

The distinction drawn by Attorney-General Cushing applies when the Government is unjustly enriched as a result of the acts of officers representing the proprietary interest of the Government. The State has been held immediately responsible to return custom duties. Only *Son (U.S.) v. Gt. Britain*, February 8th, 1853, Moore's Arb. 3404; *Turner (U.S.) v. Mexico*, April 11th, 1839, *ibid.*, 3126; *Hammond (U.S.) v. Mexico*, April 11th, 1839, *ibid.*, 3241; *Geodfrey, Pattison and Co., (Gt. Britain) v. United States*, Report U.S. and Gt. Britain Claims Comm. of 1853, 304; *Wirgman (Gt. Britain) v. United States*, *ibid.*, 312.

The general rule of procedure, as applied to redress for acts of agents, was stated by Mr. Fish, Secretary of State, as follows:

" A claim against a foreign government, based on misconduct of its domestic officials, must be presented to the judicial department of such government when such a department is fairly organised and has jurisdiction of the case." Mr. Fish, Secretary of State, to Mr. Ruger, October 21st, 1869, Moore, Digest, VI, 660.

Mr. Seward, Secretary of State, wrote in this connection;

" The Department of State cannot take cognisance of claims which are cognisable by the judicial tribunals of the United States." Mr. Seward, Secretary of State, to Lord Lyons, January 12th, 1863, Moore, Digest, VI, 660.

" . . . it is believed to be a general rule with all governments to abstain from a direct application for amends in a case of injury to a citizen or subject, which injury is capable of redress through the ordinary process of law, at least until reparation shall have been sought through the judicial tribunals." Mr. Fish, Secretary of State, to John Warren, February 26th, 1875, Moore, Digest, VI, 661; Mr. Day, Acting Secretary of State, to Messrs. Lauterbach, etc., April 6th, 1898, *ibid.*, 670, Mr. Hay, Secretary of State, to Mr. Lombard, October 3rd, 1898, *ibid.*, 671.

Where the acts or omissions are contrary to international obligations of the State or tainted with illegality or marked by culpable negligence, frequently the State has been held immediately responsible. Where officials subjected a vessel to repeated examinations and spoliations, accompanied with ill-treatment of the master and crew, a commission said:

" In the opinion of the board these facts constitute a valid claim against the Republic of Mexico. They were the acts of public officers, of officers of the customs, of the military and of the judicial departments. They were not the acts of unauthorised individuals, but were shielded and sanctioned by those exercising authority in the name of Mexico, and undoubtedly had their origin in the causes assigned by the Vice-Consul of the United States." *Eclipse (U.S.) v. Mexico*, March 3rd, 1849, Moore's Arb. 3397; *Jonan (U.S.) v. Mexico* November 20th, 1875, *ibid.*, 3251; *Schooner Hope (U.S.) v. Brazil*, February 29th, 1852, *ibid.*, 4615; *Jones (U.S.) v. Gt. Britain*, February 3rd, 1853, *ibid.*, 3050; *William Lee (U.S.) v. Peru* *ibid.*, 3405 (unjustifiable refusal to clear a vessel); *Sibley (U.S.) v. Mexico*, April 11th, 1839, *ibid.*, 3045; *The Jesse, etc. (Gt. Britain) v. United States*, American, and British Claims Arb., August 18th, 1910, Neilsen Report, 479, 480.

In the case of *Union Bridge Co. (U.S.) v. Gt. Britain*, the commission held, where the acts of an agent of the State were involved:

" The consignment of the material to Bloemfontein was a wrongful interference with neutral property. It was certainly within the scope of Mr. Harrison's duty as railway storekeeper to forward material by rail, and he did so under instructions which fix liability on His Britannic Majesty's Government." American and British Claims Arb., August 18th, 1910, pages 371, 380.

In the case of *Gage (U.S.) v. Venezuela*, involving the maltreatment after arrest of a foreigner, the American Commissioner quoted Hall with approval:

" Presumably, therefore, acts done by them are acts sanctioned by the State, and until such acts are disavowed, and until, if they are of sufficient importance, their authors are

soient punis, on est fondé à supposer que l'Etat s'est identifié avec eux ». Hall's Int. Law, 4^{me} édition, 226; Venezuela Arb. de 1903, 165.

Dans le cas de dommages causés en mer, les Etats-Unis ont été tenus pour responsables dans l'affaire du *Confidence*, la Constitution ayant été reconnue en défaut, en matière de collision. Il n'a été fait aucune mention de l'épuisement des voies de recours ouvertes par la législation nationale. *Confidence* (Grande-Bretagne) c. Etats-Unis, 13 janvier 1855, Moore's Arb., 3063. Dans les affaires citées ci-dessous, soumises à l'« American and British Claims Arbitration Commission » du 18 août 1910, et ultérieures à l'affaire du *Confidence*, les termes du mandat, tout en ne stipulant pas que toutes les voies de recours ouvertes par la législation nationale devaient tout d'abord être épuisées, permettaient à la Commission d'exiger qu'il fût fait usage de ces voies de recours dans la mesure jugée équitable par elle. *The Lindsjarne* (Grande-Bretagne) c. Etats-Unis, American and British Claims Arb., 18 août 1910, rapport Neilsen, 483; *The Canadienne* (Grande-Bretagne) c. Etats-Unis, *idem* 427; *The Sidra* (Grande-Bretagne) c. Etats-Unis *idem* 453; *The Lanie Cobb* (Etats-Unis) c. Venezuela, M. Bayard, Secrétaire d'Etat, à M. Scott, 3 septembre 1885, Moore, Digest, VI, 757 (les recours prévus par la législation nationale avaient été refusés); *The Jesse, etc.* (Grande-Bretagne) c. Etats-Unis, American and British Claims Arb., 18 août 1910, rapport Neilsen, 479, 480 (intervention illégale à l'égard de bateaux de pêche).

La capture illégale de navires par des corsaires a été considérée comme engageant la responsabilité de l'Etat. Protocole du 1^{er} mai 1852 entre les Etats-Unis et le Venezuela, « U.S. Treaties and Conventions », II, page 1842.

« Le droit à réparations existe à l'égard d'un navire des Etats-Unis qui s'est rendu coupable d'un dommage maritime, tout autant que si le navire appartenait à un particulier, et, bien que, pour des raisons d'ordre public, ce droit ne puisse s'exercer au moyen de poursuites directes contre le navire, il sera exercé par la voie des tribunaux, chaque fois que le bien lui-même qui fait l'objet de la réclamation se trouvera soumis à leur juridiction et à leur contrôle par suite de l'action affirmative (affirmative action) des Etats-Unis. En conséquence, une prise confiée à un capitaine et à un équipage de prise ayant commis un dommage maritime en abordant et en coulant un autre navire, il a été décidé que les dommages subis par les propriétaires de celui-ci seraient évalués et payés sur le produit de la vente de la prise, avant que le dit produit soit réparti entre ceux qui avaient opéré la capture ». *The Siren*, 7 Wall, 1952. Moore, Digest, VI, 756-757.

« 2 b)Un gouvernement ne peut être tenu pour responsable que lorsqu'il sanctionne les actes commis par ses fonctionnaires en violation de la loi; il ne devrait pas l'être lorsqu'il s'agit d'actes non autorisés si, dès qu'il en a connaissance, il se hâte de les désavouer; en ce cas, la responsabilité de ces actes incombe au fonctionnaire fautif. Le recours dont vous disposez consiste à intenter une action à titre privé contre les fonctionnaires nationaux qui, volontairement ou par suite d'un zèle exagéré dans l'exercice d'attributions qu'ils supposaient leur incomber, ont commis cette atteinte à votre personne. » M. Tripp, Ministre en Autriche, à M. Mix, 11 octobre 1893, Foreign Relations 1894, 25.

L'Etat n'a pas été tenu pour responsable d'actes commis par des fonctionnaires municipaux lorsque les voies de recours prévues par le droit interne n'avaient pas été épuisées.

«Mais, qu'ils soient justifiables ou non, les actes qui font l'objet de la plainte ont été commis par un fonctionnaire municipal du département, dont la conduite ne saurait engager la responsabilité du Gouvernement mexicain, à moins que lesdits actes n'aient été commis avec l'autorisation de celui-ci. Ce serait adopter un point de vue extraordinaire que de prétendre, en invoquant le droit des gens, qu'un gouvernement doit réparation pour tout dommage pouvant résulter des actes illégaux ou irréguliers de l'un de ses fonctionnaires municipaux subalternes. Pour obtenir réparation des dommages de ce genre, la partie lésée doit recourir à une action contre l'auteur de l'acte en question et elle a accès aux tribunaux judiciaires pour exercer ce recours, mais ne peut réclamer d'indemnité au gouvernement. En tout ce qui concerne cette affaire, le demandeur avait accès aux tribunaux du Mexique, et c'est à eux qu'il aurait dû faire appel. » Bensley (Etats-Unis) c. Mexique 3 mars, Moore's Arb. 3017.

Un fonctionnaire, qui avait arrêté arbitrairement un étranger, ayant été poursuivi par son propre gouvernement, puni d'une amende, blâmé et congédié, un demandeur ne put obtenir d'indemnité. *Pierce* (Etats-Unis) c. Mexique, 4 juillet 1868, Moore's Arb. 3252.

Quatre catégories de cas, dans lesquels l'Etat peut être tenu responsable d'actes non autorisés de fonctionnaires, sont cités dans l'affaire *De Brissot* (Etats-Unis) c. Venezuela:

« 1. Le gouvernement peut avoir eu connaissance suffisamment tôt pour l'empêcher, de l'acte illégal que son fonctionnaire se proposait de commettre, et ne l'a pas effectivement empêché.

« 2. Ayant été en mesure de révoquer en temps utile l'acte de son fonctionnaire, il n'a pas agi dans ce sens.

« 3. L'ignorance de l'intention du fonctionnaire de commettre l'acte en question peut, en raison des circonstances, être jugée malveillante ou criminelle.

« 4. Etant au courant des faits, le gouvernement ne s'est pas hâté de blâmer les actes de son agent ou de prendre des mesures appropriées en vue d'éviter le renouvellement ultérieur des mêmes fautes. » 5 décembre 1885, Moore's Arb. 2949, 2953.

Dans un cas où l'Etat s'était injustement enrichi par suite des actes de fonctionnaires qui avaient outrepassé leur compétence, le gouvernement a été considéré comme directement

punished, the State may fairly be supposed to have identified itself with them." Hall's Int. Law, 4th edition, 226; Venezuela Arb. of 1903, 165.

In the case of damage caused on the sea, the United States was held liable in the case of the *Confidence*, since it was found that the Constitution was at fault in a collision. No reference was made to the exhaustion of local remedies. *Confidence* (Gt. Britain) v. United States, January 13th, 1855, Moore's Arb., 3063. In the cases cited below before the American and British Claims Arbitration Commission of August 18th, 1910, which follow the *Confidence* case, the terms of submission, while not making mandatory the previous exhaustion of local remedies, permitted the commission to require their exhaustion to such extent as it should consider just. *The Lindsjarne* (Gt. Britain) v. United States, American and British Claims Arb., August 18th, 1910, Neilsen Report, 483; *The Canadienne* (Gt. Britain) v. United States, *ibid.* 427; *The Sidra* (Gt. Britain) v. United States, *ibid.* 453, *The Lanie Cobb* (U. S.) v. Venezuela, Mr. Bayard, Secretary of State, to Mr. Scott, September 3rd, 1885, Moore, Digest, VI, 757 (local redress had been refused); *The Jessie*, etc., (Gt. Britain) v. United States, American and British Claims Arb., August 18th, 1910, Neilsen Report, 479, 480 (illegal interference with fishing vessels).

Unlawful capture by privateers has been held to render the State responsible. Protocol between the United States and Venezuela, May 1st, 1852, U.S. Treaties and Conventions, II, page 1842.

" A claim for damages exists against a vessel of the United States guilty of a maritime tort, as much as if the offending vessel belonged to a private citizen; and although, for reasons of public policy, the claim cannot be enforced by direct proceedings against the vessel, yet it will be enforced by the courts whenever the property itself, upon which the claim exists, becomes, through the affirmative action of the United States, subject to their jurisdiction and control. Therefore, where a prize ship, in charge of a prize master and crew, committed a maritime tort by running into and sinking another vessel, the damages of the owners of the latter were ordered to be assessed and paid out of the proceeds of the sale of the former, before distribution to the captors." *The Siren*, 7 Wall, 1952, Moore, Digest, VI, 756-757.

2 b.

" . . . A Government can only be held responsible when it sanctions the action of its officials, done in violation of law; it ought not to be held responsible for unauthorised acts which it promptly disowns upon being cognisant thereof; the responsibility in such case falls upon the offending official. Your remedy lies in a private action against the municipal officers who committed the outrage upon you wilfully or through over-zeal in the performance of a supposed duty." Mr. Tripp, Minister to Austria, to Mr. Mix, October 11th, 1893, Foreign Relations 1894, 25.

For the acts of officers of municipalities the State has not been held responsible, when local remedies were not exhausted.

" . . . But, whether justifiable or otherwise, the acts complained of were committed by a municipal officer of the department for whose conduct the Government of Mexico cannot be held responsible unless done by its authority. It would be an extraordinary position to assume under the law of nations that a Government is liable to afford an indemnity for every injury which may result from the illegal or irregular acts of any of its subordinate municipal officers. For injuries thus committed the party must find his redress by a prosecution against the individual by whom the wrong was done, and while the tribunals of justice are kept open to afford this redress, an indemnity cannot be demanded from the Government. For all that appears in this case, the courts of Mexico were open to the claimant and to them he should have appealed." *Bensley* (U.S.) v. Mexico, March 3rd, Moore's Arb. 3017.

Where an official, who arbitrarily arrested a foreigner, was proceeded against by his own Government, fined, reprimanded, and dismissed from office, a claimant was denied an award. *Pierce* (U.S.) v. Mexico, July 4th 1868, Moore's Arb. 3252.

Four categories where the State may be held responsible for unauthorised acts of officers are quoted in the *De Brissot* (U.S.) v. Venezuela case:

" 1. That the Government may have known in due time to prevent it the illegal act which its officer intended to commit, and did not prevent it.

" 2. That it, having been enabled to revoke in time the act of its officer, did not revoke it.

" 3. That the ignorance of the act intended by the officer may, by its circumstances, be judged as malicious or criminal.

" 4. That, having been advised of the facts, it had not pressed itself to blame the acts of its agent, nor to take the proper measures to prevent in future the repetition of the same faults." December 5th, 1885, Moore's Arb. 2949, 2953.

Where the State has been unjustly enriched as a result of the acts of officials in excess of their authority, the Government has been held immediately responsible. *Callaghan* (U.S.) v. Mexico,

responsable. Callaghan (Etats-Unis) c. Mexique, 11 avril 1839, Moore's Arb., 4346 (navire retenu aux fins d'une perception illégale de droits de douane. Les fonctionnaires des douanes avaient refusé d'exécuter l'arrêt d'un tribunal mexicain selon lequel le navire devait être relâché); Lewis (Grande-Bretagne) c. Etats-Unis, 8 mai 1871, Rapport Hale, 162; Adams (Etats-Unis) c. Mexique, 4 juillet 1868, Moore's Arb. 3065.

2 c). Lorsque les agents d'un gouvernement à l'étranger ont eu recours, sans autorisation, à un conseil, chargé d'agir dans l'intérêt de leur gouvernement, l'Etat a été considéré comme responsable. Dans l'affaire Trumbull (Chili) c. Etats-Unis, le Ministre américain avait outrepassé ses instructions en ayant recours à un conseil dans une affaire d'extradition. La Commission a estimé que le demandeur « était fondé à présumer que le Ministre des Etats-Unis avait agi conformément aux instructions du Secrétaire d'Etat, ainsi qu'à la règle selon laquelle les frais d'extradition, y compris les honoraires du conseil, sont à la charge de l'Etat demandeur ». 7 août 1892, Moore's Arb. 3570.

Dans l'affaire Hemming (Grande-Bretagne) c. Etats-Unis, ceux-ci ont refusé de reconnaître à leur consul le pouvoir de faire appel à un attorney en vue d'empêcher la contrefaçon de monnaies américaines dans l'Inde. La Commission a formulé une décision fondée sur le fait que le Gouvernement des Etats-Unis n'ignorait pas « que Hemming était employé dans une procédure entreprise au seul bénéfice de ce gouvernement, que celui-ci n'avait formulé, au cours de l'affaire, aucune objection contre les mesures prises par son Consul, mais semblait, de toute manière, avoir implicitement approuvé ces mesures et le recours aux services de Hemming ». 8 décembre 1920, American and British Claims Arb., Rapport Neilsen, 617, 622; Davies (Etats-Unis) c. Mexique, Opinions des Commissaires nommés en vertu de la Convention, 8 septembre 1923, 195-205 (contrat pour services légaux conclus avec l'agent fiscal du Gouvernement mexicain aux Etats-Unis).

Toutefois, il doit être prouvé qu'un contrat a été conclu au profit de l'Etat auquel appartient l'agent, et non au profit de cet agent lui-même. Hayes (Etats-Unis) c. Mexique, 23 janvier 1850, Moore's Arb. 3456.

2 d).

« La règle générale de droit international qu'observent les Etats-Unis est la suivante: les souverains ne peuvent être actionnés par voie de procédure diplomatique pour des dommages résultant d'actes illégaux de fonctionnaires et d'agents subalternes commis en dehors de leur compétence non seulement réelle, mais apparente ». M. Adee, Secrétaire d'Etat p. i., au baron de Fava, Ambassadeur d'Italie, 14 août 1900, Moore, Digest, VI, 743; M. Bayard, Secrétaire d'Etat, à M. Clark, 17 août 1885, *idem*.

« Le meurtre d'un défendeur par un fonctionnaire, animé d'un ressentiment personnel, au cours d'un procès civil, après la signification de l'ordonnance, doit être considéré comme un acte personnel du fonctionnaire, acte dont le Gouvernement n'est pas responsable. » M. Bayard, Secrétaire d'Etat, à M. West, Ministre de Grande-Bretagne, 1^{er} juin 1885, Foreign Relations 1885, 450; Moore, Digest, VI, 742.

«La détention du jeune garçon semble avoir constitué un délit arbitraire commis par le gouverneur, sans aucune apparence de procédure officielle et sans aucun rapport avec ses fonctions officielles. Celui-ci était personnellement responsable envers le demandeur du dommage résultant de cet acte non autorisé et il ne semble pas qu'il n'eût pas été possible d'obtenir ample réparation en faisant appel aux tribunaux judiciaires du pays. Si l'accès des tribunaux du Mexique et le droit d'ester en justice avaient été refusés au demandeur, ce refus aurait pu constituer un motif d'action en dédommagement contre le Gouvernement du Mexique ». Bensley (Etats-Unis) c. Mexique, 3 mars 1849, Moore's Arb. 3018.

Un avis formulé par l'Attorney-General Akerman, en 1871, et communiqué à M. Fish, Secrétaire d'Etat, contient ce qui suit:

« Même si l'accusation de corruption était fondée, ce qui ne semble pas être le cas, j'estime que le Gouvernement brésilien ne serait pas responsable. L'acte irrégulier qui a été commis ne violait aucune des stipulations des traités existant entre le Brésil et les Etats-Unis. Cet acte n'a pas profité au Trésor public du pays, mais était destiné uniquement à servir des intérêts privés ». Thirteen Opinions 553; Cahill (Etats-Unis) c. Espagne, 8 janvier 1876; Moore's Arb. 3066.

2 e) Dans un cas où un juge avait été exonéré des conséquences de ses actes illégaux par un décret judiciaire stipulant que les actes en question étaient couverts par une loi d'amnistie, l'avis suivant a été formulé:

« Les lois d'amnistie de l'Etat privaient les demandeurs de tout recours en appel et de toute voie de recours devant les autorités de Bolivar. En adoptant ultérieurement ces lois, le Gouvernement national de la Colombie a rendu également inutile le recours à ses tribunaux. Le pouvoir exécutif suprême de la nation était dûment informé de ces faits, mais, après avoir retardé considérablement sa décision, il refusa finalement de fournir les moyens d'obtenir réparation ». Cotesworth et Powell, août 1875, Moore's Arb. 2050-2085.

Le Commissaire Scruggs a déclaré que « la Colombie était responsable uniquement en ce qui concernait les conséquences de l'amnistie, se ralliant ainsi... au principe, généralement reconnu en politique internationale, selon lequel un pays, en acquittant un criminel, assume la responsabilité de ses actes passés ». *Idem*. voir *The Montijo* (Etats-Unis) c. Colombie, 26 juillet 1875, Moore's Arb. 1421, 1428.

April 11th, 1839, Moore's Arb., 4346 (vessel detained unlawfully to collect duty. Custom officials refused to carry out decree of Mexican court to release vessel); Lewis (Gt. Britain) v. United States May 8th, 1871, Hale Report, 162; Adams (U.S.) v. Mexico, July 4th, 1868, Moore's Arb. 3065.

2 c. Where Government agents abroad have retained, without authority, counsel to act for the benefit of their Governments, the State has been held responsible. In the case of Trumbull (Chile) v. United States, the American Minister had exceeded his authority in retaining counsel in an extradition case. The commission held that the claimant "was justified in presuming that the Minister of the United States acted in accordance with his instructions from the Secretary of State, and also pursuant to the rule that the expenses of extradition, including fees of counsel are paid by the demanding State." August 7th, 1892, Moore's Arb. 3570.

In the case of Hemming (Gt. Britain) v. United States, the latter denied the authority of its Consul to retain an attorney to prevent counterfeiting of American coin in India. The Commission made an award on the ground that the United States Government was aware "of Hemming's employment in a prosecution initiated solely for its benefit, that it did not object in any way whatever during the progress of the case to the steps taken by its Consul, but appeared implicitly at all events to approve of those steps and of Hemming's employment". December 8th, 1920, American and British Claims Arb., Neilsen Report, 617, 622; Davies (U.S.) v. Mexico, Opinions of Commissioners under Convention, September 8th, 1923, 195-205 [Contract for legal services made with Fiscal Agent of the Mexican Government in the United States.]

However, there must be proof that a contract was made for the benefit of the agent's State and not for his own benefit. Hayes (U.S.) v. Mexico, January 23rd, 1850, Moore's Arb. 3456.

2 d.

"The general rule of international law observed by the United States is that sovereigns are not liable in diplomatic procedure for damages occasioned by the misconduct of petty officials and agents acting out of the range not only of their real but of their apparent authority." Mr. Adee, Acting Secretary of State, to Baron de Fava, Italian Ambassador, August 14th, 1900, Moore's Digest, VI, 743; Mr. Bayard, Secretary of State, to Mr. Clark, August 17th, 1885, *ibid.*

"Killing by an officer, in personal malice, of a defendant in a civil process, after service of the writ, is to be considered as the personal act of the officer for which the Government is not answerable." Mr. Bayard, Secretary of State, to Mr. West, British Minister, June 1st, 1885, Foreign Relations 1885, 450; Moore, Digest, VI, 742.

". . . The detention of the boy appears to have been a wanton trespass committed by the governor, under no colour of official proceedings, and without any connection with his official duties. For the damages resulting from this unauthorised act, he was individually responsible to the claimant, and it does not appear that ample redress might not have been obtained by a resort to the judicial tribunals of the country. Had the courts of Mexico been closed to the claimant and justice denied him, that might have constituted a ground for a claim of indemnity against the Government of Mexico." Bensley (U.S.) v. Mexico, March 3rd, 1849, Moore's Arb. 3018.

An opinion of Attorney-General Akerman, given in 1871 to Mr. Fish, Secretary of State, stated:

"Even if the charge of corruption were established, which does not appear to be the fact, I am of the opinion that the Brazilian Government would not be responsible. The misconduct violated no treaty stipulations between Brazil and the United States. It did not benefit the public treasury of the country, but was in aid of a private interest." Thirteen Opinions 553; Cahill (U.S.) v. Spain, January 8th, 1876; Moore's Arb. 3066.

2 e. Where a judicial decree released a judge from the consequences of his illegal acts, declaring the acts to be within an amnesty law, it was held that:

"The amnesty laws of the State took away from the claimants all appellate recourse, and all means of redress before the authorities at Bolivar. By subsequently adopting those laws, the national Government of Colombia rendered recourse to its tribunals equally useless. The chief executive of the nation was duly informed of these facts; but, after considerable delay, finally refused to provide means for reparation." Cotesworth and Powell, August 1875, Moore's Arb. 2050-2085.

Commissioner Scruggs placed the "responsibility of Colombia solely upon the consequences of the amnesty, thus adhering . . . to the well-established principle in international policy, that, by pardoning a criminal, a nation assumes responsibility for his past acts." *Ibid.* see *The Montijo* (U.S.) v. Colombia, July 26, 1875, Moore's Arb. 1421, 1438.

VI.

Dans l'affaire *Brissot (Etats-Unis) contre le Venezuela*, le Commissaire Findlay s'est exprimé comme suit :

« L'Etat d'Apure ne possède pas de pavillon reconnu parmi les pavillons nationaux du monde; il ne peut faire la guerre à d'autres nations; il ne peut ni conclure ni violer des traités et, en ce qui concerne ses relations avec les Puissances étrangères, son existence est complètement absorbée par la souveraineté des Etats-Unis du Venezuela dont, par la force des choses, la responsabilité se trouve engagée, dans tous les cas appropriés, pour tout acte commis dans les limites de leur juridiction. » Moore's Arb. 2971 (voir cas cités à la question X).

C'est seulement en matière d'obligations contractuelles assumées par des subdivisions politiques locales de la nation qu'il a été dérogé à cette règle, pour le motif que, en pareil cas, l'étranger est supposé avoir uniquement fait fond sur le crédit de la subdivision politique locale de l'Etat. *Thompson (E. U.) c. Mexique*, 4 juillet 1868, Moore's Arb. 3484; *Nolan (E. U.) c. Mexique*, *ibid.*, 3484; *La Guaiaria Light and Power Co (E. U.) c. Venezuela*, arbitrages vénézuéliens de 1903, 178, 181; *Affaires Florida Bond (Grande-Bretagne) c. Etats-Unis*, 8 février 1853, Moore's Arb., 3595, 3609.

VII.

a) L'Etat n'est pas responsable des actes délictueux commis par des particuliers à l'égard d'étrangers. « L'acte d'un sujet ne peut jamais être l'acte du souverain, à moins que le sujet n'ait été mandaté à cet effet par le souverain. » *Affaire de la Résolution*, Cours fédérales d'appel 1781, 2 Dallas I; Moore, Digest, VI, 787; M. Forsyth, Secrétaire d'Etat, à M. Calderon de la Barca, 17 septembre 1839, *ibid.*

C'est seulement lorsque des fonctionnaires de l'Etat omettent, après en avoir eu l'occasion, d'user de toute la diligence voulue pour empêcher le dommage, et lorsque la législation nationale ne permet pas d'obtenir réparation, que la responsabilité de l'Etat se trouve engagée. L'Etat ne garantit pas qu'il réussira à empêcher l'acte délictueux, bien qu'il soit tenu d'exercer toute la diligence voulue pour maintenir l'ordre, empêcher le délit et accorder une protection raisonnable aux personnes et aux biens des étrangers. Pour que sa responsabilité soit engagée, il faut nécessairement qu'il y ait faute de la part de l'Etat, indépendamment de l'acte d'un particulier. *Affaire de l'Alabama*, dans laquelle la Grande-Bretagne a été considérée comme responsable pour n'avoir pas empêché des particuliers de violer la neutralité britannique, Moore, Digest, VI, 998, 999; M. Bayard, Secrétaire d'Etat, à M. Scruggs, 19 mai 1885, *Foreign Relations* 1885, 211, 212; M. Hay, Secrétaire d'Etat à M. Fowler, 15 avril 1899, Moore, Digest, VI, 792.

« Aux termes du droit international, si les ressortissants d'un Etat causent un dommage aux ressortissants d'un autre Etat, le gouvernement du sujet qui a commis l'offense doit prendre toute mesure raisonnable pour que l'offenseur répare le dommage causé. Mais, si l'offenseur est passible des procédures légales ordinaires, nous estimons que, d'une manière générale, ce principe ne va pas jusqu'à obliger le gouvernement à donner satisfaction en cas d'incapacité de l'offenseur. » Lincoln, Attorney-General, 1802, I Opinions 107, Moore, Digest, VI, 787.

« Le gouvernement d'un Etat étranger est responsable non seulement de tout dommage causé par lui ou avec son autorisation à des citoyens des Etats-Unis ou à leurs biens, mais aussi de tout dommage de ce genre qu'il aurait pu éviter s'il avait pris les mesures de précaution raisonnables. » Rapport du D^r Francis Wharton, Solicitor du Département d'Etat, confirmé par M. Bayard, Secrétaire d'Etat, à M. Scruggs, Ministre en Colombie, 19 mai 1885, *Foreign Relations* 1885, 212, Moore, Digest, VI, 791.

Dans une affaire où le gouvernement n'avait reçu aucun renseignement et n'avait aucune raison lui permettant de prévoir que des sauvages tenteraient une incursion pour piller un navire échoué, le demandeur a été débouté de sa plainte. *Wippermann (E. U.) c. Venezuela*, 5 décembre 1885, Moore's Arb. 3043; *Dickens (E. U.) c. Mexique*, 4 juillet 1868, *ibid.* 3037 (il n'avait pas été établi que les autorités mexicaines eussent omis de faire preuve de la diligence voulue pour prévenir un vol de bétail sur la frontière du Texas); *Mills (E. U.) c. Mexique*, 4 juillet 1868; *Johnson (E. U.) c. Mexique*, 3 mars 1849, *ibid.* 3031.

Toutefois, lorsque l'acte de particuliers, qui est l'objet de la plainte, fait partie d'une série d'actes similaires, la répétition de cet acte, ainsi que son caractère public et notoire, tend à faire présumer que les autorités en ont eu connaissance, et la responsabilité de l'Etat peut se trouver engagée. *Affaire Baldwin c. Mexique*, 1887, Moore, Digest, VI, 803. Voir *Wipperman (E. U.) c. Venezuela*, 5 décembre 1885, Moore's Arb. 3042. Le premier devoir de tout gouvernement est « de protéger la vie et les biens. C'est pour remplir cette obligation suprême que les gouvernements sont institués, et ceux qui négligent ou omettent de s'y conformer ne sont pas dignes du nom de gouvernement ». M. Lansing, Secrétaire d'Etat, au Secrétaire des Affaires étrangères du Gouvernement de facto du Mexique, 20 juin 1916, *Foreign Relations* 1916, 581, 591.

b) « Un Etat... est responsable des préjudices causés à des citoyens d'un autre Etat dans tous les cas où il est loisible à l'offenseur de rester en liberté sans qu'il lui soit demandé compte de son délit ou qu'il en soit châtié ou sans qu'un effort sincère ait été tenté en vue de l'arrêter et de le punir. » *Brissot (E. U.) c. Venezuela*, 5 décembre 1885, Moore's Arb. 2969; *Affaires Piedras Negras (Mexique) c. Etats-Unis*, 4 juillet 1868, Moore's Arb. 3035, 3037; M. Hay, Secrétaire d'Etat, à M. Strauss, 25 mars 1899, *ibid.* 794; *Affaire Renton*, M. Hay,

VI.

In the case of *Brissot (U.S.) v. Venezuela*, Commissioner Findlay said:

"Apure has no flag recognised among the national flags of the world; she has no power to make war on other nations; she can make no treaties and she can break none; and, as far as her relations with foreign Powers are concerned, her existence is completely veiled in the sovereignty of the United States of Venezuela, which, by the necessity of the status, must be responsible in any proper case for whatever is done within the limits of its jurisdiction." *Moore's Arb.*, 2971 (see cases cited under Question X).

Only in the matter of contractual obligations, entered into by local political subdivisions of the nation, has this rule been departed from for the reason that the foreigner in such cases is deemed to have relied exclusively on the credit of the local political subdivision of the State. *Thompson (U.S.) v. Mexico*, July 4th, 1868, *Moore's Arb.* 3484; *Nolan (U.S.) v. Mexico*, *ibid.*, 3484; *La Guiara Light & Power Co. (U.S.) v. Venezuela*, Venezuelan Arbitrations of 1903, 178, 181; *Florida Bond cases (Gt. Britain) v. United States*, February 8th, 1853, *Moore's Arb.*, 3595, 3609.

VII.

(a) The State is not responsible for the wrongful acts of individuals directed against aliens. "The act of the subject can never be the act of the sovereign; unless the subject has been commissioned by the sovereign." Case of the *Resolution*, Federal Courts of Appeal, 1781, 2 Dallas 1; *Moore, Digest*, VI, 787; Mr. Forsyth, Secretary of State, to Mr. Calderon de la Barca, September 17, 1839, *ibid.*

It is only where State officials fail after opportunity to use due diligence to prevent the injury and there is no local redress that State responsibility arises. The State is not a guarantor of successful prevention, although it must exercise due diligence to preserve order, prevent crime and confer reasonable protection to the person and property of foreigners. A delinquency on the part of the State, independent of the act of a private citizen, is essential to raise responsibility. Case of the *Alabama*, in which Great Britain was held liable for failure to prevent individuals from violating British neutrality, *Moore, Digest*, VI, 998, 999; Mr. Bayard, Secretary of State, to Mr. Scruggs, May 19th, 1885, *Foreign Relations 1885*, 211, 212; Mr. Hay, Secretary of State, to Mr. Fowler, April 15th, 1899, *Moore, Digest*, VI, 792.

"By the law of nations, if the citizens of one State do an injury to the citizens of another, the Government of the offending subject ought to take every reasonable measure to cause reparation to be made by the offended. But if the offender is subject to the ordinary processes of law, it is believed this principle does not generally extend to oblige the Government to make satisfaction in case of the inability of the offender." Lincoln, Attorney-General, 1802, 1 Opinions 107; *Moore, Digest*, VI, 787.

"The Government of a foreign State is liable not only for any injury done by it, or with its permission, to citizens of the United States or their property, but for any such injury which, by the exercise of reasonable care, it could have averted." Report of Dr. Francis Wharton, Solicitor of Department of State, affirmed by Mr. Bayard, Secretary of State, to Mr. Scruggs, Minister to Colombia, May 19th, 1885, *Foreign Relations 1885*, 212; *Moore, Digest*, VI, 791.

In a case where the Government had no notice or cause to expect a raid on a stranded vessel by savages, the claim was rejected. *Wipperman (U.S.) v. Venezuela*, December 5th, 1885, *Moore's Arb.* 3043; *Dickens (U.S.) v. Mexico*, July 4th, 1868, *ibid.*, 3037 (no proof of want of due diligence on part of Mexican authorities to prevent robbery of cattle on Texas border); *Mills (U.S.) v. Mexico*, July 4th, 1868; *Johnson (U.S.) v. Mexico*, March 3rd, 1849, *ibid.*, 3031.

However, where the act of private persons complained of is only one in a series of similar acts, the repetition, as well as its open and notorious character, raises a presumption of knowledge on the part of authorities which may raise State responsibility. *Baldwin Claim v. Mexico*, 1887, *Moore, Digest*, VI, 803. See *Wipperman (U.S.) v. Venezuela*, December 5th, 1885, *Moore's Arb.* 3042. The first duty of any Government is "the protection of life and property. This is the paramount obligation for which Governments are instituted, and Governments neglecting or failing to perform it are not worthy of the name." Mr. Lansing, Secretary of State, to Secretary of Foreign Relations of the *de facto* Government of Mexico, June 20th, 1916, *Foreign Relations 1916*, 581, 591.

(b) "A State . . . is liable for wrongs inflicted upon citizens of another State in any case where the offender is permitted to go at large without being called to account or punished for his offence, or some honest endeavour made for his arrest and punishment." *Brissot (U.S.) v. Venezuela*, December 5th, 1885, *Moore's Arb.* 2969; *Piedras Negras Claims (Mexico) v. United States*, July 4th, 1868, *Moore's Arb.* 3035, 3037; Mr. Hay, Secretary of State, to Mr. Strauss, March 25th, 1899, *ibid.* 794; *Renton Case*, Mr. Hay, Secretary of State, to Mr. Combs, February 25th, 1904, *Moore, Digest*, VI, 798-799; *Ruden (U.S.) v. Peru*, *ibid.*

Secrétaire d'Etat, à M. Combs, 25 février 1904, Moore, Digest, VI, 798-799; Ruden (E. U.) c. Pérou, *ibid.* 1655; Janes (E. U.) c. Mexique, 8 septembre 1923, Avis des Commissaires, 108, 114; Mallen (Mexique) c. E. U. *ibid.* 254, 261.

Mais lorsque les autorités ont promptement appréhendé les criminels et les ont punis, il a été admis que la responsabilité de l'Etat n'était pas engagée. M. Gresham, secrétaire d'Etat, à Madame Robinson, 20 septembre 1894, Moore, digest, VI, 806.

c) Si un particulier cause un dommage à un étranger par animosité personnelle contre l'étranger, en raison de sa qualité d'étranger, ce fait seul ne suffit pas à engager la responsabilité de l'Etat. Une hostilité notoire à l'égard d'une personne étrangère ou d'une catégorie d'étrangers pourrait obliger l'Etat à assurer une protection plus étendue, en vertu du principe de la diligence qu'il convient d'exercer pour prévenir un dommage. A moins que le gouvernement n'ait omis d'user de cette diligence ou ait ratifié ou approuvé l'acte, expressément ou implicitement, en négligeant de l'empêcher ou en omettant de faire une enquête et de punir le coupable, il semble que la responsabilité de l'Etat ne puisse être engagée. La responsabilité a été invoquée en raison d'un boycottage dirigé contre des étrangers appartenant à un certain Etat. On a conseillé à l'Etat requérant d'inviter les personnes lésées à demander réparation auprès des autorités judiciaires du pays. M. Sherman, Secrétaire d'Etat, à M. Hoshi, Ministre du Japon, 31 mars 1897, Moore, Digest, VI, 791. Toutefois, on a demandé la suppression d'un boycottage en Chine, en faisant valoir qu'il constituait une violation d'une disposition d'un traité et qu'il était encouragé par des personnes occupant un rang officiel. Foreign Relations, 1905, 204 à 234.

d) La responsabilité de l'Etat n'étant pas engagée en raison d'un dommage causé par un particulier à un étranger, mais en raison de quelque négligence indépendante de cet acte, commise par le gouvernement, en n'usant pas de la diligence voulue pour prévenir le dommage ou en omettant, soit de punir le coupable, soit de fournir à la personne lésée une occasion adéquate d'obtenir réparation, l'attitude provocatrice de l'étranger victime du dommage ne peut exercer aucun effet matériel sur la responsabilité de l'Etat. Massey (E. U.) c. Mexique, Opinions des Commissaires, 8 septembre 1923, 228, 230.

VIII.

Pour obtenir réparation de dommages causés par les forces armées de l'Etat au cours d'une insurrection, il est nécessaire de prouver « que les actes qui ont causé le préjudice ont été accomplis arbitrairement et sans nécessité ». Spanish Treaty Claims Comm., Fuller Report, 1907, page 25.

« ...Lorsqu'il sera affirmé et prouvé, dans un cas spécial porté devant cette Commission, que les autorités espagnoles, si elles avaient exercé la diligence voulue, auraient pu empêcher le dommage causé, l'Espagne sera, dans ledit cas, tenue pour responsable. » Décisions de la Spanish Treaty Claims Commission, Rapport définitif 1910, page 6.

En cas de dommages causés à des étrangers au cours d'une insurrection « une réclamation doit nécessairement être fondée sur une assertion positive et une preuve raisonnable établissant que les fonctionnaires responsables du Gouvernement espagnol, étant en mesure d'empêcher ce dommage, ont omis d'exercer la diligence voulue à cet effet. » M. Uhl, Secrétaire d'Etat par intérim à M. Springer, Foreign Relations 1895, page 1216.

La Spanish Claims Commission a accordé réparation dans deux cas exceptionnels où les biens des requérants avaient été incendiés par les insurgés après que les fonctionnaires espagnols eurent, d'une manière injustifiable, refusé aux propriétaires de les transporter en lieu sûr ou eurent, à tort, empêché ce transport. Rodrigues, N° 479, et Thorne, N° 284, Rapport définitif de la Spanish Treaty Claims Commission, 1910, page 12. La négligence du gouvernement a également été établie dans l'affaire de Tuicunu, N° 240, *ibid.* II. C'est au requérant qu'il incombe de prouver la négligence. M. Bayard, Secrétaire d'Etat, à M. Sutphen, le 6 janvier 1888, Moore, Digest, VI, 964.

En cas de violence commise par la foule, les fonctionnaires de l'Etat doivent user de la diligence voulue pour protéger les étrangers. Dans un cas où un fonctionnaire avait participé aux activités d'une bande de séditionnaires, l'Etat a été tenu pour responsable. Donougho (E.U.) c. Mexique, 4 juillet 1868, Moore's Arb. 3014. Dans un cas où il avait été prouvé que des soldats s'étaient joints à une foule d'émeutiers, il a été déclaré ce qui suit:

« On ne peut prétendre à bon droit que les étrangers jouissent d'une protection adéquate lorsque les organes mêmes de la loi chargés d'assurer cette protection participent au meurtre. » Youman (E.U.) c. Mexique, Avis des Commissaires, 8 septembre 1923, 150, 157.

Lorsque les autorités omettent de prendre des mesures pour disperser une foule, tout en ayant connaissance de ses agissements, l'Etat doit être tenu pour responsable. M. Evarts, Secrétaire d'Etat, à M. Gibbs, Ministre au Pérou, 28 mai 1878, Moore, Digest, VI, 817 à 818.

« Un gouvernement étant en mesure de réprimer ces désordres et ne l'ayant pas fait, et des biens américains ayant, de ce fait, subi des dommages, les Etats-Unis soutiennent que la Turquie peut être rendue responsable, aux termes d'un principe de droit international bien reconnu. » M. Sherman, Secrétaire d'Etat, à M. Angell, Ministre en Turquie, 3 août 1897, Foreign Relations 1897, 592.

Dans l'affaire Dehœc (France) c. Etats-Unis, une réclamation a été présentée, pour le motif qu'un dommage avait été causé par les autorités des Etats-Unis chargées de protéger contre la

1655; *Janes (U.S.) v. Mexico*, September 8th, 1923, Opinions of Commissioners, 108, 114; *Mallen (Mexico) v. U.S. ibid.*, 254, 261.

But where the authorities promptly apprehended criminals and punished them, State responsibility was held not to arise. Mr. Gresham, Secretary of State, to Mrs. Robinson, September 20th, 1894, Moore, Digest, VI, 806.

(c) If a private individual injures an alien because of personal animosity against the foreigner as such, that fact alone should not raise State responsibility. A notorious hostility to a particular foreigner or class of foreigners might require more protection under the principle of due diligence to prevent an injury. Unless the Government has failed to exercise such due diligence, or has ratified or approved the act, expressly or implicitly, by a negligent failure to prevent or a failure to investigate or punish, there would seem to be no basis for State responsibility. Responsibility has been claimed for a boycott directed against foreigners of a particular State. The claimant State was advised to have the injured persons seek local judicial redress. Mr. Sherman, Secretary of State, to Mr. Hoshi, Japanese Minister, March 31st, 1897, Moore, Digest, VI, 791. However, a demand was made for the suppression of a boycott in China on the ground that it was in violation of a treaty provision and encouraged by persons of official rank. Foreign Relations, 1905, 204 to 234.

(d) Since State responsibility is not incurred by reason of a tort committed by a private citizen upon a foreigner, but by reason of some independent negligence on the part of the Government in failing to use due diligence to prevent the injury or in failure to punish the guilty or afford an adequate opportunity for redress, the provocative attitude of the alien victim of the injury cannot have any material effect on State responsibility. *Massey (U.S.) v. Mexico*, Opinions of Commissioners, September 8th, 1923, 228, 230.

VIII.

In order to recover for damages done by the Government forces during an insurrection it is necessary to prove "that the acts done which resulted in the injury were done wantonly and unnecessarily." Spanish Treaty Claims Comm., Fuller Report, 1907, page 25.

"If . . . it be alleged and proved in any particular case before this Commission that the Spanish authorities, by the exercise of due diligence, might have prevented the damage done, Spain will be held liable in that case." Rules, Spanish Treaty Claims Commission, Final Report 1910, page 6.

In the event of injury to foreigners during an insurrection "a claim would necessarily have to be founded upon averment and reasonable proof that the responsible officers of the Spanish Government, being in position to prevent such injury, have failed to use due diligence to do so." Mr. Uhl, Acting-Secretary of State to Mr. Springer, Foreign Relations 1895, page 1216.

The Spanish Claims Commission made awards in two exceptional cases of the burning of the claimant's property by insurgents after the Spanish officials had unjustifiably refused to allow the owners to remove it to a place of safety or had wrongfully prevented its removal. Rodrigues, No. 479, and Thorne, No. 284, Final Report of the Spanish Treaty Claims Commission, 1910, page 12. Governmental negligence was also proved in the case of Tuinucu, No. 240, *ibid.* 11. The burden of proving negligence is on the claimant. Mr. Bayard, Secretary of State, to Mr. Sutphen on January 6th, 1888, Moore, Digest, VI, 964.

In mob violence cases, State officials must exercise due diligence to protect foreigners. In a case where an official took part in the activities of a disorderly posse, the State was held responsible. *Donoughho (U.S.) v. Mexico*, July 4th, 1868, Moore's Arb. 3014. In a case where the participation of soldiers with members of a mob was established, it was said:

"It cannot properly be said that adequate protection is afforded to foreigners in a case in which the proper agencies of the law to afford protection participate in murder." *Youman (U.S.) v. Mexico*, Opinions of Commissioners, September 8th, 1923, 150, 157.

Where the authorities fail to take measures to suppress a mob, having knowledge of its activities, the State should be held responsible. Mr. Evarts, Secretary of State, to Mr. Gibbs, Minister to Peru, May 28th, 1878, Moore, Digest, VI, 817 to 818.

"A Government being able to quell and not quelling such disorders, and damage to American property having resulted, the United States contends that Turkey can be held responsible under a well-recognized principle of international law." Mr. Sherman, Secretary of State, to Mr. Angell, Minister to Turkey, August 23rd, 1897, Foreign Relations 1897, 592.

In the case of *Debec (France) v. United States*, a claim was made on the grounds that damage was caused by the authorities of the United States engaged in protecting the claimant's property

foule, la propriété du requérant. La Commission a rejeté la plainte en invoquant que les dégâts avaient été commis par la foule. 15 janvier 1880, Moore's Arb. 3031.

Les affaires citées ci-dessus dans la présente question s'appliquent également au cas d'une « propriété détruite au cours de la lutte ». Toutefois, si la propriété a été détruite afin d'empêcher qu'elle tombât aux mains de l'ennemi, il a été décidé dans l'affaire Tumer (Grande-Bretagne) c. Etats-Unis, qu'il s'agissait d'une réquisition de la propriété aux fins d'usage public, réquisition pour laquelle une indemnité devait être payée. Mixed Commission on British-American Claims, 8 mai 1871, Rapport de l'Agent britannique, 27; Affaire du York, British-American Claims Commission, 8 mai 1871, Moore's Arb. 4378; Bertrand (France) c. Etats-Unis, 15 janvier 1880, *ibid.* 3707.

La fermeture, par un Etat, d'un port relevant de son autorité, rentre ordinairement dans les attributions de police de l'Etat et ne peut donner naissance à une responsabilité d'ordre international. Poggioli c. Venezuela, Ralston, Arbitre, Venezuelan Arb. 1903, page 870. Toutefois, si cet acte constitue une violation de contrat, la responsabilité de l'Etat peut être engagée. Martini c. Venezuela, *ibid.* 843.

Dans l'affaire De Caro c. Venezuela, dans laquelle un port aux mains des insurgés avait été fermé par décret, il a été déclaré ce qui suit:

« ... un blocus non effectif ou n'existant que sur le papier est illégal et ne peut constituer une base juridique sur laquelle le gouvernement qui a déclaré ce blocus, puisse fonder des droits, mais il peut créer des obligations pour ledit gouvernement... » Ralston, Arbitre, Venezuela Arb. 1903, page 817; Martini c. Venezuela, *ibid.* 842; le Ministre Furness au Secrétaire aux Affaires étrangères d'Haïti, 28 novembre 1908, Foreign Relations 1908, 442.

Dans des cas où les autorités gouvernementales avaient réquisitionné la propriété d'étrangers, l'Etat a été considéré comme responsable et tenu de verser une indemnité. Rapport définitif de la Spanish Claims Comm. 1910, page 16; voir M. Fish, Secrétaire d'Etat, à M. Foster, 15 août 1873, Moore, Digest, VI, 916 (exonération d'emprunts forcés aux termes d'un traité); Baker (E.U.) c. Mexique, 4 juillet 1863, Moore's Arb. 3668; M. Olney, Secrétaire d'Etat, à M. Dupuy de Lôme, Ministre d'Espagne, 14 février 1896, Moore, Digest, VI, 909.

IX.

« Les Commissaires estiment que les Etats-Unis ne peuvent être tenus pour responsables de dommages causés par les actes de rebelles sur lesquels ils ne pouvaient exercer de contrôle et dont ils n'étaient pas en mesure d'empêcher les actes. » American and British Claims Commission; Traité du 8 mai 1871, Moore's Arb. 2985; Prats (Mexique) c. Etats-Unis, *ibid.*, 2886-2900; Alleghanian (Pérou) c. Etats-Unis, *ibid.*, 1622; règlement adopté par la Spanish Claims Commission, Moore, Digest, VI, 971-972.

En cas de violences de la foule, l'étranger ne peut obtenir que les réparations légales prévues par l'Etat contre les individus faisant partie de la foule, si les fonctionnaires ont usé de la diligence voulue pour maintenir l'ordre et poursuivre les délinquants. M. Evarts, Secrétaire d'Etat, à Chen Lan Pin, Ministre de Chine, 30 décembre 1880, Moore, Digest VI, 820; Chinois à Rock Springs, Wyoming Foreign Relations 1886, 101 à 168, Moore, Digest, IV, 822-825. En conséquence, dans les cas de dommages commis par la foule, la responsabilité se fonde sur les mêmes principes qu'en ce qui concerne les actes de particuliers, c'est-à-dire que les fonctionnaires doivent ne pas avoir déployé la diligence voulue ou qu'un déni de justice doit être prouvé. Si les fonctionnaires publics ont eu amplement connaissance de l'imminence de troubles tels qu'une émeute, le principe de la diligence qu'il convient d'observer peut avoir pour résultat de leur imposer une plus grande part de responsabilité que s'il s'agit d'un soulèvement dont les fonctionnaires publics ne peuvent être accusés d'avoir eu connaissance. Le Secrétaire d'Etat Evarts à M. Gibbs, Moore, Digest, VI, 817.

a) Cette question a été discutée dans des cas mentionnés à la section VIII ci-dessus. La preuve de la négligence ou de la complicité de fonctionnaires constitue une base permettant d'établir la responsabilité de l'Etat. « On admet, d'une manière générale, qu'un gouvernement établi est responsable d'actes commis par des émeutiers ou des insurgés, si les autorités constituées n'assurent pas avec la diligence voulue la protection des biens étrangers lorsqu'elles sont en mesure d'assurer cette protection et que l'imminence du danger leur est connue ». M. Olney, Secrétaire d'Etat, à MM. Lauman et Kemp, 13 janvier 1896, Moore, Digest, VI, 967; Donoughho (Etats-Unis) c. Mexique, 4 juillet 1868, Moore's Arb. 3014 (complicité de fonctionnaires).

b) Lorsque l'Etat n'est pas juridiquement responsable, mais effectue, à titre gracieux, un paiement à des nationaux lésés, les étrangers ne sont pas juridiquement fondés à se plaindre. Lorsque les câbles télégraphiques espagnols furent coupés par les autorités navales des Etats-Unis, au cours de la guerre hispano-américaine, une indemnité fut refusée aux requérants britanniques, bien qu'une indemnité analogue eût été payée à certains requérants français. Cette discrimination était fondée sur le fait que la Compagnie des Télégraphes français avait rendu de précieux services aux Etats-Unis au cours des opérations de 1898. Eastern Extension, Australian and China Tel. Co. (Grande-Bretagne) c. Etats-Unis, American and British Claims Arb., 18 septembre 1910; Rapport Neilsen, 80. Cette question semble être une question de politique et de courtoisie internationale plutôt qu'une question régie par des droits. Dans un cas d'insurrection au Brésil, les Etats-Unis ont invité leur ministre à insister pour qu'une indemnité raisonnable fût accordée à un citoyen américain en raison des pertes subies par lui, alors que des indemnités de caractère analogue avaient été payées par le Gouvernement brésilien à diverses compagnies

from a mob. The Commission rejected the claim on the grounds that the damages were committed by the mob. January 15th, 1880, Moore's Arb. 3031.

In case of "property destroyed during the struggle", the cases cited above in this question are in point. However, where property was destroyed to keep it from falling into the hands of the enemy, it was held in *Tumer (Gt. Britain) v. United States* to be a taking of property for public use for which compensation must be paid. Mixed Commission on British-American Claims, May 8th, 1871, Report of British Agent, 27; Case of the *York*, British-American Claims Commission, May 8th, 1871, Moore's Arb., 4378; *Bertrand (France) v. United States*, January 15th, 1880, *ibid.*, 3707.

The closing by a State of a port within its control is ordinarily within the police power of the State and cannot give rise to international responsibility. *Poggioli v. Venezuela*, Ralston, Umpire, Venezuelan Arb., 1903, page 870. If, however, this act constitutes a violation of contract, State responsibility may arise. *Martini v. Venezuela*, *ibid.*, 843.

In the case of *De Caro v. Venezuela*, where a port in the hands of insurgents was closed by decree, it was held that:

" . . . a non-effective or paper blockade is illegal, and cannot constitute the foundation of rights on the part of the Government declaring it, but may create liabilities against such Government . . ." Ralston, Umpire, Venezuela Arb. 1903, page 817; *Martini v. Venezuela*, *ibid.*, 842; Minister Furness to the Haitian Secretary for Foreign Affairs, November 28th, 1908, Foreign Relations 1908, 442.

In cases of requisition of property of foreigners by the Governmental authorities, the State has been held responsible to make compensation therefor. Final Report, Spanish Claims Comm., 1910, page 16; see Mr. Fish, Secretary of State, to Mr. Foster, August 15th, 1873, Moore, Digest, VI, 916 (exemption from forced loans under treaty); *Baker (U.S.) v. Mexico*, July 4th, 1868, Moore's Arb. 3668; Mr. Olney, Secretary of State, to Mr. Dupuy de Lôme, Spanish Minister, February 14th, 1896, Moore, Digest, VI, 909.

IX.

"The Commissioners are of opinion that the United States cannot be held liable for injuries caused by the acts of rebels over whom they could exercise no control and which acts they had no power to prevent." American and British Claims Commission, Treaty of May 8th, 1871, Moore's Arb. 2985; *Prats (Mexico) v. United States*, *ibid.*, 2886-2900; *Alleghanian (Peru) v. United States*, *ibid.*, 1622; Rules adopted by the Spanish Claims Commission, Moore, Digest, VI, 971-972.

In mob violence cases, the foreigner is limited to legal remedies afforded by the State against members of the mob, where officials have used due diligence to maintain order and to prosecute offenders. Mr. Evarts, Secretary of State, to Chen Lan Pin, Chinese Minister, December 30th, 1880, Moore, Digest, VI, 820; Chinese at Rock Springs, Wyoming, Foreign Relations 1886, 101 to 168, Moore, Digest, IV, 822-825. Therefore, responsibility in mob cases is based upon the same principles as that for acts of individuals; *i.e.*, due diligence by officials must be lacking or a denial of justice must be shown. When public officials have ample notice of impending disorder, such as mob violence, the rule of due diligence may result in imposing greater burdens on them than where there is an uprising with which public officials are not charged with notice. Secretary Evarts to Mr. Gibbs, Moore, Digest VI, 817.

(a) This question has been discussed in cases referred to in Section VIII above. Proof of negligence or connivance of officials lays a basis for responsibility. "The general position is that the responsibility of an established Government for acts committed by rioters or insurgents depends upon the failure of the constituted authorities to exercise due diligence for protection of alien property when in a position to protect it and the imminence of danger is known." Mr. Olney, Secretary of State, to Messrs. Lauman and Kemp, January 13th, 1896, Moore, Digest, VI, 967; *Donoughho's (U.S.) v. Mexico*, July 4th, 1868, Moore's Arb. 3014 (connivance of officials).

(b) Where the State is not legally responsible but makes a gratuitous payment to injured nationals, foreigners have no legal basis of complaint. When the Spanish cables were cut by the naval authorities of the United States during the Spanish-American War, indemnity was denied to British claimants, although a similar indemnity had been paid to certain French claimants. The basis of the discrimination was that the French cable company had rendered valuable services to the United States during the operations of 1898. *Eastern Extension, Australian and China Tel. Co. (Gt. Britain) v. United States*, American and British Claims Arb., September 18th, 1910; Nielsen's Report, 80. The question seems to be one of policy and comity rather than one controlled by legal rights. In an insurrection case in Brazil, the United States instructed its Minister to urge that a reasonable compensation should be made to an American citizen for his losses, where claims similar in character had been paid by the Brazilian Government to several Brazilian companies.

brésiliennes. M. Olney, Secrétaire d'Etat, à M. Thompson, Ministre au Brésil, 29 janvier 1896, Moore, Digest, VI, 892.

c) D'après la théorie selon laquelle « lorsqu'une rébellion est couronnée de succès et que le parti insurrectionnel prend le pouvoir et devient le gouvernement », les actes des insurgés deviennent les actes du gouvernement et celui-ci est responsable des actes des insurgés depuis le commencement de l'insurrection. « La révolution de 1899, sous la conduite du général Cipriano Castro, a été couronnée de succès, et les actes des révolutionnaires doivent, aux termes d'un principe bien établi de droit international, être considérés comme les actes du gouvernement *de facto*. Les fonctionnaires administratifs et militaires du gouvernement ont exécuté la politique de celui-ci sous la surveillance du pouvoir exécutif. La même responsabilité est engagée, en ce qui concerne les empiétements sur les droits de neutres, dans le cas d'un gouvernement révolutionnaire triomphant, comme dans le cas de tout autre gouvernement *de facto*. » Dix (Etats-Unis) c. Venezuela, Venezuelan Arbitrations de 1903, pages 7-8; M. Evarts, Secrétaire d'Etat, à M. Foster, Ministre au Mexique, 4 avril 1879, Moore, Digest, VI, 991; M. Bayard, Secrétaire d'Etat, à M. Buck, Ministre au Pérou, 13 août 1886, Moore, Digest, VI, 992; M. Hay, Secrétaire d'Etat, à M. Dudley, Ministre au Pérou, 21 novembre 1898, Foreign Relations 1901, 430; Affaire Hughes, Moore's Arb. 2972; Henry (Etats-Unis) c. Venezuela, Venezuelan Arb. 1903, pp. 14, 22, Williams c. Bruffy (1877), 96 E. U. 176.

Un gouvernement révolutionnaire triomphant est généralement tenu, dès le début de la révolution, de reconnaître les obligations que le gouvernement précédent avait assumées en vertu de traités. Réclamation William Fowks c. Pérou, Foreign Relations, 1901, 430-431.

d) Bien qu'un mouvement dirigé contre des étrangers, en leur qualité d'étrangers, puisse être suffisamment prolongé pour que la situation parvienne à la connaissance des autorités de l'Etat, il faut, pour établir la responsabilité, qu'indépendamment de ce mouvement, les fonctionnaires n'exercent pas la diligence voulue pour protéger les étrangers. M. Blaine, Secrétaire d'Etat, à M. Dougherty, 5 janvier 1891, Moore, Digest, VI, 802-803; M. Evarts, Secrétaire d'Etat, à Chen Lan Pin, Ministre de Chine, 30 décembre 1880, *ibid.*, 820-822.

X.

Dans l'affaire du général de brigade Armstrong, les Etats-Unis ont demandé au Portugal réparation d'un acte de violation de neutralité dans les eaux territoriales d'une possession portugaise. L'arbitre, tout en reconnaissant que le Portugal était tenu d'assurer la protection, a décidé que le commandant américain du navire avait également violé la neutralité du port, et il a libéré l'Etat souverain de l'obligation d'assurer la protection par tous autres moyens qu'une intervention pacifique. Général de brigade Armstrong (Etats-Unis) c. Portugal, 26 février 1851, Moore's Arb. 1070, 1096.

Dans l'affaire Adolph G. Studer, la sentence du tribunal d'arbitrage des réclamations américaines et britanniques portait que: « Le Gouvernement britannique est partie à ce procès en raison du fait qu'aux termes des dispositions d'un traité conclu en 1885, il a, en matière internationale, assumé la responsabilité pour le Gouvernement de Johore ». American and British Claims Arbitration, 18 août 1910, rapport Neilsen, 549.

Dans la convention conclue entre les Etats-Unis d'Amérique et la France au sujet de la partie du Cameroun placée sous mandat français, il est stipulé ce qui suit:

« Article 6. — La Puissance mandataire assurera à tous les ressortissants des Etats membres de la Société des Nations les mêmes droits qu'à ses propres ressortissants, en ce qui concerne leur accès et leur établissement dans le territoire, la protection de leurs personnes et de leurs biens, l'acquisition des propriétés mobilières et immobilières, l'exercice de leur profession et de leur industrie, sous réserve des nécessités d'ordre public et de l'observation de la législation locale..... »

L'article 2 de cette convention donne, dans le territoire sous mandat, les mêmes droits aux Etats-Unis qu'aux Membres de la Société des Nations. L'article 3 est ainsi conçu: « Les droits de propriété acquis aux Américains dans le territoire sous mandat seront respectés et il n'y sera porté atteinte en aucune manière ». E. U., *Treaty Series*, N° 690.

Aux Etats-Unis, la protection des droits des étrangers incombe au Gouvernement fédéral, aux termes des traités et du droit international. Néanmoins, le châtement de délits commis contre ces droits appartient, dans une certaine mesure, aux divers Etats. Le Gouvernement fédéral a fréquemment versé des indemnités en raison de manquements des Etats, lorsque ceux-ci n'avaient ni assuré la protection des étrangers ni réparé le dommage causé. M. Webster, Secrétaire d'Etat, à M. Calderon de la Barca, Ministre d'Espagne, 13 novembre 1851, Moore, Digest, VI, 811, 814; attaques contre des Chinois à Rock Springs, *ibid.*, 820, 836; émeute de 1891 à la Nouvelle-Orléans, *ibid.*, 837, 840. Dans des plaintes contre les Etats étrangers, les Etats-Unis ont refusé d'admettre la thèse selon laquelle l'organisation fédérale de l'Etat défendeur ne serait pas, au point de vue international, tenue de maintenir l'ordre et d'accorder une réparation effective dans les subdivisions politiques qui la constituent.

« C'est le Gouvernement impérial, à Rio-de-Janeiro, qui seul est responsable, à l'égard de notre Gouvernement, de tout dommage causé à la personne ou aux biens d'un citoyen des Etats-Unis par les autorités d'une province. C'est avec ce gouvernement seul que nous entretenons des relations diplomatiques. Le même principe serait applicable à un sujet brésilien qui, dans notre pays, pourrait être lésé par les autorités d'un Etat. » M. Fish, Secrétaire d'Etat, à M. Partridge, Ministre au Brésil, 5 mars 1875, Moore, Digest, VI, 816.

Mr. Olney, Secretary of State, to Mr. Thompson, Minister to Brazil, January 29th, 1896, Moore, Digest, VI, 892.

(c) On the theory that, "where a rebellion is successful and the insurgent party is installed in power and becomes the Government", the acts of the insurgents are now the acts of the Government, the Government is responsible for the acts of the insurgents from the beginning of the insurrection. "The revolution of 1899, led by General Cipriano Castro, proved successful, and its acts, under a well-established rule of international law, are to be regarded as the acts of a *de facto* Government. Its administrative and military officers were engaged in carrying out the encroachments upon the rights of neutrals in the case of a successful revolutionary Government, as in the case of any other *de facto* Government." *Dix (U.S.) v. Venezuela*, Venezuelan Arbitrations of 1903, pages 7-8; Mr. Evarts, Secretary of State, to Mr. Foster, Minister to Mexico, April 4th, 1879, Moore, Digest, VI, 991; Mr. Bayard, Secretary of State, to Mr. Buck, Minister to Peru, August 13th, 1886, Moore, Digest, VI, 992; Mr. Hay, Secretary of State, to Mr. Dudley, Minister to Peru, November 21st, 1898, Foreign Relations 1901, 430; Hughes' Case, Moore's Arb. 2972; *Henry (U.S.) v. Venezuela*, Venezuelan Arb. 1903, pages 14, 22, *Williams v. Bruffy* (1877), 96 U.S. 176.

A successful revolutionary Government is ordinarily bound from the beginning of the revolution to recognise the treaty obligations of the predecessor Government. Claim of William Fowks *v. Peru*, Foreign Relations, 1901, 430-431.

(d) While a movement directed against foreigners as such may be of such a protracted nature as to bring the situation to the notice of State authorities, an independent failure by officials to use due diligence to afford protection is requisite to State responsibility. Mr. Blaine, Secretary of State, to Mr. Dougherty, January 5th, 1891, Moore, Digest, VI, 802-803; Mr. Evarts, Secretary of State, to Chen Lan Pin, Chinese Minister, December 30th, 1880, *ibid.*, 820-822.

X.

In the case of Brigadier-General Armstrong, the United States demanded redress from Portugal for the act of breach of neutrality in the territorial waters of a Portuguese possession. The arbitrator, while recognising the obligation of Portugal to provide protection, held that the American commander of the vessel also violated the neutrality of the port and released the sovereign from the obligation to afford protection by any other means than that of a pacific intervention. *Brigadier-General Armstrong (U.S.) v. Portugal*, February 26th, 1851, Moore's Arb. 1070, 1096.

The award of the American and British Claims Arbitration Tribunal, in the Adolph G. Studer Case, stated that: "The British Government appears in this proceeding by virtue of its assumption of responsibility internationally for the Government of Johore under the provisions of a treaty made in 1885." American and British Claims Arbitration, August 18th, 1910, Nielsen's Report, 549.

In the Convention between the United States of America and France, relating to the part of the Cameroons under French mandate, it is provided:

"Article 6 — The mandatory shall secure to all nationals of States Members of the League of Nations the same rights as are enjoyed in the territory by his own nationals in respect to entry into and residence in the territory, the protection accorded to their persons and property, movable and immovable, and the exercise of their profession or trade, subject only to the requirements of public order, and on condition of compliance with local law . . ."

Article 2 of this Convention gives the United States the same rights in the mandate as Members of the League of Nations. Article 3 states: "Vested American property of rights in the mandated territory shall be respected and in no way impaired." *U.S. Treaty Series*, No. 690.

In the United States, the protection of the rights of aliens is assumed by the Federal Government under treaty and international law, yet the punishment of offences against these rights is to a certain extent within the control of the States. The Federal Government has frequently paid indemnities for the delinquencies of the States where the States have failed to furnish protection and redress. Mr. Webster, Secretary of State, to Mr. Calderon de la Barca, Spanish Minister, November 13th, 1851, Moore, Digest, VI, 811, 814; Attacks on Chinese at Rock Springs, *ibid.*, 820, 836; New Orleans Riot of 1891, *ibid.*, 837, 840. In claims against foreign States, the United States has refused to recognise the plea that the federal organisation of the respondent State was not internationally responsible for the maintenance of order and the provision of effective redress in its constituent political subdivisions.

"It is the Imperial Government at Rio de Janeiro only which is accountable to this Government for any injury to the person or property of a citizen of the United States committed by the authorities of a province. It is with that Government alone that we hold diplomatic intercourse. The same rule would be applicable to the case of a Brazilian subject who, in this country, might be wronged by the authorities of a State." Mr. Fish, Secretary of State, to Mr. Partridge, Minister to Brazil, March 5th, 1875, Moore, Digest, VI, 816.

XI.

a) La question de la responsabilité d'un Etat agissant en état de légitime défense a été discutée sous quelques-uns de ses aspects, au N° VIII ci-dessus.

Dans l'affaire *Sterling* (Grande-Bretagne) c. Etats-Unis, il a été affirmé que :

« Les actes sur lesquels se fonde la présente plainte semblent avoir été les résultats ordinaires découlant de l'invasion d'une armée dans un territoire ennemi, invasion au cours de laquelle il est possible que les soldats aient commis quelques actes illicites de destruction et de pillage, sans qu'il soit prouvé que les Etats-Unis se soient appropriés les biens en question. Dans ces circonstances il n'y a pas de motif recevable pour tenter une action contre les Etats-Unis. » *Moore's Arb.* 3686; *Meng* (France) c. Etats-Unis, 15 janvier 1888, *ibid.*, 3697.

Toutefois, lorsque l'Etat agissant en état de légitime défense s'approprie les biens d'un étranger, une indemnité a été payée. *Wilkinson* (Grande-Bretagne) c. Etats-Unis, *British American Claims Commission*, 8 mai 1871, Rapport de l'Agent britannique, 32; *Baithwaite* (Grande-Bretagne) c. Etats-Unis, *ibid.*, 31. De même, lorsque l'Etat détruit le bien d'un étranger pour l'empêcher de tomber entre les mains d'un ennemi public, des indemnités ont été payées. On a appliqué à la propriété détruite dans ces conditions le même principe qu'à la propriété réquisitionnée pour l'usage public. Dans les considérants de la Cour Suprême des Etats-Unis, formulée par le Chief Justice Taney dans l'affaire *Mitchell* c. *Harmony*, 1851, la question a été discutée comme suit :

« Il existe sans aucun doute des cas dans lesquels on peut prendre possession d'un bien privé ou le détruire afin de l'empêcher de tomber entre les mains de l'ennemi public, et dans lesquels également un officier chargé d'une mission particulière peut réquisitionner un bien dans l'intérêt public ou s'en emparer pour le faire servir à l'usage public. Il est incontestable qu'en pareils cas, le gouvernement est tenu d'indemniser intégralement le propriétaire; mais l'officier n'a pas transgressé son devoir. » 13 Howard 133.

Les Etats-Unis ont fréquemment versé des indemnités tant à leurs propres ressortissants qu'à des étrangers, pour des biens détruits en vue de les empêcher de tomber aux mains de l'ennemi. *Grant* c. Etats-Unis, 1 Ct. Cl. 41; *Wiggins* c. Etats-Unis, 3 Ct. Cl. 412; *The York* (Grande-Bretagne) c. Etats-Unis, 8 mai 1871, *Moore's Arb.* 4378; *Turner* c. Etats-Unis, *Mixed Comm. British-American Claims*, 8 mai 1871, Rapport de l'Agent britannique, 27.

b) Si les représailles se justifient suivant le droit international, il semblerait que les précédents cités à la question XI a ci-dessus soient applicables.

c) « Il est hors de doute qu'un gouvernement, si un monopole prend un caractère oppressif, peut intervenir, dans l'intérêt public, en accordant des privilèges à une entreprise concurrente. Toutefois, s'il procède à cette intervention, de telle sorte qu'il supprime des droits privés qu'il a, de son propre accord, expressément consentis, il n'est que juste, semble-t-il, d'accorder une indemnité aux parties ainsi lésées. » M. Bayard, Secrétaire d'Etat, à M. Hall, 27 mars 1888, *Moore, Digest*, VI, 727.

Dans l'affaire *Martini*, l'arbitre *Ralston* a décidé qu'il ne serait pas équitable de rendre le Gouvernement vénézuélien intégralement responsable de certaines pertes afférentes à une opération minière et provenant de la non-observation d'un contrat, de la part du gouvernement, étant donné que certaines de ces pertes étaient imputables aux actes de révolutionnaires avec lesquels le gouvernement était en lutte. Toutefois, en ce qui concerne la fermeture d'un port, l'arbitre a estimé que la mesure prise par le gouvernement était entièrement légale à l'égard du monde entier, à condition qu'il assumât la responsabilité vis-à-vis de ceux avec lesquels il se trouvait en relations contractuelles spéciales. *Venezuelan Arbs.* de 1903, pages 819, 843, 844.

d) D'une manière générale, aucun contrat conclu par un particulier en vue de renoncer au recours à la voie diplomatique, ne peut avoir effet si son application avait pour résultat d'apporter des changements ou des modifications aux règles ordinaires du droit international. *North American Dredging Co. (E. U.)* c. Mexique, *Opinions des Commissaires*, 8 septembre 1923, page 21.

« Ce gouvernement ne peut admettre que ses citoyens, par le simple fait de conclure des contrats avec des puissances étrangères ou au moyen d'autres méthodes n'équivalant pas à un acte d'expatriation ou à une renonciation délibérée à la nationalité américaine, puissent supprimer leur dépendance vis-à-vis des Etats-Unis ou l'obligation dans laquelle se trouvent ceux-ci de les protéger en cas de déni de justice. » M. Bayard, Secrétaire d'Etat, à M. Buck, Ministre au Pérou, 15 février 1888, *Moore, Digest*, VI, 294; M. Gresham, Secrétaire d'Etat, à M. Crawford, 4 septembre 1893, *ibid.*, 299-300.

Lorsqu'un Etat a, par voie de confiscation, rompu un contrat auquel il était partie, il a été estimé que le plaignant n'était pas tenu d'observer son engagement de recourir aux tribunaux nationaux. « L'une des parties à un accord n'a pas le droit de commencer par annuler cet accord et d'obliger ensuite l'autre partie à observer les conditions de cet engagement, comme si celui-ci existait encore. » M. Blaine, Secrétaire d'Etat, à M. Loring, Ministre au Portugal, 30 novembre 1889, *Moore, Digest*, VI, 297; M. Blaine, Secrétaire d'Etat, à M. Scott, 23 juin 1887, *ibid.*, 725; *Kullhoff* (E. U.) c. Venezuela, 17 février 1903, *Venezuelan Arbs.* de 1903, pages 182, 200; *Milligan* (E. U.) c. Pérou, 4 décembre 1868, *Moore's Arb.* 1643; affaire de la *Salvador Commercial Co.*, *Foreign Relations*, 1902, page 843.

XI.

(a) Responsibility of a State acting in self-defence has been discussed in some of its aspects above under VIII.

In the case of *Sterling (Gt. Britain) v. United States* it was held that:

"The acts done upon which this claim is based seem to have been the ordinary results incident to the march of an invading army in a hostile territory, with possibly some unauthorised acts of destruction and pillage by the soldiery, with no proof of appropriation by the United States. Under such circumstances there is no ground for a valid claim against the United States." *Moore's Arb.* 3686; *Meng (France) v. United States*, January 15th, 1888, *ibid.*, 3697.

However, where the State, acting in self-defence, appropriates a foreigner's property, indemnity has been paid. *Wilkinson (Gt. Britain) v. United States*, British-American Claims Commission, May 8th, 1871, Report of British Agent, 32; *Baithwaite (Gt. Britain) v. United States*, *ibid.*, 31. Likewise, when the State destroys the property of a foreigner to prevent it from falling into the hands of a public enemy, indemnities have been paid. A similar rule has been applied to property destroyed in this way as to property taken for public use. In the opinion of the Supreme Court of the United States delivered by Chief Justice Taney in the case of *Mitchell v. Harmony*, 1851, this question was discussed as follows:

"There are, without doubt, occasions in which private property may lawfully be taken possession of or destroyed to prevent it from falling into the hands of the public enemy; and also where a military officer, charged with a particular duty, may impress private property into the public service or take it for public use. Unquestionably, in such cases, the Government is bound to make full compensation to the owner; but the officer is not a trespasser." 13 Howard 133.

The United States has frequently paid indemnities both to its own citizens and to foreigners for property destroyed to prevent it from falling into the hands of the enemy. *Grant v. United States*, 1 Ct. Cl. 41; *Wiggins v. United States*, 3 Ct. Cl. 412; *The York (Gt. Britain) v. United States*, May 8th, 1871, *Moore's Arb.* 4378; *Turner v. United States*, Mixed Comm. British-American Claims, May 8th, 1871, Report of British Agent, 27.

(b) If the reprisals are justifiable under international law, the precedents cited under question XI (a) above would seem to be applicable.

"(c) It is not questioned that a Government, when a monopoly becomes oppressive, may give public relief by the grant of privileges to an adverse interest. If, however, it should do so in such a way as to destroy private rights granted by its own express agreement, it would seem but just that compensation should be made to the parties thereby injured." Mr. Bayard, Secretary of State, to Mr. Hall, March 27th, 1888, *Moore, Digest*, VI, 727.

In the Martini Case, Umpire Ralston held that it would be unfair to hold the Venezuelan Government for the full amount of certain mining operation losses resulting from non-compliance by the Government with a contract, since some of the losses were due to the action of revolutionists, with whom the Government was at war. However, for the closing of a port, the umpire considered that the action of the Government was entirely legal as against the world at large, on the condition that it make itself responsible to those who were under special contract relations with it. *Venezuelan Arbs. of 1903*, pages 819, 843, 844.

(d) In general, no contract made by an individual to renounce the diplomatic remedy can have effect if its enforcement would result in any changes or modifications in the ordinary rules of international law. *North American Dredging Co. (U.S.) v. Mexico*, Opinions of Commissioners, September 8th, 1923, page 21.

"This Government cannot admit that its citizens can, merely by making contracts with foreign Powers, or by other methods not amounting to an act of expatriation or a deliberate abandonment of American citizenship, destroy their dependence upon it or its obligations to protect them in case of a denial of justice." Mr. Bayard, Secretary of State, to Mr. Buck, Minister to Peru, February 15th, 1888, *Moore, Digest*, VI, 294; Mr. Gresham, Secretary of State, to Mr. Crawford, September 4th, 1893, *ibid.*, 299-300.

Where there has been a confiscatory breach of contract, to which the State is a party, the agreement of the claimant to resort to the local courts has been held to be no longer binding. It is "not within the power of one of the parties to an agreement first to annul it, and then to hold the other property to the observance of the conditions as if it were a subsisting engagement." Mr. Blaine, Secretary of State, to Mr. Loring, Minister to Portugal, November 30th, 1889, *Moore, Digest*, VI, 297; Mr. Blaine, Secretary of State, to Mr. Scott, June 23rd, 1887, *ibid.*, 725; *Rudloff (U.S.) v. Venezuela*, February 17th, 1903, *Venezuelan Arbs. of 1903*, pages 182, 200; *Milligan (U.S.) v. Peru*, December 4th, 1868, *Moore's Arb.* 1643; *Case of the Salvador Commercial Co.*, *Foreign Relations*, 1902, page 843.

XII.

« Si un gouvernement étranger offre des voies de recours juridiques devant ses cours de justice ou ses tribunaux administratifs, ses conseils et comités, ou ses fonctionnaires, en vue d'obtenir satisfaction pour les pertes ou dommages subis ou d'assurer le règlement de ces pertes ou dommages, les intéressés doivent ordinairement utiliser et épuiser ces recours auprès des tribunaux, conseils ou fonctionnaires que ledit gouvernement étranger peut établir ou désigner et devant lesquels les plaignants ont la faculté d'agir en vue du règlement de leurs réclamations et de leurs différends. Une fois ces recours épuisés, s'ils ont eu pour conséquence un déni de justice attribuable à un fonctionnaire, une autorité secondaire ou un agent du Gouvernement étranger, ou s'ils ont été reconnus inutilisables ou inadéquats, ou encore s'il n'existait aucune voie de recours juridique, le Département d'Etat examinera la réclamation afin de déterminer si.... la réclamation peut à juste titre être soumise à un règlement par la voie diplomatique, par une procédure d'arbitrage ou de toute autre manière ». Circulaire relative aux réclamations, Département d'Etat, 15 mai 1919, amendée le 1^{er} octobre 1924, paragraphe 8.

Les Etats-Unis ont refusé de soutenir des réclamations contre des gouvernements étrangers et ont rejeté les réclamations présentées par des gouvernements étrangers au sujet de dommages causés à leurs ressortissants par des fonctionnaires des Etats américains, pour la raison que les recours de droit interne doivent d'abord être épuisés. M. Hay, Secrétaire d'Etat, à M. Lombard, 3 octobre 1898, Moore, Digest, VI, 671; M. Hay, Secrétaire d'Etat, à M. Carignani, Chargé d'Affaires italien, 24 août 1901, Relations étrangères 1901, 308; Tunstall (Grande-Bretagne) c. Etats-Unis, 1885, Moore, Digest, VI, 662-666; M. Buchanan, Secrétaire d'Etat, à M. Pakenham, *ibid.* 659. Des tribunaux internationaux ont rejeté un grand nombre d'affaires pour la même raison. Baldwin (E.U.) c. Mexique, 11 avril 1839, Moore, Int. Arb. 3126; Medina (E.U.) c. Costa-Rica, 2 juillet 1860, *ibid.* 2315, 2317; Brig Napier (Grande-Bretagne) c. Etats-Unis, 8 mai 1871, *ibid.* 3152-3159; Hubbell (E.U.) c. Grande-Bretagne, *ibid.* IV, 3484, 3485.

Les articles 1 et 2 de l'Accord du 18 août 1910 conclu entre les Etats-Unis et la Grande-Bretagne et prévoyant une procédure d'arbitrage pour les réclamations, ainsi que l'article 5 de la Convention du 8 septembre 1923 entre les Etats-Unis et le Mexique concernant les réclamations, dispensent d'appliquer la règle suivant laquelle les recours de droit interne doivent d'abord être épuisés avant qu'une réclamation puisse être portée devant le tribunal. Toutefois, ces dispositions résultent d'un accord particulier conclu entre les Etats et n'ont aucun effet sur les principes généraux du droit international. *Traité des Etats-Unis, etc.*, Vol. III, page 2620; *Recueil des Traités des Etats-Unis*, N° 678.

« L'obligation imposée à un étranger d'épuiser les recours dont disposent les nations pour obtenir justice avant de solliciter la protection de son gouvernement doit être entendue d'une manière rationnelle afin que cette obligation ne rende pas illusoire les droits d'un étranger. » Montano (Pérou) c. Etats-Unis, 2 novembre 1863, Moore; Arb. 1630, 1637.

Dans certains cas, il a été admis qu'il n'était pas nécessaire d'épuiser les recours de droit interne.

« Un plaignant n'est pas obligé, dans un Etat étranger, d'épuiser les recours juridiques lorsqu'il n'existe pas de recours à épuiser dans ledit Etat. » M. Fish, Secrétaire d'Etat, à M. Pile, 29 mai 1873, Moore, Digest, VI, 677.

« La règle suivant laquelle un étranger doit, avant de solliciter l'assistance de son gouvernement, s'efforcer d'obtenir réparation devant les tribunaux ne s'applique pas lorsque le gouvernement qui a commis l'acte dommageable a, de par les mesures prises par l'autorité compétente dudit gouvernement, dégagé le plaignant de l'obligation d'en appeler aux tribunaux. » Akerman, Attorney-General, 1871, 13 Op. 547, Moore, Digest, VI, 682.

Lorsqu'il a été interdit à des tribunaux nationaux de se déclarer compétents pour des procès contre l'Etat, il a été admis que l'Etat devenait responsable au point de vue international. Salvador Commercial Co c. Salvador, Foreign Relations, 1902, page 838; M. Frelinghuysen, Secrétaire d'Etat, à M. Morgan, 17 mai 1884, Moore Digest, VI, 679, Ruden (E.U.) c. Pérou, 4 décembre 1868, Moore Arb. 1653, 1655.

Lorsque les recours de droit interne ont été insuffisants, a dit M. Bayard, « il est hors de doute que les limitations d'ordre interne n'excluent pas, en règle générale, une réclamation d'ordre international ». Le Secrétaire d'Etat à M. Muruaga, 3 décembre 1886, Moore, Digest, VI, 691.

XIII.

« Le Gouvernement des Etats-Unis, en règle générale, se refuse à soutenir des réclamations qui n'ont pas appartenu à des plaignants de l'une de ces catégories, depuis la date où le droit à réparation a pris naissance jusqu'à la date de son règlement. En conséquence, les réclamations d'étrangers qui, après naissance du droit à réparation, sont devenus sujets américains ou ont été admis à bénéficier de la protection américaine, ainsi que les réclamations de citoyens américains ou de personnes bénéficiant de la protection américaine qui, après que le droit à réparation a pris naissance, ont adopté une nationalité étrangère ou ont été admis à bénéficier de la protection d'un Etat étranger et qui ont perdu leur nationalité américaine ou le droit de bénéficier de la

XII.

" If any legal remedies for obtaining satisfaction for, or settlement of, the losses or injuries sustained are afforded by a foreign Government before its judicial or administrative tribunals, boards, or officials, interested persons must ordinarily have recourse to and exhaust proceedings before such tribunals, boards, or officials as may be established or designated by the foreign Government and open to claimants for the adjustment of their claims and disputes. After such remedies have been exhausted with the result of a denial of justice attributable to an official, branch, or agency of a foreign Government, or have been found inapplicable or inadequate, or if no legal remedies are afforded, the Department of State will examine the claim with a view to ascertaining whether . . . the claim may properly be presented for settlement through diplomatic channels, by arbitration or otherwise." Claims Circular, Department of State, May 15th, 1919, revised October 1st, 1924, par. 8.

The United States has refused to press claims against foreign Governments and has rejected the claims of foreign Governments arising out of injuries committed upon their citizens by officials of American States on the ground that local remedies must first be exhausted. Mr. Hay, Secretary of State, to Mr. Lombard, October 3rd, 1898, Moore, Digest, VI, 671; Mr. Hay, Secretary of State, to Signor Carignani, Italian Chargé, August 24th, 1901, Foreign Relations 1901, 308; Tunstall (Gt. Britain) *v.* United States, 1885, Moore, Digest, VI, 662-666; Mr. Buchanan, Secretary of State, to Mr. Pakenham, *ibid.*, 659. International tribunals have dismissed many cases on the same ground. Baldwin (U.S.) *v.* Mexico, April 11th, 1839, Moore, Int. Arb. 3126; Medina (U.S.) *v.* Costa Rica, July 2nd, 1860, *ibid.*, 2315, 2317; Brig. Napier (Gt. Britain) *v.* United States, May 8th, 1871, *ibid.*, 3152-3159; Hubbell (U.S.) *v.* Great Britain, *ibid.*, IV, 3484, 3485.

Articles 1 and 2 of the Agreement of August 18th, 1910, between the United States and Great Britain, providing for the arbitration of claims, and Article 5 of the Claims Convention of September 8th, 1923, between the United States and Mexico, dispense with the rule that local remedies must first be exhausted before a claim can be brought before the tribunal. These provisions, however, are the results of special agreement between the States and have no bearing on the general principles of international law. *U.S. Treaties, etc.*, Vol. III, page 2620; *U.S. Treaty Series*, No. 678.

" The obligation of a stranger to exhaust the remedies which nations have for obtaining justice, before soliciting the protection of his Government, ought to be understood in a rational manner, that such obligation does not make delusive the rights of a foreigner." Montano (Peru) *v.* United States, November 2nd, 1863, Moore's Arb. 1630, 1637.

In certain situations it has been held that local remedies need not be exhausted.

" A claimant in a foreign State is not required to exhaust justice in such State when there is no justice to exhaust." Mr. Fish, Secretary of State, to Mr. Pile, May 29th, 1873, Moore, Digest, VI, 677.

" The rule that an alien must, before seeking the aid of his Government, endeavour to obtain redress in the courts, does not apply where the offending Government has, by the acts of its proper organ, relieved the party complaining from appealing to the courts." Akerman Attorney-General, 1871, 13 Op. 547, Moore, Digest, VI, 682.

Where the local courts were prohibited from entertaining jurisdiction of suits against the State, it was held that the State became internationally responsible. Salvador Commercial Co. *v.* Salvador, Foreign Relations 1902, page 838; Mr. Frelinghuysen, Secretary of State, to Mr. Morgan, May 17th, 1884, Moore, Digest, VI, 679; Ruden (U.S.) *v.* Peru, December 4th, 1868, Moore's Arb. 1653, 1655.

Where local remedies were insufficient, Mr. Bayard said: " Municipal limitations undoubtedly do not, as a general rule, bar an international claim." Secretary of State to Mr. Muruaga, December 3rd, 1886, Moore, Digest, VI, 691.

XIII.

" . . . the Government of the United States, as a rule, declines to support claims that have not belonged to claimants of one of these classes from the date the claim arose to the date of its settlement. Consequently, claims of foreigners who, after the claims accrued, became Americans or became entitled to American protection, or claims of Americans or persons entitled to American protection who, after the claims accrued, assumed foreign nationality or protection

protection américaine, ainsi que les réclamations que des citoyens américains ou des personnes bénéficiant de la protection américaine ont reçu d'étrangers par voie de transfert, d'achat, de succession, ou autrement, ou vice versa, ne peuvent pas être soutenues par les Etats-Unis. » Section 6 de la Circulaire du Département d'Etat concernant les Réclamations, 15 mai 1919, Sénat Doc. N° 67, 66 Cong. I Sess.

La question de savoir si la réclamation doit conserver son caractère national jusqu'à ce qu'elle soit portée devant le tribunal d'arbitrage ou jusqu'au moment où le tribunal prononce sa sentence n'est pas constamment résolue de la même manière. Les tribunaux d'arbitrage se sont, dans certains cas, largement référés aux termes du compromis d'arbitrage ou du traité établissant le tribunal. La possession du droit par un national, au moment de la signature du traité, a été le critère adopté par le traité conclu avec le Mexique le 3 mars 1849. *Sandoval (E.U.) c. Mexique*, Moore, Arb., 2323. L'arbitre de la Commission mixte des réclamations germano-américaines a estimé que la nationalité, à la date de la ratification du traité de Berlin (11 novembre 1921), déterminait la compétence de la Commission en matière de réclamations.

« Pour que le traité soit applicable il faut que les réclamations aient possédé la nationalité américaine à l'origine, aussi bien qu'à la date où le Traité est entré en vigueur. Les réclamations possédant ce caractère à ces deux dates sont, en vertu des dispositions contractuelles, des réclamations américaines, et le droit contractuel des Etats-Unis à exiger leur paiement leur est inhérent. Dès la mise en jeu des obligations contractuelles de l'Allemagne, elles revêtent, en ce qui concerne l'Allemagne, la nationalité américaine sous une forme indélébile. Un changement ultérieur dans leur nationalité, par voie de succession, de transfert ou autrement, ne peut avoir pour effet de mettre fin à ces obligations. La règle invoquée, si elle pouvait s'appliquer, ferait dépendre l'existence continue d'un droit, conféré en vertu du traité, de facteurs aussi incertains que la vie, la mort, le mariage, le succès commercial ou la faillite du particulier à qui appartient le droit à réparation, car l'un quelconque de ces facteurs peut avoir pour effet de transférer la propriété de ce droit en totalité ou en partie à un particulier étranger soit pendant l'établissement par les deux nations parties au traité de l'organisation chargée de régler les revendications soulevées en vertu dudit traité, soit pendant le temps passé à entendre ces causes et à les juger, soit avant l'exécution par l'Allemagne des sentences rendues. En vertu de la règle proposée et de son application projetée, les retards inévitables, malgré toute la diligence des deux gouvernements à régler définitivement toutes les réclamations, pourraient avoir pour effet de dégager l'Allemagne des obligations de paiement qu'elle s'est solennellement engagée à assumer.

« Il demeure à la discrétion des Etats-Unis de se refuser à faire valoir une réclamation en faveur d'une personne qui a volontairement changé sa nationalité américaine pour celle d'une autre nation, ou en faveur d'un étranger qui a acquis le droit à réparation par voie d'achat. Toutefois, il s'agit plutôt là d'une question d'ordre politique que de l'exercice d'un droit. » Commission mixte des Réparations germano-américaines, Décision administrative N° 5, pages 187-188.

A propos d'une sentence rendue le 15 janvier 1880 par la Commission franco-américaine, la Cour Suprême des Etats-Unis a estimé dans l'affaire *Burthe c. Denis* (1890), 133 E. U., 514, que la qualité de citoyen était nécessaire à la date de la présentation de la réclamation ainsi qu'à la date du jugement. Dans cette affaire intervenaient les héritiers d'un plaignant de nationalité française, dont certains étaient des citoyens américains, et à qui l'on refusa de participer à la répartition des indemnités accordées.

Si un changement se produit dans la nationalité du demandeur, il est ordinairement admis que la revendication perd son caractère national, — que la nouvelle nationalité soit celle du pays contre qui la réclamation est formulée ou celle d'un Etat tiers. *Burthe c. Denis*, 133 E. U. 514. Moore, Digest, VI, 628-629; affaire *Gribble*, Commission anglo-américaine des Réclamations, Rapport Hale, 14; *Levy (France) c. Etats-Unis*, 15 janvier 1880, Moore Arbitrage, 2514.

Lorsque le dommage cause la mort de la personne lésée et si cette personne laisse des héritiers d'une nationalité différente, les héritiers possédant la nationalité de l'Etat contre qui la réclamation est formulée se sont vu refuser le droit de faire présenter la réclamation par l'Etat de la personne décédée. *Burthe c. Denis*, 133 E. U. 514, Moore, Digest, VI, 628-629. On a estimé que les héritiers ne pouvaient devenir des plaignants que s'ils avaient la même nationalité que leur ascendant. *Lizardi (E. U.) c. Mexique*, Moore Arb. 1353; *Wiltz (France) c. Etats-Unis*, 15 janvier 1880, Moore Arb. 2243, 2246; *Héritiers Maxan (E. U.) c. Mexique*, 4 juillet 1868, *ibid.* 2485.

Si seuls certains des intéressés sont des ressortissants de l'Etat demandeur, la pratique a été de n'intervenir et de n'obtenir compensation qu'à leur profit. Les affaires concernant des héritiers de nationalités différentes qui ont été citées ci-dessus sont pertinentes. Les réclamations d'associés n'ont été présentées qu'au bénéfice des membres de l'association qui sont des ressortissants de l'Etat demandeur. *M. Fish, Secrétaire d'Etat, à M. De Long*, 19 septembre 1871, Moore, Digest, VI, 641; *Affaire Morrison*, Mexican Claims Commission, Moore Arb., 2325.

XIV.

Il semblerait préférable de réserver toute décision relative au contenu du code projeté jusqu'à la réunion de la Conférence pour la codification du droit international.

a) Sans commentaire.

and lost their American nationality or right to American protection, or claims which Americans or persons entitled to American protection have received from aliens by assignment, purchase, succession, or otherwise, or *vice versa*, cannot be espoused by the United States." Section 6 of Department of State Claims Circular, May 15th, 1919, Senate Doc. No. 67, 66 Cong., 1 Sess.

Whether the claim must retain its national character until it is brought before the arbitral tribunal or until judgment is given by the tribunal are questions not uniformly decided the same way. Arbitral tribunals have been guided in such cases largely by the terms of the arbitral agreement or the treaty creating the tribunal. National ownership at the time of the signature of the treaty was adopted as the test under the Treaty with Mexico, March 3rd, 1849. *Sandoval (U.S.) v. Mexico*, Moore's Arb. 2323. The umpire of the Mixed Claims Commission, United States and Germany, took the position that nationality at the time when the Treaty of Berlin was ratified on November 11th, 1921, determined the jurisdiction of the Commission over claims.

" Claims to fall within the Treaty must have possessed the status of American nationality both in origin and at the time the Treaty became effective. Claims possessing such status on both those dates are, under the contract, American claims and the contract right of the United States to demand their payment inheres in them. Upon Germany's contract obligations attaching they become, so far as Germany is concerned, indelibly impressed with American nationality. A subsequent change in their nationality, through succession, assignment, or otherwise, cannot operate to discharge those obligations. The rule invoked, if applicable, would make the continued existence of a right which had vested under the Treaty dependent upon such uncertain factors as the life, death or marriage or the business success or failure of the private owner of the claim, any one of which factors might result in its devolution in whole or in part to alien private ownership pending the setting up by the two nations parties to the Treaty of machinery to adjudicate the claims arising thereunder, or pending the time consumed in hearing them and in rendering judgment thereon, or pending the discharge by Germany of the awards made. Under the rule propounded and its proposed application, and notwithstanding the greatest diligence on the part of both Governments in finally disposing of all claims, unavoidable delays might well result in releasing Germany from obligations which she has solemnly bound herself to pay.

" The United States in its discretion may decline to press a claim in favour of one who has voluntarily transferred his allegiance from it to another nation, or in favour of an alien who has acquired a claim by purchase. This, however, involves a question of political policy rather than the exercise of a legal right". Mixed Claims Commission, United States and Germany, Administrative Decision No. 5, pages 187-188.

In connection with an award of the Franco-United States Commission of January 15th, 1880, the United States Supreme Court in the case of *Burthe v. Denis* (1890), 133 U.S., 514, held that citizenship was required both at the time of presentation and of judgment. This case involved the heirs of a French claimant, some of whom were American citizens, who were denied participation in the distribution of the award.

Should a change occur in the nationality of the person making the claim, the claim ordinarily has been held to lose its national character irrespective of whether the new nationality is that of the State against which the claim is made or that of a third State. *Burthe v. Denis*, 133 U.S. 514, Moore, Digest, VI, 628-629; *Gribble case*, British-American Claims Commission, Hale's Report, 14; *Levy (France) v. United States*, January 15th, 1880, Moore's Arbitration, 2514.

Where the injured person dies as a result of the injury, leaving heirs of a different nationality, heirs of the nationality of the State against which the claim is made have been denied the right to claim through the decedent's State. *Burthe v. Denis*, 133 U.S. 514, Moore, Digest, VI, 628-629. It has been held that heirs may not appear as claimants, unless their nationality is the same as that of their ancestor. *Lizardi (U.S.) v. Mexico*, Moore's Arb. 1353; *Wiltz (France) v. United States*, January 15th, 1880, Moore's Arb. 2243, 2246; *Heirs of Maxan (U.S.) v. Mexico*, July 4th, 1868, *ibid.* 2485.

If some only of the individuals concerned are nationals of the claimant State, the practice has been to interpose and secure compensation only in their behalf. The cases regarding heirs of different nationalities cited above are in point. The preferment of partnership claims has been solely on account of those members thereof who are nationals of the claimant State. Mr. Fish, Secretary of State, to Mr. De Long, September 19th, 1871, Moore, Digest, VI, 641; *Morrison Case*, Mexican Claims Commission, Moore's Arb. 2325.

XIV.

It would seem to be preferable to reserve decision as to the contents of the proposed code until the meeting of the International Law Codification Conference.

(a) No comment.

b) Les réparations pécuniaires devraient être calculées d'après une évaluation raisonnable des pertes effectivement éprouvées par le plaignant. L'arbitre de l'affaire du *Lusitania* a déclaré dans son avis:

« C'est une règle générale de droit civil et de droit commun que toute violation d'un droit privé comporte un dommage et que pour tout dommage de cette nature, la loi offre un droit à réparation. D'une façon générale, cette réparation doit correspondre au dommage subi. Cette réparation reçoit les divers noms de « compensation », « réparation », « indemnité », « dommages-intérêts »..... L'idée fondamentale des dommages-intérêts est le dédommagement, la réparation d'une perte subie, une compensation accordée, après vérification légale, pour un dommage. La réparation doit correspondre à la perte subie, afin que la partie lésée puisse recouvrer la totalité de son avoir. » Commission mixte des Réparations germano-américaines, Décisions et opinions 19, 25, *Union Bridge Co (E. U.) c. Grande-Bretagne*, Arbitrage relatif aux réclamations anglo-américaines, 1910, pages 371, 380.

Le manque à gagner, lorsqu'il est établi avec une certitude raisonnable, et lorsqu'un rapport de cause à effet a pu être démontré, a été admis. *Affaire R. H. May, Moore, Digest, VI, 731*; *Affaire Metzger, ibid.*; *Affaire Irène Roberts, Arbitrages vénézuéliens, 145*. Lorsque le manque à gagner n'est pas d'une nature spéculative et problématique, il devrait être admis. *Affaire Parker, Arbitrage des revendications anglo-américaines, 18 août 1910, Rapport Neilsen, 571*. Toutefois, des bénéfices incertains ou d'ordre spéculatifs n'ont pas été admis. *Kunhardt (E. U.) c. Venezuela, Arbitrages vénézuéliens, 63, 69*; *Affaire Rudloff, ibid., 182, 198*.

En ce qui concerne les indemnités pour « dommage indirect », la règle générale semble être la suivante:

« Les gouvernements, comme les individus, ne sont responsables que des effets prochains et naturels de leurs actes. Le droit international, ainsi que le droit interne, refusent toute compensation pour des effets lointains, lorsqu'une intention délibérée de causer un dommage n'a pas été prouvée. » *Dix (E. U.) c. Venezuela, Arbitrages vénézuéliens de 1903, pages 7, 9*; *Roberts (E. U.) c. Venezuela, ibid., 145* (des dommages indirects ont été admis); *Affaire de l'Alabama, Sentence de Genève, Moore, Digest VII, 1063*; emploi des termes directs et indirects illusoire, avis concernant les réclamations relatives aux primes d'assurance pour risques de guerre, décisions et opinions, Commission mixte des Réclamations germano-américaines, pages 58-59; Décision administrative N° II, Commission mixte des Réclamations germano-américaines, pages 11-13, voir également pages 46, 51-52, 57-59; *Eisenbach frères, ibid., page 269*; Avis relatif à l'affaire du *Lusitania, ibid., pages 19-20, 27*; *Affaire Mohegan, ibid., p. 671*.

Si, par dommage moral, on entend un dommage causé à un intérêt immatériel tel que l'honneur ou le prestige, la réparation prend habituellement dans ce cas, la forme de désaveu, d'excuse et de salut au pavillon. *Moore Digest, VI, 1035-1037*. Ces dommages sont généralement liés à des dommages matériels pour lesquels une réparation pécuniaire doit être effectuée. Lorsque l'Etat présente la réclamation d'un particulier, des éléments autres que le dommage matériel peuvent entrer dans le calcul de la réparation à exiger.

« Il est hors de doute qu'une personne lésée a droit, d'après les principes du droit international, à une compensation pour un dommage qui l'a blessée dans ses sentiments, qui a provoqué des souffrances morales, l'humiliation, la honte, la dégradation, la perte de sa situation sociale, ou qui a porté atteinte à son crédit ou à sa réputation, et cette compensation doit correspondre au dommage subi. » Avis relatif aux affaires du *Lusitania*, Commission mixte des Réclamations germano-américaines, décisions et avis, page 27.

Les dommages-intérêts, appelés « indemnité à titre de pénalité » (punitive damages) ont été discutés de la façon suivante dans l'avis relatif aux affaires du *Lusitania*.

« A notre avis, les qualificatifs « exemplary », « vindictive » ou « punitive » sont des appellations erronées, lorsqu'on les applique aux dommages-intérêts. L'idée fondamentale des « dommages-intérêts » est le dédommagement, la réparation d'une perte subie; une compensation accordée après vérification légale, pour un dommage. La réparation devrait correspondre à la perte subie, afin que la personne lésée puisse recouvrer la totalité de son avoir. » Commission mixte des Réclamations germano-américaines, décisions et avis, 25.

« Bien qu'il ne soit guère douteux que, dans un grand nombre de cas, l'idée de la répression a influencé la fixation du montant des indemnités accordées, nous ne sommes cependant pas disposés à déclarer qu'une commission quelconque a estimé qu'elle possédait le pouvoir d'accorder autre chose qu'une compensation. Dans certaines affaires, les arbitres ont refusé expressément d'octroyer des indemnités à titre de pénalité, ce qui indique, au moins par l'argument *a contrario*, qu'ils pourraient en admettre le principe, si les circonstances le permettaient, bien que, comme nous l'avons dit, le pouvoir d'imposer des indemnités de cette nature n'ait jamais été revendiqué expressément. » *Ralston, Law and procedure of international tribunals éd. révisée, Sec. 473*.

« Malgré son habileté, l'avocat n'a pas réussi à nous démontrer qu'un tribunal arbitral international ait accordé une réparation pécuniaire, par laquelle une nation souveraine était condamnée à verser des indemnités dites « exemplary », « punitive » ou « vindicative » à une autre nation présentant une réclamation au nom de ses ressortissants. » Commission mixte des Réclamations germano-américaines, Décisions et avis 27.

Aucune règle définitive ne fixe la date à partir de laquelle des intérêts doivent être alloués. Lorsque la réclamation était réglée ou lorsque le montant de cette revendication était susceptible

(b) Pecuniary reparation should be calculated upon a reasonable monetary appraisal of the claimant's actual proved losses. The umpire in the *Lusitania* Opinion said:

"It is a general rule of both the civil and the common law that every invasion of private right imports an injury and that for every such injury the law gives a remedy. Speaking generally, that remedy must be commensurate with the injury received. It is variously expressed as 'compensation', 'reparation', 'indemnity', 'recompense'. . . . The fundamental concept of 'damages' is satisfaction, reparation for a loss suffered; a judicially ascertained compensation for wrong. The remedy should be commensurate with the loss, so that the injured party may be made whole." Mixed Claims Commission, United States and Germany, Decisions and Opinions, 19, 25; Union Bridge Co. (U.S.) v. Gt. Britain, American and British Claims Arb. 1910, pages 371, 380.

Losses of profits, when proved with reasonable certainty and when a causal connection could be established, have been allowed. Case of R. H. May, Moore, Digest, VI, 731; Metzger Case, *ibid*; Irene Roberts Case, Venezuelan Arbitrations, 145. Where the loss of profits is not speculative and problematical, they should be allowed. Parker Case, British and American Claims Arbitration, August 18th, 1910, Nielsen's Report, 571. However, uncertain or speculative profits have been disallowed. Kunhardt (U.S.) v. Venezuela, Venezuelan Arbitrations, 63, 69; Rudloff Case, *ibid.*, 182, 198.

As to allowance of "indirect damage", the general rule seems to be that:

"Governments, like individuals, are responsible only for the proximate and natural consequences of their acts. International as well as municipal law denies compensation for remote consequences, in the absence of evidence of deliberate intention to injure." Dix (U.S.) v. Venezuela, Venezuelan Arbitrations of 1903, pages 7, 9; Roberts (U.S.) v. Venezuela, *ibid.*, 145 (consequential damages allowed); *Alabama* Case, Geneva Award, Moore, Digest, VII, 1063; use of terms direct and indirect illusory, Opinion in War-Risk Insurance Premium Claims, Decisions and Opinions, Mixed Claims Commission, United States and Germany, pages 58-59; Administrative Decision No. II, Mixed Claims Commission, United States and Germany, pages 11-13 (see also pages 46, 51-52, 57-59); Eisenbach Brothers, *ibid.*, page 269; Opinion in *Lusitania* Case, *ibid.*, pages 19-20, 27; Mohegan Case, *ibid.*, p. 671.

If by moral damage is meant injury to some non-material interest, such as honour or prestige, reparation in such cases usually takes the form of disavowal, apology and salute. Moore, Digest, VI, 1035-1037. Such cases are usually connected with material damage, for which pecuniary reparation must be made. When the State is presenting the claim of a private individual, other elements than physical injury may enter into the calculation of the reparation to be made.

"That one injured is, under the rules of international law, entitled to be compensated for an injury inflicted resulting in mental suffering, injury to his feelings, humiliation, shame, degradation, loss of social position or injury to his credit or to his reputation, there can be no doubt, and such compensation should be commensurate to the injury." Opinion in *Lusitania* Cases, Mixed Claims Commission, United States and Germany, Decisions and Opinions, page 27.

Punitive damages were discussed in the opinion in the *Lusitania* cases as follows:

"In our opinion, the words exemplary, vindictive, or punitive as applied to damages are misnomers. The fundamental concept of 'damages' is satisfaction, reparation for a loss suffered; a judicially ascertained compensation for wrong. The remedy should be commensurate with the loss, so that the injured party may be made whole." Mixed Claims Commission, United States and Germany, Decisions and Opinions, 25.

"While there is little doubt that in many cases the idea of punishment has influenced the amount of the award, yet we are not prepared to state that any commission has accepted the view that it possessed the power to grant anything save compensation. In some cases the umpires have refused in terms the granting of punitive awards, indicating by suggestion at least that they would, the circumstances permitting, entertain the idea, although, as we have said, the power to inflict such damages has never been expressly claimed." Ralston, Law and Procedure of International Tribunals, Revised Ed., Sec. 473.

"The industry of counsel has failed to point us to any money award by an international arbitral tribunal where exemplary, punitive, or vindictive damages have been assessed against one sovereign nation in favour of another presenting a claim in behalf of its nationals." Mixed Claims Commission, United States and Germany, Decisions and Opinions, 27.

There is no settled rule as to the date from which interest shall be allowed. Where the claim is liquidated or the amount thereof is capable of being ascertained with approximate

d'une vérification suffisamment précise, les commissions internationales ont alloué des intérêts à partir de la date de la perte ou du dommage. Commission des Réclamations anglo-américaines, 8 mai 1871, rapport Hale, 21; Commission des Réclamations germano-américaines, décision administrative N° III, 62, 63. D'autres commissions ont accordé des intérêts à partir de la date de la présentation des réclamations. « Spanish Spoliation Commission », 27 octobre 1795, Moore Arb. II, 1005; affaire de Garmendia, Ralston, Arb. vénézuéliens, 10, 13. « Il n'y a pas de fondement pour l'octroi d'indemnités sous forme d'intérêts si la perte subie n'a pas donné lieu à un règlement et si le montant de ladite perte n'est pas susceptible d'être déterminé par simple calcul. » Décision administrative N° III, Commission mixte des Réclamations germano-américaines, avis de la Commission, 62.

Les frais engagés pour présenter et faire valoir la réclamation ont, dans un grand nombre de cas, été admis comme constituant un élément recouvrable du dommage subi. Ces dépenses ont été admises dans les affaires Baldwin (E.U.) c. Mexique, Moore Arb. IV, 3235-3240; Stillmann (E.U.) c. Mexique, *ibid.*, 4347 (y compris les frais de traduction); Potter, *ibid.*, 4227; Mitchell, *ibid.*, 4228; Stetson (E.U.) c. Mexique, *ibid.* III, 3131, 3132 (frais d'impression); Louisa (E.U.) c. Mexique, *ibid.*, IV, 4325 (frais engagés en vue d'obtenir le paiement); Cootey (E.U.) c. Mexique, *ibid.*, 2770 (frais engagés pour obtenir la libération d'un navire détenu illégalement); May (E.U.) c. Guatemala, Foreign Relations 1900, 648-674, Moore, Digest VI, 731; Salvador Commercial Co (E.U.) c. Salvador, Foreign Relations, 1902, 872 (frais d'avoué et autres frais).

c) Lorsque l'Etat demandeur est censé avoir subi un dommage direct, comme dans le cas des dommages subis par un fonctionnaire public, il a droit à des excuses convenables. Moore, Digest, VI, 1035-1037. L'Etat contre lequel la réclamation est formulée devrait désavouer l'acte illégal de ses fonctionnaires, en ordonnant des poursuites effectives contre le coupable. Affaire Dillon, Moore, Digest, V, 78, 80; affaire Torry, Ralston Arb. vénézuéliens, 162, 163; le comte Sebastiani à M. Russ, Moore, Digest, V, 813. Après l'affaire McLeod, les Etats-Unis ont modifié la loi d'*habeas corpus*, afin d'empêcher qu'une situation analogue ne se renouvelle. Stat. Rev. Sec. 753, Moore, Digest, II, 30.

• Le principe du droit international est que le gouvernement qui refuse de réparer le dommage causé par ses ressortissants, de punir les coupables ou de les livrer à cette fin, peut être considéré comme participant virtuellement à l'acte dommageable, et comme responsable dudit acte. » M. Fish, à M. Foster, 15 août 1873, Moore, Digest, VI, 655.

• Il est évident que les tribunaux d'arbitrage, en accordant des dommages-intérêts en raison du fait que les autorités n'avaient pas poursuivi les coupables, ont tenu compte du dommage causé par les actes illégaux des coupables, pour lesquels les gouvernements ont été tenus responsables. » Janes (E.U.) c. Mexique, Avis des Commissaires, Convention du 8 septembre 1923, page 123. Voir également Ruden (E.U.) c. Pérou, 4 décembre 1868, Moore Arb. 1653, 1655, Cotesworth et Powell, c. Colombie, *ibid.* 2051, 2082, 2085 (Des lois d'amnistie interdisaient le recours aux tribunaux).

XV.

Pas d'observations.

accuracy, international commissions have awarded interest from the date of the loss or injury. American and British Claims Commission, May 8th, 1871, Hale's Report, 21; Mixed Claims Commission, United States and Germany Administrative Decision No. III, 62, 63. Other commissions have awarded interest from the date of the presentation of the claim. Spanish Spoliation Commission, October 27th, 1795, Moore's Arb. II, 1005; de Garmendia Case, Ralston, Venezuelan Arb., 10, 13. "There is no basis for awarding damages in the nature of interest where the loss is neither liquidated nor the amount thereof capable of being ascertained by computation merely." Administrative Decision No. III, Mixed Claims Commission, United States and Germany, Opinions of Commission, 62.

Expenses incurred in the presentation and prosecution of the claim have in many cases been allowed as a recoverable element of damage. Such expenses were allowed in Baldwin (U.S.) v. Mexico, Moore's Arb., IV, 3235-3240; Stillman (U.S.) v. Mexico, *ibid.*, 4347 (including expense of translation); Potter, *ibid.*, 4227; Mitchell, *ibid.*, 4228; Stetson (U.S.) v. Mexico, *ibid.*, III, 3131, 3132 (cost of printing); Louisa (U.S.) v. Mexico, *ibid.*, IV, 4325 (expenses incurred in effort to obtain payment); Cootey (U.S.) v. Mexico, *ibid.*, 2770 (expenses incurred to secure release of wrongfully detained vessel); May (U.S.) v. Guatemala, Foreign Relations, 1900, 648-674, Moore, Digest, VI, 731; Salvador Commercial Co. (U.S.) v. Salvador, Foreign Relations, 1902 872 (attorney's fees and other costs).

(c) Where the claimant State is deemed to be directly injured, as in the case of an injury to a public official, appropriate apologies should be made. Moore, Digest, VI, 1035-1037. The State against which the claim is made should disavow the wrongful act of its own officials by effectively prosecuting the guilty individual. Dillon Case, Moore, Digest, V, 78, 80; Torry Case, Ralston, Venezuelan Arb., 162, 163; Count Sebastiani to Mr. Russ, Moore, Digest, V, 813. After the McLeod Case, the United States amended the Habeas Corpus Act to make future repetitions of the situation impossible. Rev. Stat., Sec. 753, Moore, Digest, II, 30.

(d) "The rule of the law of nations is that the Government which refuses to repair the damage committed by its citizens or subjects, to punish the guilty parties or to give them up for that purpose, may be regarded as virtually a sharer in the injury and as responsible therefor." Mr. Fish, Secretary of State, to Mr. Foster, August 15th, 1873, Moore, Digest, VI, 655.

"It is clear that arbitral tribunals in assessing damages for the failure of authorities to punish wrongdoers have taken account of the damage caused by the wrongful acts of the culprits for which Governments have been held responsible." Janes (U.S.) v. Mexico, Opinions of Commissioners, Convention September 8th, 1923, page 123. See also Ruden (U.S.) v. Peru, December 4th, 1868, Moore's Arb. 1653, 1655; Cotesworth and Powell v. Colombia, *ibid.*, 2051, 1082, 2085 (amnesty laws precluded recourse to courts).

XV.

No comment.

Genève, le 25 juin 1929.

SOCIÉTÉ DES NATIONS

CONFÉRENCE

POUR LA CODIFICATION DU DROIT INTERNATIONAL

EAUX TERRITORIALES

**RÉSOLUTION ADOPTÉE PAR LA COMMISSION CONSULTATIVE ET TECHNIQUE
DES COMMUNICATIONS ET DU TRANSIT.**

Note du Secrétaire général:

Le Secrétaire général a l'honneur de communiquer ci-après aux gouvernements le texte d'une lettre, en date du 26 mars 1929, qui lui a été adressée par le président de la Commission consultative et technique des communications et du transit et relative à une résolution adoptée par ladite Commission au sujet de la codification du droit international concernant les eaux territoriales.

Cette lettre a fait l'objet d'un examen de la part du Comité préparatoire pour la Conférence de codification, lors de sa session de mai 1929, qui a décidé de recommander au Conseil d'en transmettre copie aux divers gouvernements (voir page 8 des documents C.73.M.38.1929.V, C.74.M.39.1929.V et C.75.M.69.1929.V).

Par une résolution du 12 juin 1929, le Conseil a décidé de donner suite à cette recommandation.

**LETTE DU PRÉSIDENT DE LA COMMISSION CONSULTATIVE ET TECHNIQUE
DES COMMUNICATIONS ET DU TRANSIT.**

Genève, le 26 mars 1929.

J'ai l'honneur de porter à votre connaissance la résolution suivante adoptée par la Commission consultative et technique des communications et du transit au cours de sa treizième session, tenue à Genève du 15 au 23 mars 1929:

« La Commission consultative et technique des communications et du transit,
« Ayant pris acte de l'inscription de la question des eaux territoriales dans le projet d'ordre du jour de la première Conférence pour la codification progressive du droit international et se plaçant exclusivement au point de vue de l'intérêt des communications et du transit,
« Attire l'attention de la Conférence sur les points suivants dont il lui paraît souhaitable que tienne compte la codification internationale:

« a) L'Etat doit, dans l'exercice de sa souveraineté, respecter les limitations imposées par le droit international;

« b) Le navire qui ne fait que traverser les eaux territoriales doit jouir de la plus grande liberté possible;

« c) Les eaux territoriales doivent être limitées aussi étroitement que possible;

« d) Un Etat, même à l'intérieur de ses eaux territoriales, ne doit pas s'immiscer dans les droits, devoirs et obligations des personnes qui se trouvent à bord d'un navire étranger, découlant de la loi du pavillon de ce navire;

« e) L'Etat doit être tenu responsable de l'atteinte portée aux droits du navire étranger tels qu'ils découlent du droit international. »

*Le Président de la Commission consultative et technique
des communications et du transit:*

(Signé) SEELIGER.

[Communicated to the Council,
to the Members of the League
and other Governments.]

Official No: **C. 218 (1). M. 96.** 1929. V.

Geneva, June 25th, 1929.

LEAGUE OF NATIONS

CONFERENCE

FOR THE CODIFICATION OF INTERNATIONAL LAW

TERRITORIAL WATERS.

**RESOLUTION ADOPTED BY THE ADVISORY AND TECHNICAL COMMITTEE
FOR COMMUNICATIONS AND TRANSIT.**

Note by the Secretary-General:

The Secretary-General has the honour to communicate herewith to the Governments a letter, dated March 26th, 1929, addressed to him by the President of the Advisory and Technical Committee for Communications and Transit informing him of the terms of a resolution adopted by the Advisory Committee on the subject of the codification of international law regarding territorial waters.

This letter has been examined by the Preparatory Committee for the Codification Conference at its session of May 1929. The Committee decided to suggest to the Council the communication of the text of the letter to the various Governments (see page 8 of documents C.73.M.38.1929.V, C.74.M.39.1929.V and C.75.M.69.1929.V).

By a resolution of June 12th, 1929, the Council decided to give effect to this suggestion.

**LETTER FROM THE PRESIDENT OF THE ADVISORY AND TECHNICAL COMMITTEE
FOR COMMUNICATIONS AND TRANSIT.**

Geneva, March 26th, 1929.

[*Translation.*]

I have the honour to bring to your attention the following resolution which was adopted by the Advisory and Technical Committee for Communications and Transit in the course of its thirteenth session, held at Geneva from March 15th to 23rd, 1929:

“ The Advisory and Technical Committee for Communications and Transit,

“ Having taken note of the inclusion of the question of territorial waters in the draft agenda of the First Conference for the Progressive Codification of International Law, and having regard solely to the interests of communications and transit:

“ Draws the Conference's attention to the following points to which it thinks consideration should be given in the codification of international law:

“ (a) In exercising its sovereignty, the State must respect the limitations imposed by international law;

“ (b) The ship merely passing through territorial waters should have the fullest possible freedom;

“ (c) Territorial waters should be kept within as narrow limits as possible;

“ (d) A State, even within territorial waters, should not interfere with the rights, duties and obligations of those on board a foreign ship, as established under the laws of the flag of that ship;

“ (e) The State should be responsible for the infringement of the rights of a foreign ship under international law.”

(Signed) SEELIGER,
*President of the Advisory and Technical Committee
for Communications and Transit.*

[Communiqué au Conseil,
aux Membres de la Société
et à d'autres Gouvernements.]

No officiel: **C. 73** (b). **M. 38** (b). 1929. V.

Genève, le 10 août 1929.

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CONFÉRENCE

POUR LA CODIFICATION DU DROIT INTERNATIONAL

Nationalité (*Volume I* — C.73.M.38.1929.V.)
Eaux territoriales (*Volume II* — C.74.M.39.1929.V.)
Responsabilité des Etats en ce qui concerne les dommages causés sur leur territoire à la personne
ou aux biens des étrangers (*Volume III* — C.75.M.69.1929.V.).

BASES DE DISCUSSION

ÉTABLIES PAR LE COMITÉ PRÉPARATOIRE A L'INTENTION
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Supplément au Tome I. — NATIONALITÉ

RÉPONSES DES GOUVERNEMENTS A LA LISTE DE POINTS:
RÉPONSE
DE L'UNION DES RÉPUBLIQUES SOVIÉTISTES SOCIALISTES.

LEAGUE OF NATIONS

CONFERENCE

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Nationality (*Volume I* — C.73.M.38.1929.V.)
Territorial Waters (*Volume II* — C.74.M.39.1929.V.)
Responsibility of States for Damage caused in their Territory to the Person or Property
of Foreigners (*Volume III* — C.75.M.69.1929.V.)

BASES OF DISCUSSION

DRAWN UP FOR THE CONFERENCE BY THE PREPARATORY
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Supplement to Volume I. — NATIONALITY

REPLIES MADE BY THE GOVERNMENTS TO THE SCHEDULE
OF POINTS:
REPLY OF THE UNION OF SOVIET SOCIALIST REPUBLICS.

Série de Publications de la Société des Nations

VV. QUESTIONS JURIDIQUES ✓

1929. V. 12.

UNION DES RÉPUBLIQUES SOVIÉTISTES SOCIALISTES.

LETTRE DU 20 JUILLET 1929.

I.

Le Statut de la nationalité soviétique du 29 octobre 1924 (voir annexe N° 1¹), en traitant de l'attribution aux étrangers de la qualité de citoyen soviétique sur le territoire de l'U.R.S.S. (article 7), laisse sous ce rapport pleine liberté d'action aux organes chargés par la loi de conférer aux étrangers la nationalité de l'U.R.S.S. Il n'est besoin dans ce cas d'aucune entente préalable avec les gouvernements étrangers intéressés. Certains détails, en ce qui concerne l'attribution de la qualité de citoyen soviétique aux étrangers, sont consignés dans des instructions spéciales (pour la République socialiste fédérative des Soviets russes, voir annexe N° 2).

II.

La législation soviétique n'exclut pas la possibilité de deux nationalités (voir article II du Statut du 29 octobre 1924). Cet article est ainsi conçu :

« Les citoyens étrangers ayant reçu la qualité de citoyens soviétiques ne jouissent pas des droits et ne remplissent pas les obligations qui pourraient découler de leur appartenance à une autre nationalité. »

Tant que l'intéressé se trouve sur le territoire de l'U.R.S.S., il est considéré dans toutes les circonstances comme citoyen soviétique, sans tenir compte de son appartenance à une nationalité étrangère.

III.

La législation soviétique (article 13 du Statut du 29 octobre 1924) établit les conditions dans lesquelles peut être accordée à un citoyen soviétique la permission d'expatriation. En conséquence, la naturalisation des citoyens soviétiques dans un Etat étranger n'entraîne pas automatiquement pour ces personnes la perte de la nationalité soviétique (voir annexe N° 3).

La question de l'expatriation fait seulement l'objet de l'article 13 du « Statut des étrangers et de la nationalité de la République soviétiste socialiste d'Ukraine (article 13, paragraphe d : voir annexe N° 4). Cet article prévoit que le requérant devra s'engager, aussitôt après avoir reçu l'autorisation de quitter la nationalité ukrainienne, à sortir du territoire de la R.S.S. d'Ukraine dans le délai fixé par le Commissariat du Peuple pour les Affaires intérieures.

En outre, la loi connaît certaines dispositions concernant la nationalité des émigrés politiques séjournant à l'étranger (voir annexes 5, 6 et 7). Enfin, la perte de la nationalité est prévue comme mesure répressive par l'article 12 de la loi précitée du 29 octobre 1924 et par l'article 13 de la loi sur les principes fondamentaux de la législation pénale de l'U.R.S.S. en date du 31 octobre 1924 et par l'article 41 du Code consulaire de l'U.R.S.S. (voir annexes N° 8 et 9).

IV.

La question de l'effet d'une naturalisation des parents sur les enfants fait l'objet de l'article 6 du statut du 29 octobre 1924. Conformément à cet article, le changement de nationalité d'un des époux jouissant de la qualité de citoyen soviétique et se trouvant sur le territoire de l'Union n'a aucune répercussion sur la nationalité des enfants. Lorsque l'un des parents, citoyen soviétique, mais vivant en dehors du territoire de l'U.R.S.S., perd la nationalité soviétique, la question de la nationalité des enfants est décidée par entente des parents. Dans le cas où les deux parents deviennent citoyens soviétiques ou, au contraire, cessent d'être citoyens soviétiques, les enfants au-dessous de 14 ans suivent la nationalité des parents. La nationalité des enfants ayant atteint 14 ans n'est pas modifiée par le fait d'acquisition d'une autre nationalité par les parents.

V.

La législation soviétique ne contient aucune disposition spéciale à cet égard.

VI.

La législation soviétique ne contient aucune disposition spéciale à cet égard.

VII.

Les enfants nés sur le territoire de l'U.R.S.S. de parents inconnus ou de parents qui n'ont pas de nationalité ou dont la nationalité est inconnue seront, conformément à l'article 3 du Statut du 29 octobre 1924, réputés comme citoyens soviétiques.

¹ Les annexes mentionnées dans cette réponse sont gardées dans les Archives du Secrétariat.

UNION OF SOVIET SOCIALIST REPUBLICS.

LETTER OF JULY 20TH, 1929.

[*Translation.*]

I.

The Soviet Statute of Nationality dated October 29th, 1924 (see Annex No. 1¹), dealing with the granting of Soviet citizenship to aliens in the territory of the U.S.S.R. (Article 7), allows full freedom of action to the organs appointed by law to confer the nationality of the U.S.S.R. upon aliens. There is no need for any previous agreement with the foreign Governments concerned. Special instructions (for the Russian Socialist Federal Soviet Republic, see Annex No. 2) have been issued in regard to certain details connected with the granting of the status of Soviet citizen to aliens.

II.

Soviet law does not preclude the possession of two nationalities (see Article II of the Statute of October 29th, 1924). This article reads as follows:

“ Aliens who have acquired the status of Soviet citizens shall not enjoy the rights or fulfil the obligations which may arise out of their possession of another nationality ”.

So long as the person concerned remains in the territory of the U.S.S.R., he is in all circumstances deemed to be a Soviet citizen, regardless of his possession of a foreign nationality.

III.

Soviet law (Article 13 of the Statute of October 29th, 1924) lays down the conditions on which a Soviet citizen may be granted permission to expatriate himself. In consequence, the naturalisation of Soviet citizens in a foreign State does not automatically entail loss of Soviet nationality for such citizens (see Annex No. 3).

The question of expatriation is dealt with only in Article 13 of the “ Statute relating to Aliens and Nationality of the Ukraine Soviet Socialist Republic ” (Article 13^d; see Annex No. 4). This article provides that the applicant must undertake, immediately upon receiving authorisation to renounce Ukrainian nationality, to leave the territory of the Ukraine Soviet Socialist Republic within the period prescribed by the People's Commissariat for Internal Affairs.

There are also certain legal provisions relating to the nationality of political emigrants living abroad (see Annexes 5, 6 and 7). Lastly, loss of nationality is prescribed as a punitive measure in Article 12 of the above-mentioned law of October 29th, 1924, Article 13 of the law dated October 31st, 1924, on the fundamental principles underlying the penal legislation of the U.S.S.R., and Article 41 of the Consular Code of the U.S.S.R. (see Annexes 8 and 9).

IV.

The effect of the naturalisation of parents on their children is dealt with in Article 6 of the Statute of October 29th, 1924. According to that article, a change of nationality by one of the parents, being a Soviet citizen and living in the territory of the Union, does not affect the nationality of the children. If one of the parents, being a Soviet citizen but living outside the territory of the U.S.S.R., loses Soviet nationality, the nationality of the children is decided by agreement between the parents. If both parents either become or cease to be Soviet citizens, their children below 14 years of age take their parents' nationality. The nationality of children of 14 years or over remains unchanged if the parents acquire another nationality.

V.

Soviet law contains no special provision on this point.

VI.

Soviet law contains no special provision on this point.

VII.

Children born in the territory of the U.S.S.R. of unknown parents or parents who have no nationality or whose nationality is unknown will, according to Article 3 of the Statute of October 29th, 1924, be deemed to be Soviet citizens.

¹ The annexes mentioned in this reply are kept in the archives of the Secretariat.

VIII.

La question est résolue dans chaque cas particulier en conformité avec l'article 4 du Statut du 29 octobre 1924.

IX.

Cette question n'est pas prévue par la législation soviétique.

X.

L'option figure dans la législation soviétique comme un des titres légaux de perte de la nationalité soviétique (art. 12 du Statut du 29 octobre 1924, paragraphe d). Les conditions sont en général prévues dans les conventions internationales correspondantes (voir annexes Nos 10 à 15). En outre, le choix de la nationalité fait l'objet de la deuxième note à l'article 6 du Statut du 29 octobre 1924. Cette note concerne les personnes qui cessent d'être citoyens soviétiques par suite de la perte de la nationalité soviétique par leurs parents.

Ces personnes peuvent acquérir la nationalité soviétique en déposant une requête au Soviet local.

XI.

Conformément à l'article 5 du Statut du 29 octobre 1924 en cas de contractation de mariage entre deux personnes, dont l'une est citoyen soviétique et l'autre citoyen étranger, chacun des époux conserve sa nationalité. Le changement de nationalité de ces personnes peut éventuellement survenir selon une procédure simplifiée, prévue en principe par la législation de l'U.R.S.S. (article 5 du Statut du 29 octobre 1924).

XII.

La femme ayant changé de nationalité à la suite ou au cours de son mariage selon la procédure indiquée dans la réponse à la question précédente peut, après la dissolution de son mariage, recouvrer sa première nationalité en se conformant à la procédure générale.

XIII.

Voir la réponse au point XI.

XIV.

La législation soviétique ne connaît pas de légitimation, car elle ne connaît pas la catégorie des enfants dits « illégitimes ».

Conformément aux dispositions des codes de lois sur le mariage, la famille et la tutelle dans les Républiques fédérées, l'enregistrement du mariage a uniquement pour but de faciliter la défense des droits personnels et réels, ainsi que les intérêts des conjoints et des enfants. La condition juridique des enfants nés d'un mariage non enregistré est la même que celle des enfants nés d'un mariage enregistré.

XV.

L'adoption est admise exclusivement dans l'intérêt des enfants. Si l'adoptant est un citoyen étranger, l'adoption n'entraîne aucun changement de nationalité pour l'adopté.

VIII.

This question is settled in each individual case in accordance with Article 4 of the Statute of October 29th, 1924.

IX.

There are no Soviet laws dealing with this question.

X.

Under Soviet law this option forms one of the legal grounds for loss of Soviet nationality (Article 12 of the Statute of October 29th, 1924, paragraph (d)). The conditions are, as a rule, laid down in the relevant international conventions (see Annexes 10 to 15). Further, the choice of nationality is dealt with in the second note to Article 6 of the Statute of October 29th, 1924. This note relates to persons who cease to be Soviet citizens through the loss of Soviet nationality by their parents.

Such persons may acquire Soviet nationality on application to the local Soviet.

XI.

According to Article 5 of the Statute of October 29th, 1924, if a marriage is contracted between two persons, one a Soviet citizen and the other an alien, each retains his or her nationality. Such persons may, however, change their nationality by a simplified procedure, the principle of which is laid down in the legislation of the U.S.S.R. (Article 5 of the Statute of October 29th, 1924).

XII.

A woman who changes her nationality after or during her marriage by the procedure indicated in the reply to the previous question may, if her marriage is dissolved, recover her original nationality by adopting the general procedure.

XIII.

See reply to XI.

XIV.

Soviet law does not recognise legitimation, as it does not recognise any such category as "illegitimate" children.

In accordance with the legal codes on marriage, the family, and guardianship in the Federated Republics, the sole object of the registration of marriage is to facilitate the defence of rights *in personam* and *in rem* and the interests of parents and children. The legal status of children born of an unregistered marriage is the same as that of those born of a registered marriage.

XV.

Adoption is allowed solely in the interest of the children. If the adopter is an alien, the adoption involves no change of nationality for the person adopted.

[Communiqué au Conseil,
aux Membres de la Société
et à d'autres Gouvernements.]

N^o officiel: **C. 74 (b). M. 39 (b).** 1929. V.

Genève, le 10 août 1929.

SOCIÉTÉ DES NATIONS

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BASES DE DISCUSSION

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Supplément au Tome II. — EAUX TERRITORIALES

RÉPONSES DES GOUVERNEMENTS A LA LISTE DE POINTS:
RÉPONSE
DE L'UNION DES RÉPUBLIQUES SOVIÉTISTES SOCIALISTES.

LEAGUE OF NATIONS

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FOR THE CODIFICATION OF INTERNATIONAL LAW**

Nationality (*Volume I* — C.73.M.38.1929.V.)
Territorial Waters (*Volume II* — C.74.M.39.1929.V.)
Responsibility of States for Damage caused in their Territory to the Person or Property
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DRAWN UP FOR THE CONFERENCE BY THE PREPARATORY
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Supplement to Volume II. — TERRITORIAL WATERS

REPLIES MADE BY THE GOVERNMENTS TO THE SCHEDULE
OF POINTS: REPLY OF THE UNION OF
SOVIET SOCIALIST REPUBLICS.

Série de Publications de la Société des Nations

V. QUESTIONS JURIDIQUES

✓ 1929. V. 13.

UNION DES RÉPUBLIQUES SOVIÉTISTES SOCIALISTES

LETTRE DU 20 JUILLET 1929.

I.

La législation soviétique ne s'est pas arrêtée d'une façon générale à cette question. Au point de vue de la différence entre les eaux territoriales et les zones spéciales côtières, le droit soviétique n'a donné jusqu'à présent aucune interprétation des divers termes employés à ce sujet dans le droit soviétique.

II.

a) Les autorités de l'U.R.S.S. possèdent un droit de surveillance sur tous les aéronefs militaires et civils dans une zone côtière de 12 milles (article 23 du Règlement sur les frontières de l'U.R.S.S. du 15 juin 1927), (voir annexe n° 1¹).

Le décret du Conseil des Commissaires du Peuple du 17 janvier 1921 stipule dans son préambule, sous le paragraphe 1, les règles concernant la navigation aérienne, s'étendant à l'espace atmosphérique au-dessus des eaux territoriales (voir annexe n° 2).

b) Le droit au sol et au sous-sol recouverts par les eaux territoriales n'est pas spécifié dans la législation soviétique, à l'exception des biens submergés. La loi du 17 avril 1928 établit les règles concernant la récupération des biens submergés dans les limites d'une zone maritime frontière de 12 milles et concernant les droits à ces biens (voir annexe n° 3).

III.

Le droit soviétique établit les règles suivantes:

Dans le Golfe de Finlande. — L'article 3 du Traité de Paix entre la R.S.F.S.R. et la République de Finlande, conclu à Iouriev (Tartu) le 14 octobre 1920, est ainsi formulé: « Les eaux territoriales des Puissances contractantes dans le Golfe de Finlande auront une largeur de 4 milles marins... ». Le Traité prévoit une série d'exceptions donnant des délimitations précises des eaux territoriales dans le Golfe de Finlande (voir annexe n° 4).

Quant à la Mer Noire, les eaux de l'Extrême-Orient et l'Océan Glacial, le dernier paragraphe de l'article 9 du Règlement sur les frontières d'Etat du 15 juin 1927 précité fixe une zone de 12 milles. Dans la région de l'Océan Glacial, entre le cap Sviatoi Nos et le cap Kanine Nos, cette zone s'étend à 12 milles au Nord de la ligne droite reliant ces deux caps (Décret du 24 mai 1921, annexe n° 5).

La loi du 24 juillet 1928 règle l'emploi de la T.S.F. par les navires étrangers dans une zone maritime spéciale de 10 milles marins le long des côtes de l'Union (voir annexe n° 6).

IV.

Les lignes mentionnées dans la législation ou dans les traités de l'Union sont calculées, soit à partir de la laisse de basse mer, soit à partir des frontières des eaux intérieures, soit enfin à partir des points les plus éloignés des rochers émergents.

V.

L'article 3 du Traité de Paix de Iouriev (Tartu) entre la R.S.F.S.R. et la Finlande (voir ci-dessus) établit les frontières précises des eaux territoriales de l'U.R.S.S. autour des îles.

VI.

.....

VII.

Conformément à la Convention sur les principes fondamentaux des rapports réciproques entre l'U.R.S.S. et le Japon, du 20 janvier 1925, le traité conclu à Portsmouth le 5 septembre 1905 entre la Russie et le Japon reste en vigueur. L'article 9 de ce dernier traité stipule que les parties s'engagent respectivement à ne prendre aucune mesure militaire qui pourrait entraver la libre navigation des détroits de La Pérouse et de Tartarie (voir annexe n° 7).

VIII.

.....

¹ Les annexes mentionnées dans cette réponse sont gardées dans les archives du Secrétariat.

UNION OF SOVIET SOCIALIST REPUBLICS.

LETTER OF JULY 20TH, 1929.

[Translation.]

I.

Soviet law does not deal in a general way with this question. As regards the difference between territorial waters and special coastal zones, Soviet law has not yet given any interpretation of the various terms it employs in this matter.

II.

(a) The authorities of the U.S.S.R. hold a right of surveillance over all military and civil aircraft within a coastal zone of twelve miles (Article 23 of the Frontier Regulations of the U.S.S.R., June 15th, 1927) (see Annex No. 1¹).

The decree of the Council of the People's Commissaries dated January 17th, 1921, lays down (Preamble, paragraph 1) the rules regarding air navigation in the air-space above territorial waters (see Annex No. 2).

(b) No specific rule relating to the soil and subsoil covered by territorial waters is laid down by Soviet legislation except as regards submerged property. The Law of April 17th, 1928, lays down rules regarding the recovery of submerged property within the limits of a frontier maritime zone of twelve miles, and regarding the rights to such property (see Annex No. 3).

III.

Soviet law lays down the following rules:

Gulf of Finland. — Article 3 of the Treaty of Peace between the R.S.F.S.R. and the Republic of Finland, concluded at Yurief (Tartu) on October 14th, 1920, reads as follows: "The territorial waters of the Contracting Powers in the Gulf of Finland shall have a width of four marine miles . . .". The treaty provides for a number of exceptions giving exact delimitations of the territorial waters in the Gulf of Finland (see Annex No. 4).

For the Black Sea, Far-Eastern waters and the Arctic Ocean, the last paragraph of Article 9 of the above-mentioned State Frontier Regulations dated June 15th, 1927, fixes the zone at twelve miles. In the area of the Arctic Ocean, between Cape Sviatoi Nos and Cape Kanin Nos, this zone extends twelve miles north of a straight line connecting those two capes (Decree of May 24th, 1921, Annex No. 5).

The Law of July 24th, 1928, regulates the use of wireless by foreign vessels in a special maritime zone ten marine miles in width along the coasts of the Union (see Annex No. 6).

IV.

The lines mentioned in the laws and treaties of the Union are calculated either from low-water mark or from the boundaries of inland waters, or from the outermost point of rocks rising above sea-level.

V.

Article 3 of the Treaty of Peace of Yurief (Tartu) between the R.S.F.S.R. and Finland (see above) lays down the exact boundaries of the territorial waters of the U.S.S.R. around islands.

VI.

.

VII.

According to the Convention dated January 20th, 1925, on the fundamental principles underlying mutual relations between the U.S.S.R. and Japan, the treaty concluded at Portsmouth on September 5th, 1905, between Russia and Japan remains in force. Article 9 of the latter treaty lays down that the parties undertake not to carry out any military measure which might hinder the free navigation of the Straits of La Pérouse and of Tartary (see Annex No. 7).

VIII.

.

¹ The annexes mentioned in this reply are kept in the archives of the Secretariat.

IX.

Le libre passage des navires, tant marchands que de guerre, est prévu dans le paragraphe 2 de l'Instruction pour la navigation des bateaux dans les eaux côtières, dans les limites de la portée des batteries de la côte, en temps de paix (Ordre du jour du Conseil révolutionnaire de la Guerre de l'U.R.S.S., du 5 juillet 1924, n° 897, voir annexe n° 8).

Le paragraphe 10 de cette Instruction prévoit l'interdiction éventuelle à tout navire de l'accès de certaines zones déterminées (le rayon de la forteresse de Cronstadt).

X¹.

Conformément à la remarque au paragraphe 2 de l'Instruction mentionnée dans la question IX, les navires de guerre n'ont pas le droit de s'arrêter dans les eaux territoriales de l'U.R.S.S. (à l'exception des cas pour lesquels il a été obtenu une permission préalable du Gouvernement de l'U.R.S.S. ou en cas de relâche forcée).

Les conditions de séjour des navires de guerre et de commerce dans les eaux territoriales de l'U.R.S.S. sont réglées de la manière suivante:

Les articles 23 à 25 et l'article 26 du Règlement sur les frontières d'Etat de l'U.R.S.S. du 15 juin 1927 prévoient la surveillance des navires étrangers dans la zone maritime frontière sous forme de droit d'arrêter et de visiter les navires marchands étrangers et d'exiger du capitaine la présentation de tous les papiers de bord et de cargaison.

En particulier, peuvent être détenus les navires opérant sans une permission des autorités le chargement, le déchargement des marchandises, l'embarquement et le débarquement des passagers (par. b) article 26 dudit Règlement) ou ayant à bord des personnes cherchant à quitter l'U.R.S.S. sans permission ou des criminels passibles d'arrestation.

En ce qui concerne la surveillance des navires de guerre, l'article 24 du même Règlement prévoit l'établissement des règles spéciales pour la surveillance de ces navires dans les eaux côtières (voir ci-dessus l'ordre du jour du 5 juillet 1924 sur la navigation dans les limites de la portée des batteries de la côte en temps de paix). Ledit ordre du jour enjoint aux chefs de batteries côtières de signaler aux autorités maritimes supérieures les cas constatés de violation des règlements en vigueur de la part des navires de guerre.

Ces dispositions d'un caractère général ont inspiré les règles suivantes:

1. Les navires, tant militaires que marchands, sont tenus, pendant leur navigation dans les eaux territoriales de l'U.R.S.S., d'arborer pendant le jour les pavillons nationaux et la nuit d'allumer les feux des signaux réglementaires (par. 8 de l'Ordre du jour du 5 juillet 1924).

Lorsque les navires se trouvent dans les limites de visibilité des postes de signalisation, ils doivent indiquer leurs signaux d'appel et exécuter les signaux requis (par. 5 *ibidem*). En entrant dans les ports de l'U.R.S.S., ils doivent observer un certain nombre de règles générales de navigation.

2. Dans les limites de la zone frontière maritime de l'U.R.S.S., les bateaux étrangers sont tenus d'observer les règles énoncées dans « Le Règlement sur les mesures préventives pour empêcher les détériorations des câbles télégraphiques sous-marins » (émanant du Commissariat du Peuple des Voies de Communication du 5 octobre 1926 *sub* n° 8905 (voir par. 6 de ce Règlement). (Annexe n° 9).

3. Les navires étrangers sont guidés par les pilotes de l'U.R.S.S. dans les endroits où un pilote est obligatoire (article 8 du Règlement des taxes de port du 19 février 1926). (Voir annexe n° 10).

4. Les navires étrangers sont tenus de se conformer aux dispositions relatives à la conduite des navires par les brise-glaces à travers les glaces. (Règles publiées par le Commissariat du Peuple des Voies de Communication, le 11 novembre 1927). (Voir annexe n° 11).

5. Conformément aux règles publiées par le Commissariat des Voies de Communication de 1922, reproduisant les règlements de la Conférence de Washington de 1889, tous les navires se trouvant dans les eaux communiquant avec les mers ouvertes doivent se soumettre aux règles pour éviter la collision des navires en mer (voir annexe n° 12).

6. En qualité de participant à la Convention sanitaire internationale, le Gouvernement de l'U.R.S.S. s'abstient de toute visite sanitaire des navires passant par les eaux territoriales et ne faisant pas de relâche dans les ports ou sur les côtes de l'U.R.S.S.

7. « Le Règlement sur les avaries », approuvé par le Commissariat du Peuple des Voies de Communication le 2 août 1927, fixe, dans le paragraphe 13 que l'enquête porte sur les avaries subies « ...b) par les navires marchands étrangers si l'avarie a eu lieu dans les limites des eaux de l'U.R.S.S. » (Voir annexe n° 13).

XI.

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XII.

L'article 28 du Règlement sur les frontières d'Etat de l'U.R.S.S. de 1927 stipule que, dans le cas où dans la zone côtière l'on découvrirait à bord d'un navire non militaire sans distinction, des personnes voulant quitter le territoire de l'U.R.S.S. sans avoir effectué les formalités néces-

¹ La réponse à cette question concerne aussi les navires marchands.

IX.

Free passage for both merchant ships and warships is provided in paragraph 2 of the Instructions for the navigation of vessels in time of peace in coastal waters within range of coast batteries (Order of the Revolutionary Council of War of the U.S.S.R., July 5th, 1924, No. 897; see Annex No. 8).

Paragraph 10 of these Instructions provides that any vessel may be prohibited access to certain specified zones (the area of the fortress of Kronstadt).

X.¹

In accordance with the observation on paragraph 2 of the Instructions mentioned in Question IX, warships have not the right to stop in the territorial waters of the U.S.S.R. (unless permission has previously been obtained from the Government of the U.S.S.R. or in case of distress).

The conditions regarding the stay of warships and merchant ships in the territorial waters of the U.S.S.R. are regulated as follows:

Articles 23 to 25 and Article 26 of the State Frontier Regulations of the U.S.S.R., dated June 15th, 1927, provide for the surveillance of foreign vessels in the maritime frontier zone; foreign merchant ships may be stopped and inspected and the captain may be required to show all the papers of the ship and cargo.

In particular, vessels may be detained if they are, without permission from the authorities, loading or unloading goods or embarking or landing passengers (Article 26 (b) of the above Regulations), or have on board persons attempting to leave the U.S.S.R. without permission or criminals liable to arrest.

As regards the surveillance of warships, Article 24 of the same Regulations provides for the establishment of special rules for the surveillance of these vessels in coastal waters (see above, Order of July 5th, 1924, on navigation in time of peace within range of coast batteries). This Order requires officers commanding coast batteries to notify the higher maritime authorities of any cases of breach of the regulations in force by warships.

On the basis of these general provisions, the following regulations are laid down:

1. Both warships and merchant ships are bound, when navigating in the territorial waters of the U.S.S.R., to fly their national flag during the day, and at night to display the proper lights (paragraph 8 of the Order of July 5th, 1924).

When vessels are within visible range of signalling stations, they must give their call signals and make the signals required (paragraph 5 *ibid.*). When entering the ports of the U.S.S.R., they must observe a number of general rules of navigation.

2. Within the maritime frontier zone of the U.S.S.R., foreign vessels must observe the rules laid down in the "Regulations on measures to prevent damage to submarine telegraph cables" (issued by the People's Commissariat for Communications, October 5th, 1926, No. 8905) (see paragraph 6 of these Regulations) (Annex No. 9).

3. Foreign vessels are piloted by U.S.S.R. pilots wherever the employment of a pilot is compulsory (Article 8 of the Port Charges Regulations of February 19th, 1926) (see Annex No. 10).

4. Foreign vessels must conform to the regulations regarding the convoying of vessels through ice by ice-breakers (Rules published by the People's Commissariat for Communications, November 11th, 1927) (see Annex No. 11).

5. According to the rules published by the Commissariat for Communications in 1922, reproducing the rules of the Washington Conference of 1889, all vessels when in waters communicating with the open sea must obey the rules for the prevention of collisions of vessels at sea (see Annex No. 12).

6. As a party to the International Sanitary Convention, the Government of the U.S.S.R. does not carry out any health inspection of vessels passing through the territorial waters without stopping at the ports or on the coasts of the U.S.S.R.

7. The "Regulations regarding damage" approved by the People's Commissariat for Communications on August 2nd, 1927, provide (paragraph 13) that an enquiry must be held on damage sustained " (b) by foreign merchant vessels if the loss occurred within the waters of the U.S.S.R." (see Annex No. 13).

XI.

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XII.

Article 28 of the State Frontier Regulations of the U.S.S.R. for 1927 prescribes that, if in the coastal zone there are found on board a non-military vessel of any kind persons intending to leave the territory of the U.S.S.R. without complying with the necessary formalities, or persons

¹ The reply to this question also covers merchant ships.

saires, ou des personnes ayant commis des actes criminels et passibles d'arrestation, conformément à la législation de l'U.R.S.S. et des républiques fédérées, seules les personnes susdites peuvent être arrêtées, tandis que le navire ne peut pas être retenu.

Au cas où l'on constaterait à bord du navire la présence de personnes s'y étant embarquées dans le but de débarquer sur le territoire de l'U.R.S.S. sans avoir effectué les formalités requises, ces personnes ne sont pas arrêtées et sont laissées à bord sous la responsabilité du capitaine du bateau, mais elles ne sont pas admises à descendre à terre.

XIII.

Conformément à la législation soviétique en vigueur, des taxes ne sont pas perçues sur des navires passant par les eaux territoriales de l'U.R.S.S., à l'exception des redevances pour services rendus et des taxes de pilotage, ce qui rentre dans la catégorie des services, perçues sur tous les navires maritimes profitant réellement des services des pilotes. Le montant dépend des conditions spéciales dans lesquelles le pilotage s'effectue, de la durée du pilotage, du tirant d'eau, etc. (articles 7 et 14 du Règlement des taxes de port et des redevances pour les services rendus dans les ports de l'U.R.S.S., du 19 février 1926).

XIV.

L'article 27 du Règlement sur les frontières d'Etat de l'U.R.S.S. de 1927 porte que la poursuite d'un navire ne se soumettant pas aux sommations de la garde frontière dans les limites de la zone maritime, peut être continuée au delà de cette zone en pleine mer, mais doit s'arrêter, en tout cas, lorsque le navire poursuivi entre dans les eaux territoriales d'un Etat étranger.

XV.

Les navires étrangers, au cours de leur séjour dans les ports de l'U.R.S.S. sont soumis à toutes les règles locales en vigueur (voir à ce sujet l'Instruction publiée par l'Ordre du jour du Conseil révolutionnaire de la Guerre, du 22 juin 1925). (Annexe n° 14).

La loi du 24 mai 1927 prévoit les règles applicables à l'arrestation des personnes à bord des navires de commerce battant pavillon étranger dans les ports soviétiques. (Annexe n° 15).

La Convention consulaire avec la Pologne, du 18 juillet 1924, et le Traité consulaire avec l'Allemagne du 12 octobre 1925, traitent aussi de cette question (voir annexes n° 16 et 17). Ces actes internationaux contiennent en outre un certain nombre de clauses concernant la juridiction civile sur les navires.

Il convient aussi de remarquer la décision du Tribunal Suprême de la République Ukrainienne dans l'affaire « Reznikov c. Ships ARCOS », reconnaissant la compétence des tribunaux soviétiques pour l'examen des prétentions découlant du contrat de travail sur un navire étranger, se trouvant dans un port soviétique, en tant que le contraire n'est pas prévu par un traité international en vigueur dans l'U.R.S.S. (Voir annexe n° 18).

who have committed criminal acts or acts rendering them liable to arrest under the laws of the U.S.S.R. and the Federated Republics, such persons alone may be arrested; the vessel itself cannot be detained.

If there are found on board a vessel persons who have embarked with the intention of landing on the territory of the U.S.S.R. without complying with the requisite formalities, such persons are not arrested; they are left on board, the master of the vessel being held responsible for them, but they are not allowed to land.

XIII.

According to the existing Soviet laws, no charges are leviable upon vessels passing through the territorial waters of the U.S.S.R., other than dues for services rendered, and the fees for pilotage (which counts as a "service"), leviable on all sea-going vessels actually employing pilots. The amount payable depends on the special circumstances in which the pilotage is carried out, the length of time during which the pilot is employed, the draught, etc. (Articles 7 and 14 of the Regulations regarding port charges and dues for services rendered in the ports of the U.S.S.R., February 19th, 1926).

XIV.

Article 27 of the State Frontier Regulations of the U.S.S.R., 1927, lays down that the pursuit of a vessel which ignores a summons by the frontier guard within the maritime zone may be continued beyond that zone in the open sea, but must stop whenever the vessel pursued enters the territorial waters of a foreign State.

XV.

Foreign vessels stopping at ports of the U.S.S.R. must comply with all the local regulations in force (on this subject see the Instructions published under the Order of the Revolutionary Council of War, June 22nd, 1925) (Annex No. 14).

The Law of May 24th, 1927, lays down rules for the arrest of persons on board merchant vessels flying a foreign flag in Soviet ports (Annex No. 15).

The Consular Convention with Poland, dated July 18th, 1924, and the Consular Treaty with Germany, dated October 12th, 1925, also deal with this question (see Annexes Nos. 16 and 17). These international acts also contain a number of clauses relating to civil jurisdiction over ships.

Further, reference should also be made to the decision of the Supreme Court of the Ukraine Republic in the case Reznikov v. Ships ARCOS, recognising the competence of the Soviet Courts to examine claims arising out of a contract of service on board a foreign vessel in a Soviet port, unless otherwise provided by an international treaty in force in the U.S.S.R. (see Annex No. 18).

Genève, le 31 août 1929.

SOCIÉTÉ DES NATIONS

Question de l'adhésion des Etats-Unis d'Amérique au Protocole de signature du Statut de la Cour perma- nente de Justice internationale.

Le Secrétaire général a l'honneur de communiquer aux Membres de la Société, aux délégués à l'Assemblée et à la Conférence pour la Revision du Statut de la Cour permanente de Justice internationale, le rapport et la résolution ci-après qui ont été adoptés, concernant la question susmentionnée, par le Conseil, sur la proposition de son rapporteur, le représentant de l'Italie, le 31 août 1929.

RAPPORT PRÉSENTÉ AU CONSEIL PAR LE REPRÉSENTANT DE L'ITALIE ET RÉOLUTION

adoptés par le Conseil le 31 août 1929.

A l'invitation du Conseil, une conférence de représentants des gouvernements siègera, dès le 4 septembre prochain, pour traiter de la question des amendements au Statut de la Cour permanente de Justice internationale. Je me permets de signaler à mes collègues l'opportunité d'inviter ladite Conférence à porter également son examen sur le rapport consacré, par le Comité de juristes, à l'adhésion des Etats-Unis d'Amérique au Protocole de signature du Statut de la Cour, ainsi que sur le projet de protocole, qui se trouve exprimer les recommandations dudit comité.

Considérant que, de son point de vue, ils représentent une solution satisfaisante, le Conseil adopta, lors de sa dernière session, ce rapport et ce projet de protocole. Il chargea, à cette occasion, le Secrétaire général de communiquer ces textes aux gouvernements intéressés et de les placer à l'ordre du jour de l'Assemblée, de façon que cette dernière puisse les approuver, le cas échéant.

Cette décision du Conseil, ne réglait pas, cependant, la question de savoir suivant quelle procédure serait ouvert à la signature des gouvernements le protocole nécessaire pour mettre en œuvre les recommandations du Comité de juristes, dans l'hypothèse où ces recommandations rencontreraient l'assentiment du Conseil et de l'Assemblée, ainsi que celui de tous les gouvernements intéressés. Mes collègues se rappelleront que le rapport des juristes signalait l'intérêt qu'il y aurait à ce que le Conseil pût faire en sorte que semblable instrument fût dressé, et signé par le plus grand nombre possible de gouvernements, avant la clôture de la session de l'Assemblée.

A l'époque de sa dernière réunion, il apparaissait prématuré que le Conseil prit des mesures dans ce sens. A présent, par contre, j'ai des raisons de croire qu'il serait opportun et favorable à une plus prompt réalisation du but envisagé, que, non seulement l'Assemblée se trouve en mesure d'examiner les recommandations des juristes et le projet de protocole, mais encore, dans l'éventualité où l'Assemblée marquerait son approbation, qu'une conférence, à laquelle prendront part tous les Etats parties au Statut de la Cour, puisse se prononcer à cet égard avant la clôture de la session de l'Assemblée. La Conférence convoquée par le Conseil pourrait, semble-t-il, assumer utilement cette tâche. A mon sens, les délégués obtiendraient aisément de leurs gouvernements les pouvoirs supplémentaires nécessaires; d'ailleurs, suivant toute probabilité, les gouvernements représentés à l'Assemblée ont déjà considéré la question sous tous ses aspects, en vue des instructions à donner à leurs délégués à l'Assemblée.

J'ai, en conséquence, l'honneur de soumettre au Conseil le projet de résolution ci-après:

Résolution proposée par le représentant de l'Italie et adoptée par le Conseil.

« Le Conseil approuve le rapport du représentant de l'Italie; il décide d'inviter la Conférence, convoquée en vertu de sa résolution du 12 juin 1929, à étendre son examen au rapport et au projet de protocole dressés par le Comité de juristes, concernant la question de l'adhésion des Etats-Unis d'Amérique au Protocole de signature du Statut de la Cour permanente de Justice internationale, cela dans l'hypothèse où les recommandations des juristes rallieraient l'approbation de l'Assemblée. Ainsi, si la Conférence s'y rallie également, le protocole nécessaire pour mettre en œuvre ces recommandations pourra être arrêté et ouvert aux signatures dans le plus bref délai possible. »

[Distributed to the Council, the
Members of the League the
Delegates at the Assembly and
the Conference.]

Official No.: **A. 28.** 1929. V.
[C.A.S.C. 3.]

Geneva, August 31st, 1929.

LEAGUE OF NATIONS

Question of the Accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice.

The Secretary-General has the honour to circulate to the Members of the League, to the delegates at the Assembly and at the Conference for the Revision of the Statute of the Permanent Court of International Justice, the following report and resolution on the above subject, which were adopted by the Council, on the proposal of its Rapporteur, the representative of Italy, on August 31st, 1929.

REPORT TO THE COUNCIL BY THE REPRESENTATIVE OF ITALY AND RESOLUTION

Adopted by the Council on August 31st, 1929.

A Conference of Government representatives is meeting, on the invitation of the Council, on September 4th next, for the purpose of considering the question of amending the Statute of the Permanent Court of International Justice. I venture to suggest to my colleagues that it would be desirable to invite this Conference also to consider the report made by the Committee of Jurists concerning the accession of the United States of America to the Protocol of Signature of the Court's Statute and the draft Protocol in which the Jurists embodied their recommendations.

At its last session, the Council adopted this report and Protocol as satisfactory from its point of view. It directed the Secretary-General to transmit them to the interested Governments and also to place them upon the agenda of the Assembly, in order that they might be approved by that body if found satisfactory by it.

This decision of the Council left open the question of the procedure by which, if the recommendations of the Jurists were acceptable both to the Council and Assembly and also to all the Governments concerned, whether Members of the League or not, the Protocol necessary to give effect to them should be opened for signature on behalf of the Governments. My colleagues may remember that the report of the Jurists contemplated that, if possible, the Council would take any necessary action to secure that such an instrument should be drawn up and signed on behalf of as many Governments as possible before the close of the Assembly's session.

At the time of the Council's last session, it appeared premature to propose that the Council should take action with the above purpose. I have now, however, reason to believe that it would be convenient, and would further the object which we all have in view, that the Jurists' recommendations and draft Protocol should not merely be considered by the Assembly but, if approved by the Assembly, should also be examined before the close of the Assembly's session by a conference at which all the States parties to the Court's Statute would be represented. The Conference already convened by the Council could, I believe, conveniently assume this task. It will not, I hope, be difficult for the delegates to obtain from their Governments any additional powers which may be necessary; the Governments represented at the Assembly have, indeed, doubtless already considered the subject in all its aspects for the purpose of the instructions which they have given to their delegates at the Assembly.

I have accordingly the honour to propose the following resolution:

Resolution proposed by the Representative of Italy and adopted by the Council.

"The Council approves the report of the representative of Italy. It decides to invite the Conference convened in virtue of its resolution of June 12th, 1929, to take also into consideration the report and draft Protocol drawn up by the Committee of Jurists on the subject of the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice, if the recommendations of the Jurists are approved by the Assembly. By this method, if the Conference is also in agreement with those recommendations, the Protocol necessary to give effect to them will be able to be drawn up and opened for signature as soon as possible."

Geneva, September 13th, 1929.

LEAGUE OF NATIONS

**QUESTION OF THE ADHERENCE OF THE UNITED STATES
OF AMERICA TO THE PROTOCOL OF SIGNATURE OF THE
STATUTE OF THE PERMANENT COURT
OF INTERNATIONAL JUSTICE**

REPORT OF THE FIRST COMMITTEE TO THE ASSEMBLY

Rapporteur: M. POLITIS (Greece).

After the resolution adopted by the Senate of the United States on January 27th, 1926, with regard to the adherence of the United States to the Protocol of Signature of the Statute of the Permanent Court of International Justice of December 16th, 1920, a Conference of the Signatories of the said Protocol was held at Geneva in September 1926, for the purpose of considering how effect might be given to the reservations and understandings embodied in the Senate resolution. The Conference of 1926 prepared the draft of a Protocol which it was believed would meet all the requirements of the situation, but unfortunately the Government of the United States, which had not been represented in the Conference, did not see its way to accept the Protocol.

On February 19th, 1929, the Government of the United States intimated by means of a note addressed to all the interested parties that an exchange of views might lead to an agreement with regard to the conditions upon which the United States desired to adhere to the Statute of the Court. Arrangements were accordingly made by the Council of the League that the Committee of Jurists which it had appointed in pursuance of the resolution of the Assembly dated September 20th, 1928, on the subject of the examination of the Statute of the Court to see whether any amendments were necessary, should deal also with the question raised by the note from the United States Government and should make any suggestions which it felt able to offer with a view to facilitating the accession of the United States on conditions satisfactory to all the interests concerned.

It was of the greatest assistance to the Committee in the accomplishment of this additional task that among its members was to be found the Honourable Elihu Root, formerly Secretary of State of the United States, and one of the members of the Committee which in 1920 framed the original draft of the Statute of the Court. His presence in the Committee enabled it to re-examine with good results the work accomplished by the Special Conference which met in 1926. The note from the United States Government to which reference is made above had shown that the margin of difference between the requirements of the United States and the recommendations made by the Special Conference was not great. For this reason, the Committee of Jurists adopted as the basis of its discussions the preliminary draft of a Protocol which was annexed to the Final Act of that Conference and introduced into it the changes which it believed were necessary in order to overcome the objections encountered by the draft of 1926 and to render it acceptable to all parties.

The revised draft Protocol was submitted to the Council of the League and adopted by that body at its session at Madrid on June 12th, 1929. It was placed on the agenda of the present session of the Assembly and also, in consequence of a resolution of the Council of August 31st, 1929, upon that of the Conference convened to consider the revision of the Court's Statute. This Conference has now informed the Assembly that the text of the Protocol has been approved by all the Governments represented in the Conference and that there is every reason to believe that it will meet with unanimous acceptance. It is necessary, however, that the Protocol should be formally approved by the Assembly of the League before it is opened for signature, as the agreement which it embodies will affect the right of the Assembly to ask for an advisory opinion from the Court.

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No difficulty has at any time been felt with regard to the acceptance of the conditions laid down by the United States in the Senate resolution of January 27th, 1926, except in so far as they relate to advisory opinions. A simple solution of these difficulties would have been found had it been possible to agree that the system of asking the Court for an advisory opinion upon any particular question should be abandoned altogether. So drastic a solution, however, is not at present feasible. The system of asking the Court for an advisory opinion has proved to be of substantial utility in securing a solution of questions which could not conveniently be submitted to the Court in any other form. It has also on occasions enabled the parties to a dispute to ask for the submission of their differences to the Court in the form of a request for an advisory opinion when they were for various reasons unwilling to submit them in the form of international litigation.

Another method by which satisfaction might easily have been given to the conditions laid down by the United States would have been that of adopting a rule that in all cases a decision on the part of the Council or of the Assembly to ask for an advisory opinion from the Court must be unanimous. As was pointed out in the Final Act of the Special Conference of 1926, it is not possible to say with certainty whether a decision by a majority is not sufficient. On this point, all that is possible is to guarantee to the United States a position of equality with the States which are represented in the Council or the Assembly of the League.

The investigation of the whole subject which was made by the Committee of Jurists showed that the conditions with which the Government of the United States thought it necessary to accompany the expression of its willingness to adhere to the Protocol establishing the Court owed their origin to apprehension that the Council or the Assembly of the League might request from the Court advisory opinions without reference to the interests of the United States, which might in certain cases be involved. Those discussions also showed that the hesitation felt by the delegates to the Conference of 1926 as to recommending the acceptance of those conditions was due to apprehension that the rights claimed in the reservations formulated by the United States might be exercised in a way which would interfere with the work of the Council or the Assembly and embarrass their procedure.

The system of asking a judicial tribunal for advisory opinions is one which does not exist at all in the United States of America, and it is not unnatural that some misapprehension should be entertained in that country as to the rôle which the Permanent Court of International Justice fulfils in giving advisory opinions on questions submitted to it by the Council or the Assembly of the League. The procedure followed by the Court in dealing with the questions submitted to it for an advisory opinion is in fact almost identical with the procedure which is followed in dealing with contentious cases.

Misapprehension appears also to exist in the United States as to the powers of the Council to give effect to the opinions rendered by the Court on questions submitted to it by the Council or the Assembly. It has, for instance, been suggested that the provisions of the concluding paragraph of Article 13 of the Covenant would enable the Council to oblige the Members of the League to resort to war for the purpose of enforcing such an opinion.

This view is erroneous. The last paragraph of Article 13 relates only to awards or decisions, not to advisory opinions. Advisory opinions are given by the Court at the request only of the Council or the Assembly of the League and in general only for the purpose of guiding the organs of the League or the International Labour Office in questions which come before those bodies in the execution of their duties. They are opinions only and in theory are not binding. Even in cases where an advisory opinion was asked for by the Council or the Assembly at the request of individual States which preferred to submit their disputes to judicial settlement through the machinery of an advisory opinion rather than by direct submission to the Court, the powers of the Council would not go beyond its general duty of securing respect for treaty engagements by ensuring that parties which submit their dispute for decision by a tribunal shall execute in good faith the decision which may be rendered. The power of the Council under Article 13, paragraph 4, in connection with awards or judicial decisions, is limited to "*proposing*" measures for the purpose of giving effect to them. It cannot do more. It certainly could not oblige States to take measures which would violate their treaty engagements.

The discussions which took place in the Committee of Jurists showed that it was useless to attempt to allay the apprehensions on either side referred to above by the elaboration of any system of paper guarantees or abstract formulæ. The only satisfactory method would be to deal with the problem in a concrete form, to provide some method by which the parties might be brought into contact so that questions as they arise might be examined and views exchanged and a conclusion thereby reached after each side had made itself acquainted with the difficulties and responsibilities which beset the other. This is the method which the Committee recommended should be adopted and to provide for which it submitted the text of a Protocol to be concluded between the States which signed the Protocol of 1920 and the United States of America. This view has been endorsed by the Conference which has recently concluded its labours, and the First Committee now recommends that it should be adopted by the Assembly.

The note of February 19th, 1929, from the United States has made it clear that that Government has no desire to interfere with the work of the Council or the Assembly of the League and that there is no intention on the part of that Government to hamper, upon unreal

or unsubstantial grounds, the machinery by which advisory opinions are from time to time requested. This rendered it possible for the Committee to recommend that the States which signed the Protocol of 1920 should accept the reservations formulated by the United States upon the terms and conditions set out in the articles of the draft Protocol which the Committee prepared and which is now annexed to this report.¹ The important article is No. 5, which provides machinery by which the United States will be made aware of any proposal before the Council or the Assembly for obtaining an advisory opinion and will have an opportunity of indicating whether the interests of the United States are affected, so that the Council or the Assembly, as the case may be, may decide its course of action with full knowledge of the position. It may be expected that the exchange of views so provided for will be sufficient to ensure that an understanding will be reached and no conflict of views will remain.

The provisions of this Article have been worded with due regard to the exigencies of business in the Council of the League. The desirability of obtaining an advisory opinion may only become apparent as the session of the Council is drawing to a close and when it may not be possible to complete the exchange of views before the members of that body separate. In that case, it will be for the Council to give such directions as the circumstances may require, in order to ensure that the intentions of the article are carried out. The request addressed to the Court may, for instance, be held up temporarily, or it may be despatched with a request that the Court will nevertheless suspend action on the request until the exchange of views with the United States has been completed. The provisions of the Article have purposely been framed so as to afford a measure of elasticity in its application. Similarly, if the Court has commenced the preliminary proceedings consequent upon the receipt of the request for an advisory opinion and has given notice of the request to the United States in the same way as to the other Governments, the proceedings may, if necessary, be interrupted in order that the necessary exchange of views may take place. What is said in this paragraph with regard to requests for advisory opinions made by the Council would also apply to requests by the Assembly in the event of the Assembly making any such request.

The provisions of this Article should in practice afford protection to all parties in all cases; but, if they do not, it must be recognised that the solution embodied in the present proposal will not have achieved the success that was hoped for and that the United States would be fully justified in withdrawing from the arrangement. It is for this eventuality that provision is made in the last paragraph of the Article. It may be hoped that, should any such withdrawal by the United States materialise, it would in fact be followed or accompanied by the conclusion of some new and more satisfactory arrangement.

In order to ensure so far as possible that the parties to the Protocol of 1920 shall be identical with the parties to the new Protocol, Article 6 provides that any State which in future signs the Protocol of 1920 shall be deemed to accept the new Protocol.

The remaining provisions of the draft Protocol do not call for detailed comment, because they are in substance similar to the corresponding provisions of the draft Protocol of 1926.

For these reasons the First Committee submits the following resolution to the Assembly :

“ The Assembly adopts the draft Protocol relating to the adherence of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice.”

It is understood that, if this resolution is adopted by the Assembly, the Secretary-General will proceed forthwith to open the Protocol for signature.

¹ This document has been printed separately for distribution to the Assembly and bears the number A. 49 (Annex). 1929. V.

[Communiqué au Conseil, aux Membres
de la Société des Nations, aux délégués
à l'Assemblée et à la Conférence.]

N^o officiel: **A. 49 (Annexe)**. 1929. V
[C.A.S.C. 11 — Annexe.]

Genève, le 13 septembre 1929.

SOCIÉTÉ DES NATIONS

ADHÉSION DES ÉTATS-UNIS D'AMÉRIQUE AU PROTOCOLE DE
SIGNATURE DU STATUT DE LA COUR PERMANENTE DE
JUSTICE INTERNATIONALE

PROJET DE PROTOCOLE

LEAGUE OF NATIONS

ACCESSION OF THE UNITED STATES OF AMERICA TO THE
PROTOCOL OF SIGNATURE OF THE STATUTE OF THE
PERMANENT COURT OF INTERNATIONAL JUSTICE

DRAFT PROTOCOL

Adhésion des Etats-Unis d'Amérique au Protocole de Signature du Statut de la Cour permanente de Justice internationale.

PROJET DE PROTOCOLE.

Les Etats signataires du Protocole de signature du Statut de la Cour permanente de Justice internationale du 16 décembre 1920, et les Etats-Unis d'Amérique, représentés par les soussignés dûment autorisés, sont convenus des dispositions suivantes, relativement à l'adhésion des Etats-Unis d'Amérique audit Protocole sous condition des cinq réserves formulées par les Etats-Unis dans la résolution adoptée par le Sénat le 27 janvier 1926.

Article premier.

Les Etats signataires dudit Protocole acceptent, aux termes des conditions spécifiées dans les articles ci-après, les conditions spéciales mises par les Etats-Unis à leur adhésion audit Protocole et énoncées dans les cinq réserves précitées.

Article 2.

Les Etats-Unis sont admis à participer, par le moyen de délégués qu'ils désigneront à cet effet et sur un pied d'égalité avec les Etats signataires, Membres de la Société des Nations, représentés, soit au Conseil, soit à l'Assemblée, à toutes délibérations du Conseil ou de l'Assemblée ayant pour objet les élections de juges ou de juges suppléants de la Cour permanente de Justice internationale visées au Statut de la Cour. Leur voix sera comptée dans le calcul de la majorité absolue requise dans le Statut.

Article 3.

Aucune modification du Statut de la Cour ne pourra avoir lieu sans l'acceptation de tous les Etats contractants.

Article 4.

La Cour prononcera ses avis consultatifs en séance publique, après avoir procédé aux notifications nécessaires et avoir donné aux intéressés l'occasion d'être entendus, conformément aux dispositions essentielles des articles 73 et 74 actuels du Règlement de la Cour.

Article 5.

En vue d'assurer que la Cour ne donne pas suite, sans le consentement des Etats-Unis, à une demande d'avis consultatif concernant une question ou un différend auquel les Etats-Unis sont ou déclarent être intéressés, le Secrétaire général avisera les Etats-Unis, par la voie indiquée par eux à cet effet, de toute proposition soumise au Conseil ou à l'Assemblée de la Société des Nations et tendant à obtenir de la Cour un avis consultatif et, ensuite, si cela est jugé désirable, il sera procédé, avec toute la rapidité possible, à un échange de vues entre le Conseil ou l'Assemblée de la Société des Nations et les Etats-Unis sur la question de savoir si les intérêts des Etats-Unis sont affectés.

Accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice.

DRAFT PROTOCOL.

The States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16th, 1920, and the United States of America, through the undersigned duly authorised representatives, have mutually agreed upon the following provisions regarding the adherence of the United States of America to the said Protocol subject to the five reservations formulated by the United States in the resolution adopted by the Senate on January 27th, 1926.

Article 1.

The States signatories of the said Protocol accept the special conditions attached by the United States in the five reservations mentioned above to its adherence to the said Protocol upon the terms and conditions set out in the following Articles.

Article 2.

The United States shall be admitted to participate, through representatives designated for the purpose and upon an equality with the signatory States Members of the League of Nations represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, provided for in the Statute of the Court. The vote of the United States shall be counted in determining the absolute majority of votes required by the Statute.

Article 3.

No amendment of the Statute of the Court may be made without the consent of all the Contracting States.

Article 4.

The Court shall render advisory opinions in public session after notice and opportunity for hearing substantially as provided in the now existing Articles 73 and 74 of the Rules of Court.

Article 5.

With a view to ensuring that the Court shall not, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest, the Secretary-General of the League of Nations shall, through any channel designated for that purpose by the United States, inform the United States of any proposal before the Council or the Assembly of the League for obtaining an advisory opinion from the Court, and thereupon, if desired, an exchange of views as to whether an interest of the United States is affected shall proceed with all convenient speed between the Council or Assembly of the League and the United States.

Lorsqu'une demande d'avis consultatif parviendra à la Cour, le Greffier en avisera les Etats-Unis en même temps que les autres Etats mentionnés à l'article 73 actuel du Règlement de la Cour en indiquant un délai raisonnable fixé par le Président pour la transmission d'un exposé écrit des Etats-Unis, concernant la demande. Si, pour une raison quelconque, l'échange de vues au sujet de ladite demande n'a pu avoir lieu dans des conditions satisfaisantes, et si les Etats-Unis avisent la Cour que la question au sujet de laquelle l'avis de la Cour est demandé est une question qui affecte les intérêts des Etats-Unis, la procédure sera suspendue pendant une période suffisante pour permettre ledit échange de vues entre le Conseil ou l'Assemblée et les Etats-Unis.

Lorsqu'il s'agira de demander à la Cour un avis consultatif, dans un cas tombant sous le coup des paragraphes précédents, il sera attaché à l'opposition des Etats-Unis la même valeur que celle qui s'attache à un vote émis par un Membre de la Société des Nations au sein du Conseil ou de l'Assemblée pour s'opposer à la demande d'avis consultatif.

Si, après l'échange de vues prévu aux paragraphes 1 et 2 du présent article, il apparaît qu'on ne peut aboutir à aucun accord et que les Etats-Unis ne sont pas disposés à renoncer à leur opposition, la faculté de retrait prévue à l'article 8 s'exercera normalement, sans que cet acte puisse être interprété comme un acte inamical, ou comme un refus de coopérer à la paix et à la bonne entente générales.

Article 6.

Sous réserve de ce qui sera dit à l'article 8 ci-après, les dispositions du présent Protocole auront la même force et valeur que les dispositions du Statut de la Cour et toute signature ultérieure du Protocole du 16 décembre 1920 sera réputée impliquer une acceptation des dispositions du présent Protocole.

Article 7.

Le présent Protocole sera ratifié. Chaque Etat adressera l'instrument de sa ratification au Secrétaire général de la Société des Nations, par les soins duquel il en sera donné avis à tous les autres Etats signataires. Les instruments de ratification seront déposés dans les archives du Secrétariat de la Société des Nations.

Le présent Protocole entrera en vigueur dès que tous les Etats ayant ratifié le Protocole du 16 décembre 1920, ainsi que les Etats-Unis, auront déposé leur ratification.

Article 8.

Les Etats-Unis pourront, en tout temps, notifier au Secrétaire général de la Société des Nations qu'ils retirent leur adhésion au Protocole du 16 décembre 1920. Le Secrétaire général donnera immédiatement communication de cette notification à tous les autres Etats signataires du Protocole.

En pareil cas, le présent Protocole sera considéré comme ayant cessé d'être en vigueur dès réception par le Secrétaire général de la notification des Etats-Unis.

De leur côté, chacun des autres Etats contractants pourra, en tout temps notifier au Secrétaire général de la Société des Nations qu'il désire retirer son acceptation des conditions spéciales mises par les Etats-Unis à leur adhésion au Protocole du 16 décembre 1920. Le Secrétaire général donnera immédiatement communication de cette notification à tous les Etats signataires du présent Protocole. Le présent Protocole sera considéré comme ayant cessé d'être en vigueur dès que, dans un délai ne dépassant pas une année à compter de la date de la réception de la notification susdite, au moins deux tiers des Etats contractants, autres que les Etats-Unis, auront notifié au Secrétaire général de la Société des Nations qu'ils désirent retirer l'acceptation susvisée.

Whenever a request for an advisory opinion comes to the Court, the Registrar shall notify the United States thereof, among other States mentioned in the now existing Article 73 of the Rules of Court, stating a reasonable time-limit fixed by the President within which a written statement by the United States concerning the request will be received. If for any reason no sufficient opportunity for an exchange of views upon such request should have been afforded and the United States advises the Court that the question upon which the opinion of the Court is asked is one that affects the interests of the United States, proceedings shall be stayed for a period sufficient to enable such an exchange of views between the Council or the Assembly and the United States to take place.

With regard to requesting an advisory opinion of the Court in any case covered by the preceding paragraphs, there shall be attributed to an objection of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations in the Council or in the Assembly.

§ If, after the exchange of views provided for in paragraphs 1 and 2 of this Article, it shall appear that no agreement can be reached and the United States is not prepared to forgo its objection, the exercise of the powers of withdrawal provided for in Article 8 hereof will follow naturally without any imputation of unfriendliness or unwillingness to co-operate generally for peace and goodwill.

Article 6.

Subject to the provisions of Article 8 below, the provisions of the present Protocol shall have the same force and effect as the provisions of the Statute of the Court and any future signature of the Protocol of December 16th, 1920, shall be deemed to be an acceptance of the provisions of the present Protocol.

Article 7.

The present Protocol shall be ratified. Each State shall forward the instrument of ratification to the Secretary-General of the League of Nations, who shall inform all the other signatory States. The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall come into force as soon as all States which have ratified the Protocol of December 16th, 1920, and also the United States, have deposited their ratifications.

Article 8.

The United States may at any time notify the Secretary-General of the League of Nations that it withdraws its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately communicate this notification to all the other States signatories of the Protocol.

In such case, the present Protocol shall cease to be in force as from the receipt by the Secretary-General of the notification by the United States.

On their part, each of the other Contracting States may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately give communication of this notification to each of the States signatories of the present Protocol. The present Protocol shall be considered as ceasing to be in force if and when, within one year from the date of receipt of the said notification, not less than two-thirds of the Contracting States other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance.

FAIT à Genève, le
septembre mil neuf cent vingt-neuf, en un
seul exemplaire, dont les textes français et
anglais feront également foi.

DONE at Geneva, the
day of September, nineteen [hundred and
twenty nine, in a single copy, of which the
French and English texts shall both be
authoritative.

Geneva, September 13th, 1929.

LEAGUE OF NATIONS

**QUESTION OF THE REVISION OF THE STATUTE OF THE
PERMANENT COURT OF INTERNATIONAL JUSTICE.**

REPORT OF THE FIRST COMMITTEE TO THE ASSEMBLY

Rapporteur: M. POLITIS (Greece).

On September 20th, 1928, the Assembly of the League of Nations adopted the following resolution :

“ The Assembly :

“ Considering the ever-increasing number of matters referred to the Permanent Court of International Justice ;

“ Deeming it advisable that, before the renewal of the term 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 :

“ Draws the Council's attention to the advisability of proceeding, before the renewal of the term 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.”

In pursuance of this resolution, the Council decided on December 13th and 14th, 1928, to set up a Committee of Jurists consisting of Jonkheer VAN EYSINGA, M. FROMAGEOT, M. GAUS, Sir Cecil HURST, M. ITO, M. POLITIS, M. RAESTAD, M. RUNDSTEIN, M. SCIALOJA, M. URRUTIA and a jurist of the United States of America to be appointed by the President of the Council and the Rapporteur, who selected Mr. Elihu ROOT. The Council further invited the President and the Vice-President of the Court, M. ANZILOTTI and M. HUBER, and the Chairman of the Supervisory Commission, M. OSUSKY, to participate in the work of the Committee. M. PILOTTI was added to the Committee on March 9th, 1929.

The Committee of Jurists, which met at Geneva in March of the present year, presented a report which was received by the Council at its session of last June and was communicated by the Council to all the Members of the League and States mentioned in the Annex to the Covenant. It has been circulated to the Assembly in document A.9.1929.V, and will no doubt be reproduced in the proceedings of the Assembly as an annex to my present report.

The Jurists propose a number of changes in the Statute of the Court, consisting of amendments to various articles and the addition of a new Chapter relating to advisory opinions.

For the reasons for which these changes were proposed, I beg to refer to the text of the Jurists' report. It is unnecessary for me to give an account of them here, since I am sure that they have been fully considered by all the delegations. The following passage from the report may be quoted as indicating, not merely the spirit in which its work was performed by the Committee of Jurists, but also that in which the subject has been considered by the Conference of Government representatives which has just concluded its labours and by the First Committee of the Assembly :

“ The Council Rapporteur had pointed out that, having regard to the terms of the Assembly's decision, the Committee should have wide terms of reference, namely, ‘ to report what amendments appear desirable in the various provisions of the Court's Statute’. He further stated ‘ that the Committee would, of course, be competent to examine such suggestions as may reach it, during its work, from authoritative sources ’ and ‘ that it would fall to the Committee to ascertain the opinion of the Permanent Court of International Justice in respect of the working of the Court ’.

“ As may be seen from the discussion in the Assembly, the latter did not contemplate recasting completely the Statute of the Court ; it had merely in view the possibility of supplementing or improving the Statute in the light of the experience already acquired.

“ It is in this spirit that the Committee, which met at Geneva on March 11th, 1929, under the chairmanship of M. SCIALOJA, has pursued its work, which was completed on March 19th under the chairmanship of Jonkheer VAN EYSINGA, the Vice-Chairman.

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“ In the proposals which the Committee has the honour to submit to the Council, it has been in general actuated by the desire to give the States full assurance that the Permanent Court of International Justice established by the League of Nations is a real *judicial* body which is constantly at their disposal for the purpose of hearing and determining their disputes and which possesses alike the necessary juristic competence and experience of international affairs.”

In addition to the changes which it proposed in the Statute of the Court, the Committee of Jurists formulated, for eventual adoption by the Assembly, a recommendation regarding the nomination by the national groups of candidates for election as members of the Court.

At its session of last June, the Council placed the Jurists' report upon the Assembly's agenda, and at the same time decided to convene, on September 4th, a conference of representatives of the interested Governments to discuss the Jurists' proposals concurrently with the Assembly.

It was arranged that the discussion of the subject in the Conference should be completed before the matter was dealt with by the Assembly.

The Conference completed its labours on September 12th, 1929, and communicated the results to the President of the Assembly and the Chairman of the First Committee by a letter of the same date, which was considered by the First Committee at its meeting of September 13th.

The Conference informed the Committee that it had reached the following conclusions upon the proposals of the Jurists for the amendment of the Court's Statute :

The new text of *Articles 3 and 8* has been adopted as proposed by the Committee of Jurists.

New text of *Article 13*. The last line is to read : “ This *last* notification makes the place vacant ”.

The new text of *Articles 14 and 15* has been adopted as proposed by the Committee of Jurists.

New text of *Article 16*. Adopted as proposed by the Jurists, on the understanding that the words “ occupation of a professional nature ” are to be interpreted in the widest sense, *i.e.*, cover, for example, such an activity as being director of a company.

New text of *Article 17*. Adopted as proposed by the Jurists, with the omission in the first paragraph of the words “ of an international nature ”.

New text of *Article 23*. Adopted as proposed by the Jurists with the following changes: The words “ at the end of each year for the following year ” at the end of the first paragraph are omitted.

In the second paragraph, the words “ not including the time spent in travelling ” are added at the end of a paragraph.

The new text of *Articles 25, 26, 27, 29, 31, 32*, the change in the French text of *Article 38*, the new text of *Articles 39 and 40* and the change in the English text of *Article 45* are adopted as proposed by the Jurists.

The new Chapter IV of the Statute—Advisory Opinions—new *Articles 65 to 68*, has been adopted in the following form :

New Article 65.

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

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

New Article 66.

“ 1. The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

“ The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court or international organisation considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

“ Should any Member or State referred to in the first paragraph have failed to receive the communication specified above, such Member or State may express a desire to submit a written statement, or to be heard ; and the Court will decide.

“ 2. Members, States and organisations having presented written or oral statements or both shall be admitted to comment on the statements made by other Members, States or organisations, in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States and organisations having submitted similar statements.”

New Article 67.

“ The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of Members of the League, of States and of international organisations immediately concerned.”

New Article 68.

“ In the exercise of its advisory functions, the Court shall further be guided by the provisions of the Statute which apply in contentious cases to the extent to which it recognises them to be applicable.”

The Conference associated itself with the following observations formulated in the course of its discussion with reference to the new Article 68 :

“ In contentious cases, where a decision has to be given, the procedure naturally involves hearing both parties ; the two parties set out their arguments and observations, and the Judges are thus provided with all the material necessary for reaching a conclusion. It must be the same in the case of advisory opinions.

“ When an advisory opinion is asked, it is really indispensable, if the opinion is to carry any weight, if it is to be truly useful, that in the same manner as in a contentious case all the material necessary for reaching a conclusion should be placed before the person consulted ; he requires to know the arguments of both parties.

“ This is the reason for providing that the procedure with regard to advisory opinions shall be the same as in contentious cases.”

The Conference further informed the Committee that it had considered the following letter addressed to its President by the delegate of Brazil :

“ Geneva, September 10th, 1929.

“ My Government, which is taking part in the Conference of States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice of December 16th, 1920, would be glad that this opportunity should be taken to regularise, in a clear and precise manner, the situation of Brazil in regard to the Permanent Court of International Justice.

“ I have already informed the Secretary-General of the League of Nations of my Government's desire to contribute to the expenses of the Court in a proportion to be agreed. On the other hand, however, important elections are due to take place next year and it seems equitable that Brazil should be able to participate in them on a footing of equality with the other signatory States, whether Members of the League or non-Members.

“ The existing text of the Statute seems, however, not to contemplate such participation. I would be grateful if you would be so good as to ask the Conference whether it would not be appropriate to elucidate the Statute in such manner as to remedy this situation.

(Signed) Mario DE PIMENTEL BRANDAO, *Delegate of Brazil.*

After examining the question raised by the Brazilian delegate, the Conference adopted amendments to Articles 4 and 35 of the Statute of the Court, as the result of which these Articles assume the following form :

New text of Article 4.

“ The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions :

“ In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the Pacific Settlement of International Disputes.

“ The conditions under which a State which has accepted the Statute of the Court, but is not a Member of the League of Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the Assembly on the proposal of the Council.”

New text of Article 35.

“ The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

“ The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

“ When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.”

For the purpose of giving effect to the amendments which it desired to see made in the Statute of the Court, the Conference drew up and transmitted to the First Committee a draft Protocol to which the text of the amendments is annexed ¹

The following important comment upon the text of the draft Protocol was made in the letter received from the President of the Conference :

“ The Conference associates itself with the following observations made by its Drafting Committee upon the draft Protocol :

¹ This document has been printed separately for distribution to the Assembly and bears the number A. 50(Annexe).1929.V.

“ As regards the special position of the United States, it may perhaps prevent misunderstanding if it is pointed out that three instruments relating to the Court will be presented for acceptance to that Power, namely :

“ The Protocol destined to satisfy the reservations attached by the United States Senate to the accession of the United States of America to the Statute of the Court ;

“ The Protocol of Signature of 1920 ; and

“ The new Protocol relating to the amendment of the Statute.

“ There could, of course, be no question of the United States being a party to the unamended Statute while the other States concerned were parties to the Statute in its amended form, but the draft Protocol relating to the amendment of the Statute is believed to safeguard entirely the situation of the United States with regard to the amendments (see paragraph 7 of the Protocol) ; and, while it is, of course, not within the province of the Drafting Committee or the Conference to anticipate what procedure the United States may follow, it may be hoped that the United States will in due course sign and ratify all three above-mentioned instruments. It would, in fact, be possible for the United States at the moment when it signs the Protocol dealing with its reservations to sign also the Protocol of Signature of 1920 and that relating to the amendments, subject to the eventual entry into force of the first-mentioned agreement.”

As regards the method by which effect should finally be given to the conclusions of the Conference, if they were also accepted by the Assembly, the Conference anticipated that the Assembly, by a suitable resolution, would adopt for its part the amendments to the Statute of the Court and the draft Protocol relating thereto and that the Secretary-General would then proceed without delay to present this instrument to the delegates for their signature.

Finally, the Conference informed the First Committee that, after considering the Jurists' proposal regarding the nomination of candidates by the national groups, it had adopted the following resolution :

“ The Conference recommends that, in accordance with the spirit of Articles 2 and 39 of the Statute of the Court, the candidates nominated by the national groups should possess recognised practical experience in international law and that they should be at least able to read both the official languages of the Court and to speak one of them ; it also considers it desirable that to the nominations there should be attached a statement of the careers of the candidates justifying their candidature.

“ The Conference decides to transmit this recommendation to the Assembly of the League of Nations in order that eventually it may be brought by the Secretary-General to the knowledge of the national groups.”

I am happy to inform the Assembly that the First Committee finds itself in entire agreement with the views expressed by the Conference as regards the revision of the Court's Statute.

It recommends that the Assembly should adopt the amendments to the Statute and the draft Protocol drawn up by the Conference, and that the Protocol should, as soon as possible thereafter, be presented by the Secretary-General to the delegates for their signature. In view of the extreme importance of bringing the amendments into force before the election of the members of the Court which has to take place during the next session of the Assembly, it is urgent that as many signatures as possible of the Protocol should be given before the close of the Assembly's session, and that the Governments should make every possible effort to ratify the Protocol without delay.

The First Committee is also of opinion that it would be desirable for the Assembly to adopt the recommendation which the Conference has adopted and transmitted to it on the subject of the nomination by the national groups of candidates for election as members of the Court.

The First Committee accordingly proposes for adoption by the Assembly the following resolution :

Draft Resolution.

“ 1. The Assembly adopts the amendments to the Statute of the Permanent Court of International Justice and the draft Protocol which the Conference convened by the Council of the League of Nations has drawn up after consideration of the report of the Committee of Jurists, which met in March 1929 at Geneva and which included among its members a jurist of the United States of America. The Assembly expresses the hope that the draft Protocol drawn up by the Conference may receive as many signatures as possible before the close of the present session of the Assembly and that all the Governments concerned will use their utmost efforts to secure the entry into force of the amendments to the Statute of the Court before the opening of the next session of the Assembly, in the course of which the Assembly and the Council will be called upon to proceed to a new election of the members of the Court.

“ 2. The Assembly associates itself with the following recommendation adopted by the Conference :

“ The Conference recommends that, in accordance with the spirit of Articles 2 and 39 of the Statute of the Court, the candidates nominated by the national groups should possess recognised practical experience in international law and that they should be at least able to read both the official languages of the Court and to speak one of them ; it also considers it desirable that to the nominations there should be attached a statement of the careers of the candidates justifying their candidature.”

[Communiqué au Conseil, aux Membres
de la Société des Nations, aux Délégués
à l'Assemblée et à la Conférence.]

N^o officiel: **A. 50 (Annexe)**. 1929. V;
[C.A.S.C. 12 — Annexe.]

Genève, le 13 septembre 1929.

SOCIÉTÉ DES NATIONS

QUESTION DE LA REVISION DU STATUT
DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE

PROJET DE PROTOCOLE

LEAGUE OF NATIONS

QUESTION OF THE REVISION OF THE STATUTE
OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

DRAFT PROTOCOL

Revision du Statut de la Cour permanente de Justice internationale.

PROJET DE PROTOCOLE

1. Les soussignés, dûment autorisés, conviennent, au nom des gouvernements qu'ils représentent, d'apporter au Statut de la Cour permanente de Justice internationale les amendements qui sont indiqués dans l'annexe au présent Protocole et qui font l'objet de la résolution de l'Assemblée de la Société des Nations du 9 septembre 1929.

2. Le présent Protocole, dont les textes français et anglais feront également foi, sera soumis à la signature de tous les signataires du Protocole du 16 décembre 1920, auquel est annexé le Statut de la Cour permanente de Justice internationale, ainsi qu'à celle des Etats-Unis d'Amérique.

3. Le présent Protocole sera ratifié. Les instruments de ratification seront déposés, si possible avant le 1^{er} septembre 1930, entre les mains du Secrétaire général de la Société des Nations, qui en informera les Membres de la Société et les Etats mentionnés dans l'annexe au Pacte.

4. Le présent Protocole entrera en vigueur le 1^{er} septembre 1930, à condition que le Conseil de la Société des Nations se soit assuré que les Membres de la Société des Nations et les Etats mentionnés dans l'annexe au Pacte, qui auront ratifié le Protocole du 16 décembre 1920, mais dont la ratification sur le présent Protocole n'aurait pas encore été reçue à cette date, ne font pas d'objection à l'entrée en vigueur des amendements au Statut de la Cour qui sont indiqués dans l'annexe au présent Protocole.

5. Dès l'entrée en vigueur du présent Protocole, les nouvelles dispositions feront partie du Statut adopté en 1920 et les dispositions des articles primitifs objet de la revision seront abrogées. Il est entendu que, jusqu'au 1^{er} janvier 1931, la Cour continuera à exercer ses fonctions conformément au Statut de 1920.

6. Dès l'entrée en vigueur du présent Protocole, toute acceptation du Statut de la Cour signifiera acceptation du Statut révisé.

7. Aux fins du présent Protocole, les Etats-Unis d'Amérique seront dans la même position qu'un Etat ayant ratifié le Protocole du 16 décembre 1920.

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

DRAFT PROTOCOL.

1. The undersigned, duly authorised, agree, on behalf of the Governments which they represent, to make in the Statute of the Permanent Court of International Justice the amendments which are set out in the Annex to the present Protocol and which form the subject of the resolution of the Assembly of the League of Nations of September 1929.

2. The present Protocol, of which the French and English texts are both authentic, shall be presented for signature to all the signatories of the Protocol of December 16th, 1920, to which the Statute of the Permanent Court of International Justice is annexed, and to the United States of America.

3. The present Protocol shall be ratified. The instruments of ratification shall be deposited, if possible before September 1st, 1930, with the Secretary-General of the League of Nations, who shall inform the Members of the League of Nations and the States mentioned in the Annex to the Covenant.

4. The present Protocol shall enter into force on September 1st, 1930, provided that the Council of the League of Nations has satisfied itself that those Members of the League of Nations and States mentioned in the Annex to the Covenant which have ratified the Protocol of December 16th, 1920, and whose ratification of the present Protocol has not been received by that date, have no objection to the coming into force of the amendments to the Statute of the Court which are annexed to the present Protocol.

5. After the entry into force of the present Protocol, the new provisions shall form part of the Statute adopted in 1920 and the provisions of the original articles which have been made the subject of amendment shall be abrogated. It is understood that, until January 1st, 1931, the Court shall continue to perform its functions in accordance with the Statute of 1920.

6. After the entry into force of the present Protocol, any acceptance of the Statute of the Court shall constitute an acceptance of the Statute as amended.

7. For the purposes of the present Protocol, the United States of America shall be in the same position as a State which has ratified the Protocol of December 16th, 1920.

FAIT à Genève, le
jour de septembre mil neuf cent vingt-neuf,
en un seul exemplaire qui sera déposé dans
les archives du Secrétariat de la Société des
Nations. Le Secrétaire général adressera des
copies certifiées conformes aux Membres de la
Société des Nations et aux États mentionnés
dans l'annexe au Pacte.

DONE at Geneva, the
day of September nineteen hundred and
twenty-nine, in a single copy which shall be
deposited in the archives of the Secretariat
of the League of Nations. The Secretary-
General shall deliver authenticated copies
to the Members of the League of Nations
and to the States mentioned in the Annex
to the Covenant.

ANNEXE.

ANNEXE AU PROTOCOLE DU SEPTEMBRE 1929

AMENDEMENTS AU
STATUT DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE

Les articles 3, 4, 8, 13, 14, 15, 16, 17, 23, 25, 26, 27, 29, 31, 32 et 35 sont remplacés par les dispositions suivantes :

Nouvelle rédaction de l'article 3.

La Cour se compose de quinze membres.

Nouvel article 4.

Les membres de la Cour sont élus par l'Assemblée et par le Conseil sur une liste de personnes présentées par les groupes nationaux de la Cour d'Arbitrage, conformément aux dispositions suivantes.

En ce qui concerne les Membres de la Société qui ne sont pas représentés à la Cour permanente d'Arbitrage, les listes de candidats seront présentées par des groupes nationaux, désignés à cet effet par leurs Gouvernements, dans les mêmes conditions que celles stipulées pour les membres de la Cour d'Arbitrage par l'article 44 de la Convention de La Haye de 1907 sur le règlement pacifique des conflits internationaux.

En l'absence d'accord spécial, l'Assemblée, sur la proposition du Conseil, réglera les conditions auxquelles peut participer à l'élection des membres de la Cour un Etat qui, tout en ayant accepté le Statut de la Cour, n'est pas Membre de la Société des Nations.

Nouvelle rédaction de l'article 8.

L'Assemblée et le Conseil procèdent indépendamment l'un de l'autre à l'élection des membres de la Cour.

Nouvelle rédaction de l'article 13.

Les membres de la Cour sont élus pour neuf ans.

Ils sont rééligibles.

Ils restent en fonction jusqu'à leur remplacement. Après ce remplacement, ils continuent de connaître des affaires dont ils sont déjà saisis.

En cas de démission d'un membre de la Cour, la démission sera adressée au Président de la Cour, pour être transmise au Secrétaire général de la Société des Nations.

Cette dernière notification emporte vacance de siège.

Nouvelle rédaction de l'article 14.

Il est pourvu aux sièges devenus vacants selon la méthode suivie pour la première élection, sous réserve de la disposition ci-après : dans le mois qui suivra la vacance, le Secrétaire général de la Société des Nations procédera à l'invitation prescrite par l'article 5, et la date d'élection sera fixée par le Conseil dans sa première session.

Nouvelle rédaction de l'article 15.

Le membre de la Cour élu en remplacement d'un membre dont le mandat n'est pas expiré achève le terme du mandat de son prédécesseur.

Nouvelle rédaction de l'article 16.

Les membres de la Cour ne peuvent exercer aucune fonction politique ou administrative, ni se livrer à aucune autre occupation de caractère professionnel.

En cas de doute, la Cour décide.

ANNEX TO THE PROTOCOL OF SEPTEMBER 1929.

AMENDMENTS TO THE
STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

Articles 3, 4, 8, 13, 14, 15, 16, 17, 23, 25, 26, 27, 29, 31, 32 and 35 are replaced by the following provisions :

New text of Article 3.

The Court shall consist of fifteen members.

New text of Article 4.

The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of the Hague of 1907 for the pacific settlement of international disputes.

The conditions under which a State which has accepted the Statute of the Court but is not a member of the League of Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the Assembly on the proposal of the Council.

New text of Article 8.

The Assembly and the Council shall proceed independently of one another to elect the members of the Court.

New text of Article 13.

The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations.

This last notification makes the place vacant.

New text of Article 14.

Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of the League of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Council at its next session.

New text of Article 15.

A member of the Court elected to replace a member whose period of appointment has not expired, will hold the appointment for the remainder of his predecessor's term.

New text of Article 16.

The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

Any doubt on this point is settled by the decision of the Court.

Nouvelle rédaction de l'article 17.

Les membres de la Cour ne peuvent exercer les fonctions d'agent, de conseil ou d'avocat dans aucune affaire.

Ils ne peuvent participer au règlement d'aucune affaire dans laquelle ils sont antérieurement intervenus comme agents, conseils ou avocats de l'une des parties, membres d'un tribunal national ou international, d'une commission d'enquête, ou à tout autre titre.

En cas de doute, la Cour décide.

Nouvelle rédaction de l'article 23.

La Cour reste toujours en fonction, excepté pendant les vacances judiciaires, dont les périodes et la durée sont fixées par la Cour.

Les membres de la Cour dont les foyers se trouvent à plus de cinq jours de voyage normal de La Haye auront droit, indépendamment des vacances judiciaires, à un congé de six mois, non compris la durée des voyages, tous les trois ans.

Les membres de la Cour sont tenus, à moins de congé régulier, d'empêchement pour cause de maladie ou autre motif grave dûment justifié auprès du Président, d'être à tout moment à la disposition de la Cour.

Nouvelle rédaction de l'article 25.

Sauf exception expressément prévue, la Cour exerce ses attributions en séance plénière.

Sous la condition que le nombre des juges disponibles pour constituer la Cour ne soit pas réduit à moins de onze, le Règlement de la Cour pourra prévoir que, selon les circonstances et à tour de rôle, un ou plusieurs juges pourront être dispensés de siéger.

Toutefois, le quorum de neuf est suffisant pour constituer la Cour.

Nouvelle rédaction de l'article 26.

Pour les affaires concernant le travail, et spécialement pour les affaires visées dans la partie XIII (Travail) du Traité de Versailles et les parties correspondantes des autres traités de paix, la Cour statuera dans les conditions ci-après :

La Cour constituera pour chaque période de trois années une chambre spéciale composée de cinq juges désignés en tenant compte, autant que possible, des prescriptions de l'article 9. Deux juges seront, en outre, désignés pour remplacer celui des juges qui se trouverait dans l'impossibilité de siéger. Sur la demande des parties, cette chambre statuera. A défaut de cette demande, la Cour siégera en séance plénière. Dans les deux cas, les juges sont assistés de quatre assesseurs techniques siégeant à leurs côtés avec voix consultative et assurant une juste représentation des intérêts en cause.

Les assesseurs techniques sont choisis dans chaque cas spécial d'après les règles de procédure visées à l'article 30, sur une liste d'« Assesseurs pour litiges de travail », composée de noms présentés à raison de deux par chaque Membre de la Société des Nations et d'un nombre égal présenté par le Conseil d'administration du Bureau international du Travail. Le Conseil désignera par moitié des représentants des travailleurs et par moitié des représentants des patrons pris sur la liste prévue à l'article 412 du Traité de Versailles et les articles correspondants des autres traités de paix.

Le recours à la procédure sommaire visée à l'article 29 reste toujours ouvert dans les affaires visées à l'alinéa premier du présent article, si les parties le demandent.

Dans les affaires concernant le travail, le Bureau international aura la faculté de fournir à la Cour tous les renseignements nécessaires et, à cet effet, le Directeur de ce Bureau recevra communication de toutes les pièces de procédure présentées par écrit.

Nouvelle rédaction de l'article 27.

Pour les affaires concernant le transit et les communications, et spécialement pour les affaires visées dans la partie XII (Ports, Voies d'eau, Voies ferrées) du Traité de Versailles et les parties correspondantes des autres traités de paix, la Cour statuera dans les conditions ci-après :

La Cour constituera, pour chaque période de trois années, une chambre spéciale composée de cinq juges désignés en tenant compte autant que possible des prescriptions de l'article 9. Deux juges seront, en outre, désignés pour remplacer celui des juges qui se trouverait dans l'impossibilité de siéger. Sur la demande des parties, cette chambre statuera. A défaut de cette demande, la Cour siégera en séance plénière. Si les parties le désirent, ou si la Cour le décide, les juges seront assistés de quatre assesseurs techniques siégeant à leurs côtés avec voix consultative.

Les assesseurs techniques seront choisis dans chaque cas spécial d'après les règles de procédure visées à l'article 30, sur une liste d'« Assesseurs pour litiges de transit et de communications », composée de noms présentés à raison de deux par chaque Membre de la Société des Nations.

Le recours à la procédure sommaire visée à l'article 29 reste toujours ouvert dans les affaires visées à l'alinéa premier du présent article, si les parties le demandent.

Nouvelle rédaction de l'article 29.

En vue de la prompt expédition des affaires, la Cour compose annuellement une Chambre de cinq juges, appelés à statuer en procédure sommaire lorsque les parties le demandent. Deux juges seront, en outre, désignés, pour remplacer celui des juges qui se trouverait dans l'impossibilité de siéger.

New text of Article 17.

No member of the Court may act as agent, counsel or advocate in any case. No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity. Any doubt on this point is settled by the decision of the Court.

New text of Article 23.

The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years, not including the time spent in travelling.

Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court.

New text of Article 25.

The full Court shall sit except when it is expressly provided otherwise.

Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

Provided always that a quorum of nine judges shall suffice to constitute the Court.

New text of Article 26.

Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions.

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases, the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labour Cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers, and, as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

In Labour cases, the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

New text of Article 27.

Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications Cases" composed of two persons nominated by each Member of the League of Nations.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

New text of Article 29.

With a view to the speedy despatch of business, the Court shall form annually a Chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit.

Nouvelle rédaction de l'article 31.

Les juges de la nationalité de chacune des parties en cause conservent le droit de siéger dans l'affaire dont la Cour est saisie.

Si la Cour compte sur le siège un juge de la nationalité d'une des parties, l'autre partie peut désigner une personne de son choix pour siéger en qualité de juge. Celle-ci devra être prise de préférence parmi les personnes qui ont été l'objet d'une présentation en conformité des articles 4 et 5.

Si la Cour ne compte sur le siège aucun juge de la nationalité des parties, chacune de ces parties peut procéder à la désignation d'un juge de la même manière qu'au paragraphe précédent.

La présente disposition s'applique dans le cas des articles 26, 27 et 29. En pareils cas, le Président priera un, ou, s'il y a lieu, deux des membres de la Cour composant la Chambre, de céder leur place aux membres de la Cour de la nationalité des parties intéressées et, à défaut ou en cas d'empêchement, aux juges spécialement désignés par les parties.

Lorsque plusieurs parties sont en cause commune, elles ne comptent, pour l'application des dispositions qui précèdent, que pour une seule. En cas de doute, la Cour décide.

Les juges désignés, comme il est dit aux paragraphes 2, 3 et 4 du présent article, doivent satisfaire aux prescriptions des articles 2 ; 17, alinéa 2 ; 20 et 24 du présent Statut. Ils participent à la décision dans des conditions de complète égalité avec leurs collègues.

Nouvelle rédaction de l'article 32.

Les membres de la Cour reçoivent un traitement annuel.

Le président reçoit une allocation annuelle spéciale.

Le vice-président reçoit une allocation spéciale pour chaque jour où il remplit les fonctions de président.

Les juges désignés par application de l'article 31, autres que les membres de la Cour, reçoivent une indemnité pour chaque jour où ils exercent leurs fonctions.

Ces traitements, allocations et indemnités sont fixés par l'Assemblée de la Société des Nations sur la proposition du Conseil. Ils ne peuvent être diminués pendant la durée des fonctions.

Le traitement du Greffier est fixé par l'Assemblée sur la proposition de la Cour.

Un règlement adopté par l'Assemblée fixe les conditions dans lesquelles les pensions sont allouées aux membres de la Cour et au Greffier, ainsi que les conditions dans lesquelles les membres de la Cour et le Greffier reçoivent le remboursement de leurs frais de voyage.

Les traitements, indemnités et allocations sont exempts de tout impôt.

Nouvelle rédaction de l'article 35.

La Cour est ouverte aux Membres de la Société des Nations, ainsi qu'aux Etats mentionnés à l'annexe au Pacte.

Les conditions auxquelles elle est ouverte aux autres Etats sont, sous réserve des dispositions particulières des traités en vigueur, réglées par le Conseil, et dans tous les cas, sans qu'il puisse en résulter pour les parties aucune inégalité devant la Cour.

Lorsqu'un Etat, qui n'est pas Membre de la Société des Nations, est partie en cause, la Cour fixera la contribution aux frais de la Cour que cette partie devra supporter. Toutefois cette disposition ne s'appliquera pas, si cet Etat participe aux dépenses de la Cour.

Le texte français de l'article 38, n° 4, est remplacé par la disposition suivante :

4. Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit.

[Il n'y a pas de changement dans le texte anglais.]

Les articles 39 et 40 sont remplacés par les dispositions ci-après :

Nouvelle rédaction de l'article 39.

Les langues officielles de la Cour sont le français et l'anglais. Si les parties sont d'accord pour que toute la procédure ait lieu en français, le jugement sera prononcé en cette langue. Si les parties sont d'accord pour que toute la procédure ait lieu en anglais, le jugement sera prononcé en cette langue.

A défaut d'un accord fixant la langue dont il sera fait usage, les parties pourront employer pour les plaidoiries celle des deux langues qu'elles préféreront, et l'arrêt de la Cour sera rendu en français et en anglais. En ce cas, la Cour désignera en même temps celui des deux textes qui fera foi.

La Cour pourra, à la demande de toute partie, autoriser l'emploi d'une langue autre que le français ou l'anglais.

Nouvelle rédaction de l'article 40.

Les affaires sont portées devant la Cour, selon le cas, soit par notification du compromis, soit par une requête, adressées au Greffe ; dans les deux cas, l'objet du différend et les parties en cause doivent être indiqués.

Le Greffe donne immédiatement communication de la requête à tous intéressés.

Il en informe également les Membres de la Société des Nations par l'entremise du Secrétaire général, ainsi que les Etats admis à ester en justice devant la Cour.

New text of Article 31.

Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to select a judge as provided in the preceding paragraph.

The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of this Statute. They shall take part in the decision on terms of complete equality with their colleagues.

New text of Article 32.

The members of the Court shall receive an annual salary.

The President shall receive a special annual allowance.

The Vice-President shall receive a special allowance for every day on which he acts as President.

The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

These salaries, allowances and indemnities shall be fixed by the Assembly of the League of Nations on the proposal of the Council. They may not be decreased during the term of office.

The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court.

Regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.

The above salaries, indemnities and allowances shall be free of all taxation.

New text of Article 35.

The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

The French text of Article 38, No. 4, is replaced by the following provision :

4. *Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit.*

[There is no change in the English text.]

Articles 39 and 40 are replaced by the following provisions :

New text of Article 39.

The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of any party, authorise a language other than French or English to be used.

New text of Article 40.

Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court.

Le texte anglais de l'article 45 est remplacé par la disposition suivante :

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

[Il n'y a pas de changement dans le texte français.]

Le nouveau chapitre suivant est ajouté au Statut de la Cour :

CHAPITRE IV. — AVIS CONSULTATIFS.

Nouvel article 65.

Les questions sur lesquelles l'avis consultatif de la Cour est demandé sont exposées à la Cour par une requête écrite, signée soit par le président de l'Assemblée ou par le Président du Conseil de la Société des Nations, soit par le Secrétaire général de la Société agissant en vertu d'instructions de l'Assemblée ou du Conseil.

La requête formule, en termes précis, la question sur laquelle l'avis de la Cour est demandé. Il y est joint tout document pouvant servir à élucider la question.

Nouvel article 66.

1. Le Greffier notifie immédiatement la requête demandant l'avis consultatif aux membres de la Société des Nations par l'entremise du Secrétaire général de la Société, ainsi qu'aux Etats admis à ester en justice devant la Cour.

En outre, à tout Membre de la Société, à tout Etat admis à ester devant la Cour et à toute organisation internationale jugés, par la Cour ou par le Président si elle ne siège pas, susceptibles de fournir des renseignements sur la question, le Greffier fait connaître, par communication spéciale et directe, que la Cour est disposée à recevoir des exposés écrits dans un délai à fixer par le Président, ou à entendre des exposés oraux au cours d'une audience publique tenue à cet effet.

Si un des Membres de la Société ou des Etats mentionnés au premier alinéa du présent paragraphe, n'ayant pas été l'objet de la communication spéciale ci-dessus visée, exprime le désir de soumettre un exposé écrit ou d'être entendu, la Cour statue.

2. Les Membres, Etats ou organisations qui ont présenté des exposés écrits ou oraux sont admis à discuter les exposés faits par d'autres Membres, Etats et organisations dans les formes, mesures et délais fixés, dans chaque cas d'espèce, par la Cour, ou, si elle ne siège pas, par le Président. A cet effet, le Greffier communique en temps voulu les exposés écrits aux Membres, Etats ou organisations qui en ont eux-mêmes présentés.

Nouvel article 67.

La Cour prononcera ses avis consultatifs en audience publique, le Secrétaire général de la Société des Nations et les représentants des membres de la Société, des Etats et des organisations internationales directement intéressés étant prévenus.

Nouvel article 68.

Dans l'exercice de ses attributions consultatives, la Cour s'inspirera en outre des dispositions du Statut qui s'appliquent en matière contentieuse, dans la mesure où elle les reconnaîtra applicables.

The English text of Article 45 is replaced by the following provision :

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President ; if neither is able to preside, the senior judge present shall preside.

[There is no change in the French text.]

The following new chapter is added to the Statute of the Court :

CHAPTER IV. — ADVISORY OPINIONS.

New Article 65.

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

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

New Article 66.

1. The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court or international organisation considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

Should any Member or State referred to in the first paragraph have failed to receive the communication specified above, such Member or State may express a desire to submit a written statement, or to be heard ; and the Court will decide.

2. Members, States, and organisations having presented written or oral statements or both shall be admitted to comment on the statements made by other Members, States, or organisations in the form, to the extent and within the time-limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States, and organisations having submitted similar statements.

New Article 67.

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of Members of the League, of States and of international organisations immediately concerned.

New Article 68.

In the exercise of its advisory functions, the Court shall further be guided by the provisions of the Statute which apply in contentious cases to the extent to which it recognises them to be applicable.

Geneva, October 15th, 1929.

LEAGUE OF NATIONS.

**AMENDMENT OF THE COVENANT OF THE LEAGUE OF NATIONS
AS A RESULT OF THE GENERAL ADHESION OF THE
MEMBERS OF THE LEAGUE TO THE PACT OF PARIS
FOR THE RENUNCIATION OF WAR.**

**EXTRACTS FROM THE RECORDS OF THE TENTH ORDINARY SESSION
OF THE ASSEMBLY.**

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I. Extracts from Speeches made at the Plenary Meetings of the Assembly in the Course of the Discussion of the Report on the Work of the Council and of the Secretariat.

SPEECH BY THE RIGHT HONOURABLE JAMES RAMSAY MACDONALD (*British Empire*)
at the Assembly on September 3rd, 1929.

.....
We want, however, to make further contributions at this Assembly, and since our Government came into office it has been considering what it could do to advance, to build up, what I call the foundations for the Pact of Peace.

I would like you to consider the effect of the Pact of Peace upon the assumptions of certain clauses of the Covenant of the League of Nations, because it is all to the good if we can prune out dead wood from the Covenant. There were certain clauses, certain assumptions, certain ideas in the back of our minds when the Covenant was drafted which already represented a dead age. In order to make the Pact effective, I would draw your attention especially to Articles 12 and 15 of the Covenant and ask you to consider whether we cannot bring that very old document into relation with certain things that have happened since. This matter, however, will come before you in another way.

.....
SPEECH BY M. STAUNING (*Denmark*)
at the Assembly on September 4th, 1929.

.....
Among the questions which will shortly arise is also that of the influence that the Kellogg-Briand Pact, which we hailed with joy, may have on the provisions of the Covenant of the League. I was very glad to hear the British Prime Minister invite attention to this question.

.....
SPEECH BY M. CORNEJO (*Peru*)
at the Assembly on September 4th, 1929.

.....
The future alone will show what will be the effects and the outcome of those two noble endeavours to give articulate expression to the human conscience—the League of Nations and the Kellogg Pact. Together, these unite in a single ideal of peace the peoples of all continents, climes and races.

It is the Assembly's duty to provide a framework for these endeavours and, as the British Prime Minister said in his remarkable speech, to translate ideals into constitutions and institutions.

There have been—perhaps there still are—lawyers who have discovered (for lawyers are always discovering something), if not inconsistencies, at least differences, fraught with danger, between the Covenant of the League and the Kellogg Pact. But no one who grasps the logic of events can fail to see that the Kellogg Pact was the natural outcome of this Assembly's efforts to find a formula for conciliation and compulsory arbitration.

I deeply regret that the great Republic of the United States of America is absent from our midst, but I venture to hope that that absence will not be permanent. Yet when I learned how the United States Secretary proposed that the happy initiative of the French Minister should be made universally applicable, I was glad that the United States was absent. That general formula could only be submitted by a great Power, and the United States was the only Power free to submit proposals direct to the Governments, and so to lay them before the conscience of the world.

By this procedure it was possible to avoid the difficulties inherent in a diplomatic discussion conducted, under the guillotine of unanimity, in conferences where at times stubborn national egoism has free play.

The Kellogg Pact is the universal negation of war; and it is the duty of this Assembly to find the universal affirmation of a procedure which will give effect to this condemnation of war.

The Kellogg Pact, like the Old Testament itself, says: "Thou shalt not kill". We must find the Gospel which shall express this condemnation of hatred in terms of fraternity and co-operation.

The most important question arising from the Kellogg Pact is the transformation of the laws of neutrality. When war was the supreme law of States, neutrality was a providential means of keeping conflicts within bounds; but since war has been outlawed, since it has become the crime of Cain, "neutrality" on the part of the League of Nations is inconceivable.

Neutrality was an unexpressed condition antecedent to the formation of the League; once its organisation was established, however, neutrality became incompatible with the League.

We have to find a procedure which shall make the moral condemnation rapid and effective. The time has not yet come, I know, when there will be an international police force to compel rebels to respect international laws; but for that very reason we must find a means of obtaining the moral verdict, which will be more effective than is generally believed. I am confident that no State, strong or weak, will ever dare to flout the conscience of the world.

I do not know whether the idea has already been mooted, but I shall have the honour to propose the appointment of a special committee to study legal ways and means whereby the Briand-Kellogg Pact may be incorporated in the Covenant of the League, and the modifications that must be made in the latter to bring it into line with the Briand-Kellogg Pact.¹

It was M. Beneš, I think, who said that the Covenant of the League had left one door open to war. That door has been closed by the Briand-Kellogg Pact. We must open the windows so that we may look forth and prevent any attack against the League, which has become the stronghold of peace.

.....

SPEECH BY M. HYMANS (*Belgium*)
at the Assembly on September 5th, 1929.

I should like to support in the Assembly of the League certain measures which seem to me the logical and natural complement of the measures already adopted, the Covenant and the Paris Pact. I think that, in the first place, we should try to establish harmony between the Covenant and the Paris Pact and adapt them one to the other.

There is, of course, no real discrepancy between them, and it was formally stated, before the Paris Pact was signed, that it left intact the rights and obligations arising from the Covenant of the League and the Locarno Treaty. The clauses of the Paris Pact cover the obligations under the Covenant, and widen them; nevertheless, it must be confessed that there is some disproportion between the utter condemnation of a war of aggression, the total and absolute renunciation of war as an instrument of national policy on the one hand and, on the other, the more limited measures of the Covenant, which, as you know, leaves the door half open for war, and considers it, in certain cases, quite legitimate.

I think it is time we tried to unify and codify this system, to put an end to a multiplicity of commitments which creates confusion. Clearness begets confidence, and confidence is vital if international engagements are to be sound and solid.

The idea to which I have just referred is not new. It was stated from this platform last year by my friend and colleague M. Politis, and it was the subject of a recent resolution of the International Federation of League of Nations Societies. Then, the other day, Mr. MacDonald gave it his authoritative support. I do not think I could frame a detailed proposal or draft texts. I merely wish to indicate the idea. I think it should receive careful and judicious consideration, and I hope that an exhaustive and conscientious study of it may lead to effective and logical proposals.

.....

SPEECH BY M. BRIAND (*France*)
at the Assembly on September 5th, 1929.

The League has waged more than one campaign against war which has been productive of very marked results. Last year, speaking from this platform, I said that there must be no falling off in the activities of an institution such as this. I was the first to pay tribute to what the League had done, to note the progress it had made in the cause of peace.

Anything that has been accomplished during the last few years has been due to the inspiration of the League; certain things, rightly held up to admiration on this platform, would not have been possible had not the League, by virtue of its acts and the confidence it inspires, created a favourable atmosphere throughout the world. Locarno, to which we owe the presence here of the German delegation—with which as representative of France I am glad to collaborate—was born of the League, and the Pact of Paris, which has been mentioned here, although it might seem to have been conceived outside the League, was also brought into being by its inspiration.

Here, since I first had the honour to represent my country at Geneva, I learned to seek a means of exorcising war and, still under the influence of this idea, I found the formula from which the Pact of Paris sprang. That Pact it has been my privilege to deposit with the Secretariat of the League of Nations. It is here now in our midst, part and parcel of the League and of its patrimony.

Yet, despite the progress made in the cause of peace as a result of the Paris Pact, despite the part played by Conventions—for example, by the Locarno Treaty—in the campaign against war, there still remains one serious omission in our work, and, though I may feel some hesitation in approaching this problem, I have to tell myself that, as a member of the League, it is my duty not to shirk it.

Yes, despite the League's efforts in the cause of peace, one serious omission exists which sooner or later we must remedy.

¹ The draft resolution proposed on September 10th, 1929, by the Peruvian delegation, together with the text of a letter addressed by M. Cornejo to the President of the Assembly are reproduced on page 9.

We have agreed to place a ban on war; war henceforth will be deemed a crime, whereas a few years ago, though execrated by all of us, it was perhaps not legal, but unquestionably was lawful. Now, at last, we have our enemy by the throat; now we have him fast in the pillory. That is all to the good; it forms a stout moral barrier precluding all recourse to war. But who would venture to say that that is enough?

Who would venture to say that, when an institution like the League has pronounced sentence, its duty is done?

No, gentlemen, not until the League, having condemned the crime, has taken such precautions as lie within its power to prevent that crime from being committed, or to punish it when committed—not till then will it have completed its duty.

Let us make no mistake; every nation is obsessed with the same idea. Wherever our activities are discussed, wherever they are approved, and held to offer real guarantees of peace—and they do offer such guarantees—the question arises; but supposing, all the same, that among all the nations there were one, only one perhaps, which did not keep faith; supposing, all the same, under some provocation the nature of which we refuse to conceive, but which still might occur, war were to break out, what would happen? What would be done by that great association of nations which has condemned war? What action would it take in such an event? How could it do otherwise than use the power which lies ready within its grasp?

A few years ago, when for the first time I represented my country in this Assembly, a great effort was made to fill that gap; for a whole month the Assembly toiled to raise up a solid barrier against war, to fix penalties, if by any evil chance war should be unchained.

That particular effort, which is an honour to the League, was never followed up, to our deep regret. Does that mean that we are henceforth to renounce our endeavour and begin again in some other form, that we are to put systematically on one side all idea of penalties?

Gentlemen, no society worthy of the name which took precautions against crimes and penalties will renounce the right to inflict punishment, or will shirk that duty.

It is inadmissible that the League should not at some time endeavour to supply this deficiency. It is impossible that some day—and I trust we shall not have long to wait—it should not be able to turn to the nations and say: "You put your confidence in me; henceforth I feel that I am fully deserving of it, for now the League will no longer be content with execrating war and putting a ban upon it; the League has become the secular arm to punish anyone so rash as to employ that weapon". To this end we must work continually, with a firm resolve to succeed. Certain obstacles will gradually disappear; certain difficulties will be removed. We need only attack the problem with a real determination to solve it, and I personally do not despair of an early solution.

.....

SPEECH BY THE RIGHT HONOURABLE ARTHUR HENDERSON (*British Empire*)

at the Assembly on September 6th, 1929.

.....

I am now going to venture to introduce in greater detail a subject to which the British Prime Minister made a brief reference in his speech. Other speakers, including M. Briand and M. Hymans, raised the question of the relation of the Covenant of the League of Nations to the Pact of Peace signed in August of last year. The entry into force of the Pact of Peace is a great new event which has happened since the last session of the Assembly. It is a great new addition to international law by which the relations of States are governed and controlled. It is of importance to every country, and especially to those countries which are Members of the League of Nations.

The purpose of the Pact was the outlawry of war. It was the solemn renunciation of the right or power of the signatory States to have recourse to force as an instrument of their national policy. That is Article 1 of the Pact of Peace. It was the solemn undertaking that in no case would they seek to settle their disputes by other than pacific means. That is Article 2. These new undertakings have already been accepted by the vast majority of the Members of the League. Even those which have not yet definitely assumed these obligations have made plain their firm intention to do so at an early date.

What is the result of the engagements so entered into? It is this—that the Members of the League are bound, in their mutual relations with regard to international disputes and recourse to war, by two different systems or sets of obligations—those of the Covenant of the League of Nations and those of the new Pact of Peace.

The Covenant—need I remind this Assembly?—was drawn up on the morrow of war. It was prepared by a Commission of the Peace Conference of 1919. It was without question a remarkable piece of work, and each year, as it goes by, proves more clearly the wisdom of those who drew it up. Its authors, however, were bound by the will of the Governments of that day, and those Governments were not prepared to renounce completely the right of what we now call private war. They were prepared to go some distance in that direction, and indeed, the Covenant goes very far, but it does not go all the way.

The Covenant contains what the lawyers have called gaps—the gaps of Article 15; it contains the provisions of Article 12, to which I shall draw your attention in a moment. These gaps make possible the recourse to war as an instrument of national policy in certain cases where

the League, under the terms of the Covenant, has not been able to reach a decision in a dispute, or where, a decision having been reached, it has not been accepted by the parties to that dispute.

The right of private war thus remains legitimate in several sets of circumstances under the Covenant as it now stands, but this right of private war, which its authors were compelled by their Governments in 1919 to leave in the Covenant, has been abolished by the Pact of Peace. This means, therefore, not that there is a contradiction or conflict between the Covenant on the one hand and the Pact on the other, but that the Pact has gone beyond the Covenant and has filled the gaps which the Covenant left open.

Let me cite briefly some concrete examples of what I mean. Paragraph 1 of Article 12 of the Covenant reads as follows: "The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision or the report of the Council."

Observe, if you please, that, after an award or a decision or a report has been made and after three months have gone by, a party to a dispute under the Covenant is free to resort to war unless the other party has accepted the award. Under the Covenant they still have this freedom, but under the Pact they have no such freedom, they have relinquished it.

Similarly, paragraph 6 of Article 15 lays down that, if the report by the Council is agreed to by all the members of the Council, if one party accepts that report while the other does not, the accepting party may resort to war against the party which does not accept. Thus, under the Covenant, Members of the League retain the right to resort to war to secure justice for themselves. Under the Pact of Paris, the Pact of Peace, that same right has been renounced.

Likewise, paragraph 7 of Article 15 lays it down that, if the Council fails to reach a report to which it unanimously agrees, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice. Under the Covenant they have this right to go to war. Under the Pact of Paris, the Pact of Peace, they have given up that right.

Now, the Covenant is the constitution of the League of Nations. It is the fundamental law upon which the permanent political institutions of the League are built; it is the very foundation upon which must rest the mutual relations of its members. Is it conceivable that we should be content to leave as they stand in this Constitution of ours, rights of private war which have been rendered out of date by the great new instrument to which nearly all of us have agreed?

In my judgment, the time has come, as the Prime Minister said the other day, to cut out from the Covenant the dead wood which now remains, and in order that we may deal with this in some practical form I am now taking the liberty to read to you a draft resolution which I am submitting to this Assembly:

"The Tenth Assembly of the League of Nations:

"Notes with satisfaction the general adhesion of States Members of the League of Nations to the Pact signed in Paris on August 27th, 1928, imposing on its signatories the renunciation of war as an instrument of national policy and the undertaking to have recourse only to pacific means for the settlement of their disputes;

"Considers that, in order to take account of the progress thus made in the organisation of peace, it is desirable to re-examine Article 12 and Article 15 of the Covenant of the League in order to determine whether it is necessary to make any modifications therein."

May I say, in conclusion, that the Assembly will note that it is left to the Agenda Committee to determine to which Committee this matter should be referred; it will also note that the Committee is free to propose the solution which, in its judgment, may seem right—whether immediate action at this present session of the Assembly, or reference to some standing or special Committee with a view to action at the Assembly twelve months hence? The British Government is ready to accept the procedure which may seem wise to the Assembly as a whole. It cares nothing for such details provided the main principle is accepted. Our only purpose is to bring the Covenant into line with the wider outlawry of war to which we have all agreed.

I am happy to say that I submit this resolution not only in the name of the British delegation but also in the names of the delegations of France, Italy, Belgium, Chile, and Denmark, and the resolution in principle has also the sympathetic approval of the German delegation.

If this resolution could be dealt with on the lines which the British delegation suggests, I believe that we shall be taking as a result one of the most important and one of the most far-reaching steps to convince our peoples that, when we signed the Pact of Paris, we were determined to begin to build a great edifice of peace which would secure co-operation and goodwill amongst all the nations we represent.

SPEECH BY M. VOLDEMARAS (*Lithuania*)

at the Assembly on September 7th, 1929.

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The so-called Peace Pact was carried through outside the League—for obvious reasons, the United States of America not being a Member of the League—but the Assembly had before it

last year a draft resolution submitted by the Lithuanian delegation calling upon the Council to study the question of adapting the provisions of the League Covenant to the undertakings arising out of the Briand-Kellogg Pact.

I submitted this draft resolution myself a year ago from this platform, with a few very simple words of explanation. I said then that either the Pact would become an instrument of positive international law, binding on all the Members of the League who had acceded to it, or it would not. In the former case, we should have gained a year which might otherwise have been spent in study; in the second case, we could have said, in reply to world public opinion, that M. Briand's generous initiative which was adopted by the United States of America has found an equally generous echo in this Assembly.

The resolution was referred to the Agenda Committee, and I was under no illusion as to what the reply would be. The Committee thought it premature.

This year, the British delegation has submitted an identical proposal, which has also been referred to that same Committee, and I very much fear it may share the fate of mine. Perhaps difficulties will not arise in the Committee, but the road before us is a long one, since it is not enough for an amendment to have been framed and adopted by the Assembly—it must be ratified by all the States Members of the League. And ratification is difficult to obtain. The leading newspapers expressed the view, after Mr. MacDonald's speech, that his suggestion also was somewhat inopportune, for the idea also exists—what it signifies is another question—that the articles of the League Covenant must not be changed, and that the provisions of the Covenant and the engagements embodied in the Briand-Kellogg Pact are practically identical and merely a repetition of one another.

This opposition is likely to be even stronger within the individual countries. In virtue of the Covenant, the period allowed for ratification is fairly long, but failure to ratify entails resignation as a Member of the League.

I am under no illusions; the suggestion so boldly taken up by the British delegation will be a long time in achieving its purpose, but if the League sets to work with a will, I am convinced that, in one, two, or three years, these amendments will have become an integral part of the Covenant.

I have said that the League could not take part in the framing of the Pact, but it can and should adopt it as a most precious legacy, as an embodiment of the general principles laid down in the Preamble to the Covenant.

.....

SPEECH BY M. VENIZELOS (*Greece*)

at the Assembly on September 7th, 1929.

.....

The League's efforts in the political sphere have met with the same fate. The Geneva Protocol is the most striking example. The effort itself failed; but the idea remains, and has already borne fruit. It led to the Locarno Agreements. It secured the accession of Germany and the forthcoming accession of Great Britain and France to the Optional Clause, and contemplated accession of France to the General Act for the Pacific Settlement of International Disputes. It gave birth to that Paris Pact with which history will always gratefully associate the names of M. Briand and Mr. Kellogg.

Statesmen much more authoritative than I have said all that need be said regarding that great act, but its enormous importance can never be sufficiently emphasised. Whereas, in the Covenant of the League, we were not bold enough to proscribe a war of aggression in all cases, within ten years more than sixty nations have managed to agree in condemning war as an instrument of national policy. This great progress would never have been possible unless the League had educated public opinion.

We may no doubt regret that the Paris Pact does not organise means for preventing wars of aggression, but its condemnation of them, in the name of almost all nations, is of capital importance and cannot fail to have enormous practical results. One of these, as Mr. MacDonald, M. Hymans, M. Briand, Mr. Henderson and other speakers have already pointed out, calls for immediate action. The States Members of the League, having all accepted the Paris Pact, are bound to bring their commitments under the Covenant of the League into line with those into which they have entered through the Paris Pact. They must prune away from Articles 12 and 15 of the Covenant certain provisions which are now out of date, for it is no longer possible to conceive of a "peace moratorium", nor can there be any exception to the rule which condemns a war of aggression.

.....

SPEECH BY DR. STRESEMANN (*Germany*)

at the Assembly on September 9th, 1929.

.....

Among the various steps to consolidate peace must be mentioned the very important proposals made by the British delegation, in agreement with other delegations, to clear up the relations between the Kellogg Pact, signed at Paris in August last, and the provisions of the Covenant.

Mr. Henderson, the British Foreign Secretary, has already been good enough to say that the German delegation was in entire sympathy with the fundamental idea underlying this proposal. In view of the German Government's attitude towards the Kellogg Pact from the outset, I need hardly mention the importance attached to the Pact by that Government.

I fully appreciate the desire to emphasise the connection between the provisions of the Pact and those of the Covenant. It is very necessary that there should be no obscurity or uncertainty in these matters, which determine our conception of right and wrong in the supreme questions of international relations.

Our solemn engagements must be so worded as to be understood not only by experts in international law but also by the man in the street.

I do not wish to start a premature discussion on the best solution of this problem, but I should like to point out that, if we are to have complete concordance between the provisions of the Covenant and the principles underlying the Kellogg Pact, we can hardly, I think, confine ourselves to examining the articles expressly mentioned in the British proposal; we must also examine any other provisions of the Covenant which are inseparably bound up with those of the Kellogg Pact.

.....

SPEECH BY M. MOTTA (*Switzerland*)

at the Assembly on September 9th, 1929.

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For the same reason, on considering another proposal, that put forward by the British delegation with regard to the desirability of adapting Articles 12 and 15 of the Covenant to meet the new situation created by the Locarno Agreements and by the entry into force of the Paris Pact, I reflected that we have all accepted the Paris Pact. That Pact connotes compulsory arbitration. It does not explicitly prescribe it, but it postulates it; in a sense it proclaims it, because, if States renounce war and if differences arise between them, they must find some means for their settlement. If conciliation fails, those means can be no other than legal or arbitral procedure.

If this conclusion is correct, if the Paris Pact involves arbitration, and if now we have all, or nearly all, accepted or are about to accept the compulsory jurisdiction of the Court, we have already, not only on paper but—what is better—in actual fact, succeeded in adapting the articles of the Kellogg-Briand Pact to those of the Covenant. I only hope this work will be undertaken; I only hope we shall study the British delegation's proposal. The Swiss delegation concurs here and now. All the materials are already collected; the Assembly's work will be no more than that of an architect correcting the lines of a building.

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SPEECH BY M. MIRONESCO (*Roumania*)

at the Assembly on September 11th, 1929.

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The Roumanian delegation will carefully consider the proposal to bring the provisions of the Covenant into line with those of the Paris Pact. Certain consequences follow from the very fact that the Members of the League are for the most part signatories to the Paris Pact. According to the Covenant, there are four cases in which war is not forbidden; but by signing the Paris Pact, by condemning war and by declaring that they renounce it, those States which are also Members of the League have, *ipso facto*, renounced the right to make war even in circumstances in which our Covenant regards it as legitimate. That important consequence is a noteworthy one, and it follows without any amendment of the Covenant.

But there is still Article 16 of the Covenant. That article is framed to meet the case of a war which is forbidden by the Covenant. Thus, if a country makes war in violation of the Paris Pact but without violating the Covenant—that is to say, in the four cases in which war is not forbidden by the Covenant—it is doubtful whether the sanctions provided for in Article 16 would be applicable.

This situation must be cleared up. The Roumanian delegation thinks that, in the case of any State Member of the League which is also a signatory of the Paris Pact, Article 16 should apply as soon as that State is guilty of any violation of that Pact.

Further, in the case of signatories of the Paris Pact which are not Members of the League, although Article 16 cannot impose any positive obligation on them, it does impose a negative obligation, namely, the obligation not to oppose the sanctions prescribed in the Covenant of the League as a punishment for war.

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II. Extracts from the Minutes of the First Committee.

FIFTH MEETING

Held on Tuesday September 17th, 1929, at 3.30 p.m.

Chairman: M. SCIALOJA (Italy).

Amendment of the Covenant of the League of Nations as a Result of the General Adhesion of the Members of the League to the Pact of Paris for the Renunciation of War.

The CHAIRMAN read the British and Peruvian proposals, which, he said, could be discussed together; the text of these proposals is as follows:

1. Draft resolution proposed by the British Delegation (September 6th, 1929).

“ The Tenth Assembly of the League of Nations:

“ Notes with satisfaction the general adhesion of States Members of the League of Nations to the Pact signed in Paris on August 27th, 1928, imposing on its signatories the renunciation of war as an instrument of national policy and the undertaking to have recourse only to pacific means for the settlement of their disputes;

“ Considers that, in order to take account of the progress thus made in the organisation of peace, it is desirable to re-examine Article 12 and Article 15 of the Covenant of the League in order to determine whether it is necessary to make any modifications therein.”

2. Draft resolution proposed by the Peruvian Delegation (September 10th, 1929), and text of a letter addressed by M. Cornejo to the President of the Assembly.

Draft Resolution.

“ The Assembly shall appoint a Committee of five members to report on the form to be adopted for the inclusion of the Kellogg Pact in the Covenant of the League of Nations, and on the alterations necessary therein to give effect to the prohibition of war as an instrument of national policy.”

Letter.

“ Acting upon instructions from my Government, I have the honour to propose that the Assembly should examine the Covenant of the League of Nations in order to consider how far it may be desirable to amend or supplement that instrument with a view to bringing it into accord with the Kellogg Pact.

“ The British delegation having submitted a similar proposal, I desire to associate myself entirely with the action taken by the British delegation in agreement with the French, Chilean, Italian and Danish delegations.

(Signed) M. M. CORNEJO,
First Delegate of Peru.”

Sir Cecil HURST (British Empire) said that, at the meeting of the Assembly on September 6th last, Mr. Henderson proposed a resolution on the subject of bringing the text of the Covenant into conformity with the text of the Pact which was signed at Paris last summer and came into force at the beginning of the present year. By the terms of the Paris Pact, its signatories pledged themselves to renounce war as an instrument of national policy. The obligations thus assumed went somewhat further than the provisions of the Covenant. It was now ten years since the Covenant came into force, and at the time it was drawn up it was not possible to embody in it obligations so far-reaching as those accepted in the Pact of Paris last year. That such obligations would now be accepted was shown by the great measure of adhesion the Paris Pact had received.

Because the British resolution involved some modification of the Covenant, he trusted the Assembly would not think that the people of the United Kingdom were in any way discontented with the terms of that instrument. The remarkable part was not that there was now something to correct in the terms of the Covenant in the light of the experience of the last ten years, but that the progress made since the Covenant came into force had been so great as to enable the world to accept the more far-reaching stipulations embodied in the Paris Pact.

When the Covenant was drawn up, it was felt that, unless certain loopholes were left, it would not secure general acceptance. It was not intended that Members of the League should resort to war

by taking advantage of these loopholes, but it was felt that, if the obligations of the Covenant extended to the cases in which war was more likely to arise, it was all that could then be achieved.

The Government of the United Kingdom were now of opinion that some of the provisions of the Covenant required re-examination. Article 12 stipulated that, if there should arise between Members of the League any dispute likely to lead to a rupture, then "they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council", and the Article went on to say: "They agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report by the Council". The right to go to war after those three months had elapsed was not excluded. The framers of the Covenant thought that, if they could prevent war during those three months, it would be stopped altogether, since public opinion on both sides would ensure a peaceful settlement. Beyond that those who drew up the Covenant feared to go, lest the instrument should be regarded as Utopian.

The great majority of the States had now, however, accepted an overriding obligation in no circumstances to resort to war, and it was clear that the obligation in Article 12 was less far-reaching than that. It therefore seemed to the British Government that steps should be taken to make the obligation under Article 12 at least as far-reaching as that embodied in the Paris Pact. For that purpose, the change required was small. Down to the words "or to the enquiry by the Council" no change was required, and after that the text should be altered to read "and they agree that they will in no case resort to war". That undertaking would be precisely in line with the obligation embodied in Article 2 of the Kellogg Pact, which stipulated that "the High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or whatever origin they may be which may arise among them shall never be sought except by peaceful means". The Members of the League would continue to agree that, "if there should arise between them any dispute likely to lead to rupture", then "they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council" and they would agree not to go to war.

If an amendment of that sort were made—and for States which had accepted the Pact of Paris that modification would involve no change in their obligation—it would involve two minor consequential amendments in other provisions of the Covenant. Article 13 stipulated that the Members of the League agreed that, whenever any dispute arose between them which they recognised to be suitable for submission to arbitration or judicial settlement and which could not be satisfactorily settled by diplomacy, they would submit the whole subject-matter to arbitration or judicial settlement. The fourth paragraph of the Article provided that "the Members of the League agree that they will carry out in full good faith any award or decision that may be rendered and that they will not resort to war against a Member of the League which complies therewith". It continued: "In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto".

What operation could that central phrase of the paragraph possess if there was already in existence for those Members of the League, embodied in the Pact of Paris, an obligation not to use war as an instrument of national policy, and if they consented to a modification of Article 12 of the Covenant to the effect that, if there was a dispute, it should in no wise be made the excuse for recourse to war? Consequently, that central phrase of the fourth paragraph of Article 13 ceased to be useful, and he submitted that it might be amended to read:

"The Members of the League agree that they will carry out in good faith any award or decision that may be rendered. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto."

A second consequential amendment would be that, in the sixth paragraph of Article 15, an alteration would have to be made. At the same time, that provision could not be amended by the simple method he had suggested with regard to the fourth paragraph of Article 13, because there was an essential difference between the two proposals. In the case of a submission of a justiciable dispute to a body which could give a binding decision, there was the obligation to accept the decision which was recognised in the opening phrase of Article 13; but, when States were submitting to the conciliatory proceeding of the Council, there was not, and he did not think there could be, any similar obligation to accept the recommendations of the Council. Just as in the existing sixth paragraph of Article 15 States were only obliged to accept the unanimous report to the extent that they undertook not to go to war with the State which complied with it, so he submitted that, in the altered form, all that it would be possible to provide would be that, if a report of the Council was unanimously agreed to by the Members thereof other than the representatives of one or more parties to the dispute, the Members of the League agreed that, as against any party to the dispute which complied with the recommendations of the Court, they would take no action which was inconsistent with its terms. It was unnecessary there to oblige them not to go to war. That obligation would already have been embodied in the suggested amendment to Article 12, which would bind them, not merely not to go to war for a period of three months, but not to go to war at all.

The second main modification which he suggested was necessary in the terms of the Covenant in order to bring it into harmony with the Pact of Paris was this. In Article 15 of the Covenant, provision was made that, if the Council was unable to arrive at a unanimous decision, the Members of the League reserved to themselves the right to take such action as they should consider necessary for the maintenance of right and justice. That was the provision which had been so often described as the gap in the Covenant, leaving Members of the League the right to resort to war in certain events. But the circumstances in which they would resort to war would be covered by the terms of Article 1 of the Pact of Paris. They would be resorting to war as an instrument of national

policy. The amendment which he submitted ought to be made to that provision of the Covenant was as follows:

"If the Council fails to reach a report which is unanimously agreed to by the Members thereof other than the representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice other than a resort to war."

There might be many other actions which could be so taken.

Those were the formal modifications which it seemed to his Government were required in the terms of the Covenant in view of the fact that a major obligation had now been accepted by most States when they became parties to the Pact of Paris.

Some minds might be troubled by the fact that all the Members of the League were not parties to the Pact of Paris. That was true, but at the same time the number of the States which were Members of the League and which had not accepted the obligations of the Pact of Paris was not large, and they were in most cases—he hoped in all—States which had been deterred from announcing their acceptance of the Pact of Paris by constitutional reasons. For the vast majority of the Members of the League, the obligations of the Pact of Paris had already become a reality.

The Committee would observe that he had made no mention of two Articles as requiring amendment which, in discussion, had frequently been mentioned as being Articles that would require amendment if the changes he had suggested were made. The first of these was Article 10, providing for the preservation of the existing political independence of all Members of the League. He did not think this Article required modification by reason of the acceptance of the Pact of Paris; and to touch Article 10 would be very unwise and even dangerous. Since the Covenant came into force, there had been two camps or groups which held somewhat divergent views on the subject of Article 10. Some States thought that the burden it imposed upon Members of the League was so heavy that it was unreasonable to ask States to accept it, and there had been proposals for the elimination of Article 10 altogether. On the other hand, there were States which looked to Article 10 as the keystone of the arch of security which the League gave them, and which would view with dismay any attempt whatever to weaken its terms. In the presence of views so divergent, he ventured to think it would be far better not to think of touching Article 10.

The second Article of which he had made no mention, because his Government thought no change should be made in it, was Article 16, the Article providing for sanctions. It was clear from that Article that the Members of the League only undertook to apply those sanctions if there was violation of Articles 12, 13 and 15. If the obligations of Articles 12, 13 and 15 were extended, it was clear that the cases in which the Members of the League would be called upon to apply sanctions would also be extended. Consequently, the suggested modifications did in a sense increase the burden which Membership of the League imposed upon its Members. On the whole, his Government thought that that small extension of the obligations involved in Article 16 was the wisest course to take. It would lead to great complication if it were sought to embody in the terms of the Covenant two different sets of obligations, of which one was covered by the sanctions and the other was not. If, for instance, under Article 12 as it now stood, a State waited for three months before resorting to war and then went to war, it did not violate Article 12 and consequently there was no obligation upon other Members of the League to apply sanctions against it. If, on the other hand, Article 12 was modified in the way he had indicated and the obligation to refrain from resorting to war became indefinite in duration and the State went to war four months after the award or decision, then, if the amendment was accepted, it would go to war in circumstances that would oblige other Members of the League to apply sanctions to it. But this extension of the obligations of Article 16 seemed to his delegation to be no more than a theoretical extension and not a practical one. The application of sanctions was only a burden if other States did in fact resort to war. The more the possibility of war was reduced the less possibility there was of having to apply sanctions and, consequently, the less onerous did the burden of sanctions become.

It would be seen that the modifications he had suggested as necessary in the Covenant as the result of the acceptance of the Pact of Paris covered but a very modest field. They implied no radical revision of the charter which bound all the States Members of the League. They were but minor corrections, which it seemed reasonable to make in view of the progress that the world had made in the course of the last ten years. If he was right in thinking that the field in which amendments were proposed was modest and if the terms of the amendments which he had indicated seemed to be adequate to achieve their purpose, why should not acceptance by the Assembly of these proposals be secured in the course of the Assembly which was still in session? He had read with great interest the corresponding proposal that had been put forward by the Peruvian delegation. The Peruvian delegation had proposed that a Committee of Five should be set up to consider any amendments that were necessary in the terms of the Covenant in order to bring it into harmony with the Pact of Paris. If the majority of the members of the Committee thought this question was so big a one that it ought to be made the subject of study after the Assembly, Sir Cecil would agree that it ought to be committed to some body which would have adequate time and opportunity to deal with the question. If that was the general view of the Committee, the members of the British delegation would quite understand and would be perfectly ready to accept it, but their own view was that amendments which he had suggested were so modest in their nature, they covered a field so restricted, that, in reality, it would not be either difficult or unreasonable for the members of the Assembly to put this matter through right away. After all, it was now ten years since the League was started. Great progress had been made in the course of that decade, and would it not be an admirable opportunity to mark their sense of the progress realised by bringing the terms of the Covenant up to date? A phrase had been used by his own

Prime Minister in the course of his speech before the Assembly, when it was said that the moment had come to cut away the dead wood from the Covenant. It had occurred to him that perhaps the phrase might create in the minds of some an idea that they thought the Covenant a dying tree in which dead wood was beginning to appear. Let him suggest rather that the Committee should consider that what was wanted was the elimination only of boughs of that tree which had ceased to be useful because the tree had grown so high that the lower boughs ceased to operate. He hoped at the conclusion of the meeting that it might be possible, either for a general preponderance of view to have been expressed in favour of appointing or recommending the appointment of some body to go into the question after the Assembly had met, or that there might have been expressed a generality of opinion in favour of some more immediate effort at amendment of the Covenant so as to put the whole business through in the course of the present session of the Assembly.

M. CORNEJO (Peru) said that the Peruvian delegation shared the view of the British delegation and accepted the amendments to the Covenant so brilliantly explained by the fine speaker whose lofty idealism had always been and would always be a torch to lighten the path of the League of Nations. The Peruvian delegation had, however, proposed the appointment of a Committee to bring the Pact of Paris and the Covenant of the League of Nations into harmony. That Committee should consider whether, apart from Sir Cecil Hurst's amendments, other articles of the Covenant ought not to be amended so as to bring the two instruments entirely into line.

It was quite true that, when the Pact of Paris was signed—and Peru had been one of the first countries to sign after the original signatories, certain jurists had had the impression that there might be discrepancies and even inconsistencies between the Pact and the Covenant; it was now generally admitted, however, that the Pact of Paris had developed, strengthened and consolidated the principles on which the Covenant was based.

Ten years earlier, as Sir Cecil Hurst had reminded them, it had not been thought possible to obtain the assent of all countries to an absolute condemnation of war, and the door had been left open for certain wars which had been regarded as lawful. After the lapse of three months, a country that did not conform to the Council's recommendations might declare war. The Paris Pact, however, had outlawed war as an instrument of national policy.

He must dwell at some length on this idea of national policy. Policy was one of the means employed by a country to preserve and develop its existence. Consequently, if war was condemned as an instrument of national policy, it was condemned absolutely. No country could resort to war in order to increase its power, or in order to defend its vital interests. In other words, a country which, for example, suffered a denial of justice, could not resort to war in order to obtain redress, but must have recourse to the peaceful methods contemplated in the Covenant.

There was, however, another consideration to be borne in mind. War was only a means; the end was peace, which came into being when the conquering State imposed its will upon the conquered. Thus the Paris Pact, in forbidding wars of aggression, condemned dictated peace. He therefore thought that the Pact and the Covenant ought perhaps to embody provisions to deal with the case of a powerful country's having a weaker country at its mercy and claiming the right to impose its own peace terms.

Was a country which was guilty of the crime of war to be allowed to profit in its national policy by the peace it would impose upon the conquered country? In his view, the whole object of the Paris Pact was to prevent any such peace.

What terms would the conquering country impose in its dictated peace? Either territorial annexations or a war indemnity. One no longer saw, of course, as in ancient pictures, the victor in his chariot, crowned with laurels and dragging the vanquished in fetters in his train; but the chariot and the laurels were represented in these days by jurists, diplomatists and financiers, who translated the victory into territorial annexations or cash.

Such profits from war were prohibited by the Paris Pact, as they were also in spirit by the Covenant; he therefore thought it necessary that it should be made quite clear that, if the Paris Pact were violated, the League would intervene to prevent the territorial situation of any State Member of the League from being changed as the outcome of a war—to prevent the crime of war from yielding the victor a profit in the form of any kind of national advantage. If such countries could be convinced that they would in no case gain anything by an unexpected attack, there would be no fear of any country's resorting to war. Countries did not make war for fun; they made war when they hoped for victory and when they were convinced that they could win the peace—a much more important thing than winning the war.

Another point that he wished to discuss, and that he would like the proposed Committee to study, was that of neutrality.

Before the Paris Pact, any country was entitled to obtain a declaration of its neutrality. Now that war was forbidden as an instrument of national policy, no country had the right to be neutral. It was the duty of every country to defend the principles to which it had subscribed in the Paris Pact. That was an idea already accepted by the League of Nations, as witness the scheme for financial assistance to States which were the victims of attack—now under discussion in the Fourth Committee. He would repeat, however, that it was desirable to state clearly in the Covenant that no country had any longer the right to remain neutral.

There was one last point which the Committee ought to study—the question of the Council's unanimity.

If war was allowed in certain cases, the reason was that national sovereignty was a principle that still subsisted unimpaired. Up to the present, all Council resolutions concerned with the settlement of a dispute had to be passed unanimously.

As war was henceforth forbidden as an instrument of national policy, unanimity was no longer essential. When it had proved impossible to settle a dispute by conciliation or arbitration,

a majority of the Council should suffice to pass a resolution calling upon the States concerned in the dispute to accept the Council's opinion. Otherwise, one dissentient voice in the Council could prevent any possibility of a settlement. He was not in a position to say in what cases a majority should suffice; the Committee could go into all the possible cases.

In conclusion, he said that the Tenth Assembly would do itself high honour by filling the gap in the Covenant and bringing the Covenant into line with the Pact of Paris, thus making international co-operation an effective reality.

M. Georg COHN (Denmark) noted that the Committee had before it two different proposals regarding the inclusion of the Kellogg Pact in the Covenant of the League of Nations—two proposals of which the scope was different.

The British Government's proposal merely concerned the question of a further examination of Articles 12 and 15 of the Covenant, in order to decide whether it would be desirable to make any modifications. The Peruvian delegation's proposal went much further, since it aimed at an entire remodelling of the Covenant in order to render effective the prohibition of war as an instrument of national policy. The Peruvian point of view had already received a certain amount of support during the discussions in the Assembly. Several delegations had declared that the problem could not be limited to Articles 12 and 15 of the Covenant and that they ought above all to consider the system of sanctions referred to in Article 16.

Denmark was one of the countries which had the honour to sign the proposal submitted by the British delegation. He would therefore venture to explain the reasons which, in his opinion, militated in favour of limiting the question in accordance with this proposal. He desired to speak frankly and freely, even if some of the reasons he advanced were of a somewhat unusual nature. The short time at the Committee's disposal obliged them to go straight to the root of the question without any hesitation.

His Government had submitted the question of the relationship between the Kellogg Pact and the Covenant of the League of Nations to very careful consideration: first of all, when the Kellogg Pact was laid before the Danish Parliament and had been unanimously accepted by all parties, and subsequently when the instructions to the Danish delegation to the present Assembly were being prepared.

The Danish delegation had arrived at the conclusion that the Kellogg Pact did not entail a real outlawry of war to the extent that war, when it broke out for some reason or another, would be a state of affairs for which no rules of law would exist. The Danish Government and its delegation were of the opinion that rules of the Hague Conventions relating to the laws of war and neutrality, modified by the system of the Covenant of the League of Nations, should also be applied to any war which broke out notwithstanding the provisions of the Kellogg Pact. The latter did not even contain an unconditional renunciation of warfare. It was valid only as between the contracting parties, so that war between States not bound by the Pact was not included. Furthermore, its preamble laid down that a State which had recourse to war had no right to protection under the Pact. The renunciation of war did not therefore apply to the case of a State which itself had recourse to war.

Finally, during the diplomatic negotiations which had preceded the Pact, all had agreed that acts which merely constituted a case of legitimate defence could not be excluded by the Pact.

The Danish delegation thought that they should recognise these limits to the scope of the Kellogg Pact. It thought, however, that, within these limits, the Pact involved strictly juridical renunciation by all countries of their right to wage war, without any reservation except those he had already mentioned. As compared with the Covenant of the League of Nations, the Kellogg Pact therefore marked very considerable progress. It made good certain omissions in the Covenant of the League of Nations. When the latter was revised in conformity with the Kellogg Pact, there would be no further excuse, either direct or indirect, for resorting to war.

Denmark willingly accepted the modification of the Covenant of the League of Nations in the direction indicated. The Danish delegation was indeed of opinion that it would be necessary to prohibit war as such, and considered it quite useless to endeavour to draw any distinction between lawful and unlawful warfare, between wars of aggression and defensive wars, or to maintain the concepts of crime, culpability or responsibility in this matter. Those were concepts of national criminal law which could hardly be adapted to international relations.

They might wonder why Denmark, in view of her attitude, did not desire a radical alteration of the whole system of the Covenant of the League of Nations, in conformity with the new principle of the Kellogg Pact. He wished to explain the reasons. On leaving for Geneva, the Danish delegation had not thought to take the initiative in raising this question. It had indeed approved the British proposal, but that was on account of the limited nature of the proposal itself. The reasons which led the Danish delegation to take this decision were four in number.

First, it had thought that it would be preferable, before discussing the principles of the Kellogg Pact to allow them time to spread and take a hold on national opinion. Any premature re-examination of this question might produce the following result: those who had already expressed their scepticism with regard to—or had even opposed—the Covenant continued their criticisms by alleging that in reality the Kellogg Pact did not go any further than the Covenant of the League of Nations. That might do great harm to the new Pact, not only from a juridical, but also from a moral, point of view.

Secondly, the Danish delegation had thought that the Assembly was not perhaps qualified to give a very precise interpretation of the Kellogg Pact to which certain States not represented

at Geneva, such as the United States of North America and the Union of the Soviet Socialist Republics had acceded. It would perhaps not be quite correct to give an authoritative decision regarding the scope of the Kellogg Pact without the assistance of these States.

Denmark's third reason was connected with the system of penalties in the Covenant. Certainly, the Danish delegation was of opinion that the Kellogg Pact did not affect Article 16 of the Covenant of the League of Nations in its present form and that the latter Article remained applicable. But, as he had pointed out at the beginning, the reservation to the preamble of the Kellogg Pact must be interpreted to mean that renunciation of warfare was not applicable in the case of a State which itself resorted to war. That was exactly the situation provided for in Article 16 of the Covenant of the League of Nations, which laid down that sanctions should be applied to a State which resorted to war in violation of its obligations under the Covenant.

If, however, they modified Articles 12 and 15 of the Covenant in order to bring them into line with the Kellogg Pact, the indirect result would be a modification of the system of sanctions provided for in Article 16. Indeed, these sanctions would become applicable, not only to the State declaring war in violation of Articles 12 and 15—according to their present limited meaning but also when war had been declared in all other cases covered by the new text of the articles. The indirect result would therefore be a considerable extension of the application of sanctions.

Denmark would agree to such extension with regard to economic and political sanctions taken under Article 16, for the Danish delegation was of opinion that in all cases war should be combated in as effective a manner as possible. But that was not the case with regard to the military sanctions under the Article. Denmark had always felt some doubt with regard to the military sanctions mentioned in Article 16. She saw in them a vestige of the former law of war and regarded them as being contrary to the great fundamental idea of the Covenant with regard to disarmament and the preservation of peace. Such sanctions would also be contrary to the spirit of the Kellogg Pact. The Danish delegation considered any extension of these military sanctions, even indirect, as not very desirable.

The fourth reason which actuated the Danish delegation was that it was not absolutely necessary to alter the Covenant of the League, for the Members of the League of Nations had also accepted the Kellogg Pact, the latter being a more recent Convention which superseded the rules of the Covenant of the League of Nations when there was any contradiction between these two Pacts. If matters were left as they were, the rules of the Kellogg Pact would remain fully applicable, the gaps in the system of the Covenant would be filled, while the system of sanctions under the Covenant would only retain its present limited scope.

Finally, the Danish delegation thought it might be dangerous to endeavour to solve this question on too broad a basis. There was an old English maxim: "Do not bite off more than you can chew". He strongly urged the Committee merely to adopt the British proposal, to which they might perhaps add, in addition to the commentaries on Articles 12 and 15, a commentary on Article 13.

The Danish delegation could not share the British delegation's view that the indirect effects of the amendments proposed in connection with the system of sanctions would be rather theoretical than practical. He reminded them of his previous remarks concerning the extension of the system of sanctions.

He thought, however, they might easily avoid that difficulty by appropriate drafting. He ventured to suggest, for example, the addition to the Covenant of the League of Nations of a new Article 17a reproducing the Kellogg Pact, but leaving untouched the system of sanctions laid down in the previous articles of the Covenant. Other solutions were also conceivable.

He felt bound to express doubt as to the utility of referring this question to the Committee on Arbitration and Security, as had been proposed. In the limited form he suggested, the question did not come within that Committee's terms of reference.

On behalf of the Danish delegation, he recommended that the question should be referred for examination to a committee of enquiry which would also be a drafting committee, consisting of nine members, to be set up by the Assembly. This committee might—as soon as it possibly could—submit to the Council a report on the result of its work, and the question might then be included for ultimate discussion in the agenda of the next Assembly.

M. LIMBURG (Netherlands), although agreeing upon the desirability of bringing the Covenant into line with the Kellogg Pact, thought that the Committee might reasonably hesitate before taking a decision. It was apparently Sir Cecil Hurst's opinion that the present Assembly could adopt his amendments; and his proposal for the appointment of a Committee of Enquiry was only a subsidiary measure. He (M. Limburg) thought Sir Cecil Hurst was too optimistic. In the first place, the question was a purely technical one, and the text of the proposed amendments had not yet been submitted to the Committee. Secondly, he thought the British proposal only aimed at amending Articles 12 and 15. The British delegate had quite rightly referred in his speech to Article 13, which might also require modification. There might perhaps be other articles, such as Article 17, that would call for consideration.

He was doubtful whether the principle of the Kellogg Pact could be, as it were, incorporated, by means of certain small modifications, into the League Covenant, which was already complete in itself. They might be compelled by force of circumstances to carry out a more complete overhaul than the British delegate had proposed. He might be wrong, but he thought that, if a continental

jurist had proposed this method of modifying the Covenant, Sir Cecil Hurst would have made comments on the continental legal mind.

If Sir Cecil Hurst's amendments were adopted, the question arose whether a distinction should be drawn in Article 15 between the case where the Council was unanimous and the case where there was only a majority. He thought that it was necessary to study this question. On the other hand, it was perhaps desirable to introduce into the Covenant a general article laying down that resort to war was in all circumstances forbidden.

M. ROLIN (Belgium) pointed out that this was already done by Article 12.

M. LIMBURG (Netherlands) answered that that no longer applied if Article 12 was amended as Sir Cecil Hurst proposed. Moreover, Articles 13, 15 and 16 would also be modified, but there would be no article which laid down the principle once and for all.

Those were his technical reasons for hesitating to believe that the proposed amendments could be adopted at the present session of the Assembly.

It might be urged that advantage should be taken of the existing favourable atmosphere to get the amendments passed. Had the League's experience of amendments to the Covenant been so very satisfactory? He thought they ought to be very careful about that matter. If the amendments were accepted at that session, and if, after all the justifiable enthusiasm that the Kellogg Pact had aroused, they were not ratified by an adequate number of States Members, the effect would be deplorable.

On the subject of sanctions, Sir Cecil Hurst had said that, by reducing the possible cases of war, they would reduce the cases in which sanctions might be called for. The speaker said he did not understand this argument and added that in any case, the field of application of sanctions would be enlarged, for there would be, not only sanctions—military and other—against wars which were already unlawful but also sanctions—military and other—against wars which hitherto had not been unlawful according to the Covenant.

There were some countries that had signed and ratified the Kellogg Pact but had not considered the problem of sanctions, for the simple reason that it had not arisen. If, at that session of the Assembly, they adopted the British delegation's amendments, the possible enlargement of the system of sanctions might cause certain countries to hesitate to ratify those amendments. Although agreeing upon the principle, he did not see how Sir Cecil Hurst's amendments could be adopted at that session.

M. RAESTAD (Norway) said that it would undoubtedly be desirable to eliminate from the Covenant such parts of it as were in contradiction with the Kellogg Pact. He then referred to the Danish delegate's remark that, if they tried to reproduce the substance of the Kellogg Pact in the Covenant, they would find themselves interpreting the Kellogg Pact, which would be a rather delicate thing to do in the absence of certain of the Powers that had signed it.

Further, it should be observed that the underlying principle of the Kellogg Pact was different from that of the Covenant. The British proposal regarding Article 12 showed that this introduced a certain element of danger. The British delegation had proposed to say: "The Members of the League agree that they will in no case resort to war". Under the Kellogg Pact system, there was at least one case in which war was lawful; whereas, according to Sir Cecil Hurst's text, war would not be lawful in that case.

In the text of the Kellogg Pact, it was stated that the High Contracting Parties "abandon war as an instrument of national policy". Further, in the preamble, it was said that "henceforward any signatory Power that attempts to develop its national interests by resorting to war shall be deprived of the benefits of this Treaty". That meant that, if there was a war between two States signatories of the Kellogg Pact, a third signatory State could resort to war against whichever of the other two had, in its opinion, acted in violation of the Kellogg Pact. That was an essential feature of the Kellogg Pact system, because it was based on an individualistic conception, unlike the Covenant system, which was on a collective principle.

Moreover, if the scope of Article 16 were enlarged, the sanctions provided under Article 16 would operate against a State which had done what, under the Kellogg Pact, it was entitled to do.

It would be seen that, if they simply deleted from the Covenant those phrases which were incompatible with the Kellogg Pact, if they tried to reproduce the system of the Kellogg Pact, they might find themselves embodying in the League Covenant a system which would really be incompatible with that of the Pact of Paris.

On the question of sanctions, he agreed with the Danish delegate. There were several reasons for not interfering with the system of sanctions. The Pact to renounce war did not bind its signatories to any sanctions. Consequently, it did not, in itself, constitute for the members of the League, a definite reason for extending now the existing system of sanctions. He had, however, no objection in principle to the extension of sanctions, but he regarded it as a question to be considered inside the League and independently of the Kellogg Pact.

He agreed with the Danish delegate that the League should aim at the suppression of such phrases in the Covenant as were incompatible with the Paris Pact.

In any case, the question was undoubtedly a delicate one, and they ought to think twice before they started re-writing the Covenant. Consideration should therefore be given to the Danish delegate's proposal to appoint a committee to study the question and also to ask for the opinions of Governments.

M. ROLIN (Belgium) said he was surprised and disappointed by the objections that had been made and the hesitation that was displayed. The British proposal had not come as a surprise to him, any more than had the Lithuanian proposal of the previous year. Those who were interested in the League had asked themselves, as soon as the Kellogg Pact was signed, how it was to be made to fit in with the Covenant of the League, and international jurists of distinction had promptly begun to consider what alterations might be made in the Covenant in order to codify the conception of non-aggression, for that was what it amounted to. The two texts covered different ground, and it was desirable to make the present situation in regard to the international law concerning war comprehensible to everybody.

So far as non-aggression in all its aspects was concerned, it was necessary to enable the simplest minds to understand the effect of the obligations that had been assumed; those who had carried on propaganda among the masses knew how difficult it was to explain the difference between arbitration and appeal to the Council, or between unanimous decisions and majority decisions.

The question was to lay down in unequivocal terms that resort to war was prohibited. The text proposed was a simple one; it changed the limited undertaking in Article 12 into an unlimited undertaking and consequentially cancelled the limited undertakings in Articles 12 and 13.

That was, of course, extending the sanctions to all cases of resort to war, but that was apparently the intention of all the Members of the League which had signed the Kellogg Pact, and it was impossible to leave two kinds of obligation side by side.

Two objections had, however, been raised from the technical point of view. M. Limburg had said that, if Sir Cecil Hurst's suggestions were followed, a new distinction would have to be introduced into Article 15 between unanimous decisions and majority decisions, because in the Covenant resort to war was prohibited when the recommendation was unanimous.

M. LIMBURG (Netherlands) said that he did not think the distinction in question need be maintained.

M. ROLIN (Belgium) said that, if Sir Cecil Hurst's text had been distributed, M. Limburg would have seen that the only point on which the British delegate added anything new was where he re-established the distinction in another form by emphasising that, in the case of a unanimous vote, the parties could not take up an attitude incompatible with the recommendations of the report, whereas in the case of a majority decision they retained their freedom, provided always that they did not resort to war; and all the Members of the League were as much bound as the parties.

Other suggestions might be made; for instance, the Council's recommendation might be regarded as equivalent to an arbitral award, for the enforcement of which the Council would take all proper steps. The question might be discussed, but it had not escaped Sir Cecil Hurst's notice.

It had also been said that a single undertaking was needed; but the new Article 12 laid it down that the Members agreed that they would in no case resort to war. That was undoubtedly a general formula.

It was likewise possible to have other preferences on that point; some delegates might like it to be specified that such a prohibition should not prevent either resistance to an attack or military action taken in pursuance of the Council's or the Assembly's recommendations. Those were purely technical questions, on which it would be easy to secure agreement. The matter had been under consideration in every quarter for a long time, and it could hardly be said to be too late to devote one or two sub-committee meetings to it.

M. Raestad had raised a technical objection which he (M. Rolin) had not understood quite so clearly: he had said that there was a certain incompatibility with the Kellogg Pact system, because Article 12 absolutely prohibited any resort to war, whereas, if the Pact should be violated by one of its signatories, all the others, and not merely the country attacked, were to regard themselves as released from the non-aggression undertakings into which they had entered so far as concerned the aggressor.

He did not think there was any sound basis for this criticism, for, under one of the clauses of the Covenant, a State which broke its engagements was regarded, *ipso facto*, as having committed an act of war against all the other Members of the League, which were then entitled to consider themselves at war with that State.

Another objection had been raised of a political order; it had been said that to explain the Kellogg Pact in a document to which certain signatories of the Pact were not parties would be an act of political discourtesy. If that had been the real trend of the solution, he would have opposed it, but it was not so. Whatever form the solution might take, such solution would not apply to the signatories of the new Pact not Members of the League. But it was quite logical for the Members of the League to endeavour to bring their Covenant into line with the spirit of the Kellogg Pact. They should not have any hesitation in defining, if necessary, the reservations which they thought indispensable and which he hoped they would reduce to a minimum. But it was desirable that the Council should be aware of the scope of the obligations they had sanctioned.

"Sanctioned"—that was the fateful expression, and there had been no attempt to hide the fact that sanctions were the main cause of their difficulties. That was an old controversy within the League of Nations. From the very first Assembly, a number of States Members of the League had hoped to define and strengthen Article 16 and increase security; they had hoped to reinforce the machinery of sanctions. For nine years they had been marking time and had finally, because of the resistance encountered, more or less renounced every general effort to reinforce these sanctions. They had even, indeed, had recourse to an international volunteer force intended to strengthen the sanctions and provide the Council with some material expression of its power in this direction. With this end in view, the draft for financial assistance was drawn up.

There was one case in which it had been thought there would be no opposition because there never had been any opposition and because it was a case, not of inventing new means, but of maintaining intact those which had already swayed for years the thoughts of most of the Members of the League: the general application of the prohibition of warfare.

On this point, the Treaties of Mutual Assistance and the Protocol had, when they came to be discussed after their adoption, met with general approval.

Many objections to the system of the Protocol had been raised, but as far as he was aware, no Member had protested in any Parliament against the final decision, based on the sanctions of the Covenant, to prohibit all resort to war. That showed that public opinion, in spite of the traditions and attachment to certain historical conceptions, realised that there was an essential need for solidarity and loyalty, and that it would be impossible to create undertakings of two kinds protected by sanctions of two kinds: on the one hand, the sanctions envisaged by Article 16; on the other hand, following the system which their Danish colleague preferred, political or economic sanctions; if they were to follow M. Raestad, no sanctions at all.

If the League of Nations were to embark on this course, it would suffer a serious moral defeat. What would be thought, even in the United States, of a League of Nations which had embodied the substance of the undertakings of the Kellogg Pact in its own Covenant, but, wherever these undertakings went further than the former ones, had relegated them to a secondary position, without providing them with any support or material penalty?

That would be a decision entailing a grave responsibility. When they spoke of neutrality, wishing to retain as far as possible its character according to the former notions of international law, they totally and utterly disregarded the new juridical fact of the nature of the collective undertakings of non-aggression. Formerly, a state of neutrality existed when a State was a spectator in the event of a conflict between two other States; and whether the aggression was or was not a violation of an existing treaty of a State did not concern the neutral State, either as to such violation or as to the treaty violated.

In the present state of international law, since the Kellogg Pact had been ratified, no single case of aggression could occur without the violation of an engagement, not as between the two parties to the dispute, but as between the aggressor and each of the signatory States, each of the Members of the League of Nations.

What could be more monstrous under such circumstances than a claim to remain neutral? The claim would be so monstrous that various politicians in the United States had already dropped more than a hint in their speeches that, although the Government of the United States was not in any way bound by the Covenant, it could never treat a State which had been attacked in the same way as the attacking State, since the latter would have violated engagements entered into in respect of the United States itself.

For that reason, if for no other, he was in favour of referring the question to a committee. He earnestly hoped that his colleagues, who had expressed the present opinion of their Governments, would re-consider the problem in this new light, which he thought to be the light of international confidence.

Baron MARKS DE WÜRTEMBERG (Sweden) said that, before the discussion, there had been some uncertainty regarding the scope of the British proposal and that of the Peruvian proposal.

Some thought that the aim had been merely, now that most of the Members of the League of Nations had acceded to the Briand-Kellogg Pact, to draft an agreement of the League of Nations in such a manner that it would clearly express the progress already achieved by the Briand-Kellogg Pact with regard to the organisation of peace.

Others had thought that these proposals also took into account and, indeed, mainly referred to the extension of the application to the economic and military sanctions provided in Article 16 of the Covenant of the League, and that, consequently, they would render more effective the obligations which bound the signatories of the Briand-Kellogg Pact, over and above those already imposed by the Covenant of the League.

During the discussions in the Committee, it had become quite clear that what they had in view was a revision of the Covenant of the League of Nations, whichever proposal were adopted.

A revision from a purely drafting point of view would doubtless be desirable in certain respects. It might avoid various misunderstandings with regard to the interdependence of the two important international agreements in question. He thought there was no reason to oppose a revision of that kind. They could also consider the difficulties which would be involved. The League of Nations would hardly, without coming to a previous agreement with the countries non-Members of the League which had acceded to the Briand-Kellogg Pact, interpret the provisions of the Briand-Kellogg Pact itself. Any person acquainted with the provisions of the latter knew that they were open on various points, and even on important points, to different interpretations. The situation would be rather complicated if the interpretation given by a modification of the Covenant of the League of Nations was not that upheld by signatories of the Paris Pact which were not Members of the League. Then there were difficulties in the way of a revision of the Covenant from a drafting point of view. The Swedish Government, taking these difficulties into account, nevertheless had prepared to give serious consideration to the question of such revision.

Neither with regard to the problem of the application of military and economic sanctions in certain cases of war, which, under the present provisions of the Covenant, could not bring such

sanctions into operation, would the Swedish Government be opposed to their studying the question most carefully. But in that respect also it felt that difficulties would arise to complicate the solution.

If the League of Nations could assume the responsibility of a guarantee against every kind of warfare and could render that guarantee effective, it would have succeeded in its efforts to establish lasting peace.

Resort to war would have been practically excluded. But they might ask whether such a programme would not impose upon the League of Nations a task which at present it had not the necessary means of fulfilling.

Without entering into the details of the problem, he would give a concrete example. Let them suppose that the Council, having to deal with a dispute under Article 15 of the Covenant, had unanimously approved the attitude of a certain State, or let them suppose a State had won its case before the International Court of Justice and the other party to the conflict refused to comply with the decision of the Council or the Court. He was not convinced that the League of Nations, faced with this test, would be strong enough in relation to States in general to apply economic or military penalties to the State which resorted to force, with a view to itself enforcing the decision of the Council or the Court. Such a setback might be nothing less than a catastrophe for the League.

These remarks did not mean that the Swedish Government was opposed to a very careful study of these diverse problems; but they must not lose sight of the difficulties which lay in the path of any immediate decision with regard to basic points.

The best method perhaps would, in the first place, be to ask the various Governments their opinion on the question. But he was not opposed to the appointment of a committee to study all these problems.

Sir Cecil HURST (British Empire) made a proposal as to procedure. In opening, he said, he had indicated that his Government was willing to accept the view that the question should be referred for study to some appropriate body at the close of the Assembly, if the Committee so desired. They had hoped the restrictive limits within which they proposed the amendments should be made would render it possible for the Committee to decide that the whole matter might be put through during the present Assembly, but so many members of the Committee doubted whether that was feasible that it would not be appropriate to press for that. He had also indicated in his preliminary remarks that, if the Committee thought it right, a sub-committee might be nominated after the discussion to consider whether the list of articles to which the British Government had suggested amendments represented all those to which amendments should be made and whether the terms of the amendments proposed were satisfactory.

He suggested a sub-committee should be set up with the duty of recommending to the Committee: (1) whether or not it was feasible to put the matter through during the present Assembly, or whether it was desirable that the question should be studied after the Assembly was over, and (2) if the latter, what recommendations should be made on the point.

The Committee decided in conformity with the proposals of the British delegation to appoint a Sub-Committee.

On the proposal of M. POLITIS (Greece) it decided to leave the Chairman free to appoint the Members of this Sub-Committee.

The Sub-Committee thus appointed was composed as follows:

M. ADATCI (Japan).
M. COT (France).
M. CORNEJO (Peru).
Sir Cecil HURST (British Empire).
M. LIMBURG (Netherlands).
M. POLITIS (Greece).
M. ROLIN (Belgium).
Baron MARKS DE WÜRTEMBERG (Sweden).

EXTRACT FROM THE EIGHTH MEETING

Held on Friday, September 20th, 1929, at 3.30 p.m.

Chairman: M. LIMBURG (Netherlands).

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Amendment of the Covenant of the League of Nations as a Result of the General Adhesion of the Members of the League to the Pact of Paris for the Renunciation of War.

Draft resolution proposed by the Sub-Committee:

“ The Assembly:

“ Having taken note of the resolution submitted to it on September 6th on behalf of various delegations that, in view of the large measure of acceptance obtained by the Pact signed

at Paris on August 27th, 1928, whereby the parties renounced war as an instrument of national policy in their relations with one another, it is desirable that Articles 12 and 15 of the Covenant of the League of Nations should be re-examined in order to determine whether it is necessary to make any modifications therein; and

“ Having also taken note of the resolution proposed by the Peruvian delegation on September 10th recommending that a report should be obtained as to the alterations which were necessary in the Covenant of the League in order to give effect to the prohibitions contained in the Pact of Paris:

“ Declares that it is desirable that the terms of the Covenant of the League should not accord any longer to Members of the League a right to have recourse to war in cases in which that right has been renounced by the provisions of the Pact of Paris referred to above;

“ Instructs the Secretary-General to communicate to all the Members of the League a copy of the amendments to the Covenant of the League which have been proposed for this purpose by the British Government together with such further papers as may be necessary;

“ Invites the Council to appoint a Committee of eleven persons to frame a report as to the amendments in the Covenant of the League which are necessary to bring it into harmony with the Pact of Paris. This Committee should meet in the first three months of 1930 and in the course of its labours should take into account any replies or observations which have been received from the Members of the League by that date. The report of the Committee will be submitted to the Members of the League in order that such action as may be deemed appropriate may be taken during the meeting of the eleventh ordinary session of the Assembly in 1930.”

M. Cor (France) (Rapporteur) said that the Committee's discussions showed the extreme importance of bringing the Covenant of the League of Nations into harmony with the General Pact for the Renunciation of War.

It had been thought that, from the judicial standpoint, this was not perhaps necessary. Accordingly, the draft resolution merely suggested the desirability of bringing the provisions of the Covenant of the League of Nations into harmony with the provisions of the Paris Pact.

But while there was no need, juridically, to bring the two instruments into harmony, such a step would, as M. Politis had pointed out, be of great political value. Further, the concordance in question between the two instruments should be clear, not merely to jurists, but to the man in the street as well.

The Sub-Committee had accordingly framed a draft resolution stating, in the first place, that it was necessary that the provisions of the Covenant of the League should no longer leave to Members of the League the right to resort to war when the Paris Pact had taken this right away from States.

There remained the question of procedure. At its first meeting, the Committee had examined Sir Cecil Hurst's draft, and had begun with the first amendment to Article 12. It soon discovered that, although there might be unanimity on the object in view, there were certain difficulties regarding the methods by which that object could be achieved.

Moreover, certain delegates entertained apprehensions which could readily be understood. It was an important and delicate question to bring the Covenant and the Pact into harmony, and the Governments had not had time to study the question, the British delegation's resolution having only been submitted during the present session. They had thought, therefore, that time had better be given for reflection and for studying the problem in all its aspects and, accordingly, after the first meeting, they had abandoned the idea of submitting that year the necessary amendments for bringing the provisions of the Covenant and the Pact into harmony.

It was then proposed to set up some organisation to prepare the work. As time was of importance, they had not consulted the various Governments beforehand. They had thought that, if they took the opinions of Governments before laying the question before the preparatory body, it would be impossible to have the amendments in hand by 1930, so that their Committee could examine them afresh and the Assembly adopt them.

Mindful, however, of the desirability of consulting the Governments, the Sub-Committee decided upon the following procedure: the Secretariat would communicate to all Members of the League the text of the amendments to the Covenant proposed by the British Government, together with all other relative documents, in particular the Minutes of the Committee. The Council would, for its part, appoint a Committee to meet in about six months' time. The various Governments could, if they so desired, state their views on the question. There could be no doubt that, when it met, the Committee would already be in possession of a number of suggestions from the various countries.

They would thus avoid the delay which would have been inevitable if they had previously consulted the various States Members and waited until all replies were to hand.

It seemed advisable to appoint rather a large Committee. After discussion, the number of members had been fixed at eleven, to be appointed by the Council. It was decided that the Committee's task should be to submit a report on the amendments of the Covenant which it held to be necessary in order to bring the Covenant into line with the Paris Pact.

He hoped that by this means all aspects of the problem would be rapidly examined and that the Assembly, at its next session, might adopt a solution the desirability and importance of which were obvious to all the members of the Sub-Committee.

M. DANDURAND (Canada) said he was doubtless not alone in thinking that the Tenth Assembly might adopt the amendments submitted by the British delegation, but, in view of the reception which had been accorded to M. Cot's report, he agreed with its conclusions and accepted the procedure suggested.

M. COT (France), Rapporteur, proposed two slight modifications in the text of the draft resolution. Instead of "The Assembly, having taken note of the resolution", etc., he proposed "The Assembly, taking note . . .", etc.

And in the second paragraph: "Taking note also . . ." instead of "Having also taken note . . .", etc.

These modifications were adopted.

The draft resolution thus amended was adopted.

M. YOSHIDA (Japan) said he supposed it would be desirable that at least one of the members of the Committee referred to in the draft resolution should be a national of a distant country. He therefore suggested that the last paragraph should read: "This Committee should meet during the earlier part of 1930" instead of "in the first three months of 1930".

The CHAIRMAN said he did not see any great difference between the two expressions. The text as proposed had, moreover, been accepted by the Sub-Committee, at which M. Adatci was present. They must not allow the Committee of Jurists to overlap with the Conference for the Codification of International Law, which would, it was hoped, meet on March 13th, 1930.

M. YOSHIDA (Japan) said he did not insist.

M. DUZMANS (Latvia) asked whether it was understood that the report which accompanied the draft resolution would contain the actual text of Sir Cecil Hurst's proposals.

M. COT (France), Rapporteur, replied that the proposed resolution was quite categorical on this point, as it was laid down in paragraph 4:

"Instructs the Secretary-General to communicate to all the Members of the League a copy of the amendments to the Covenant of the League which have been proposed for this purpose by the British Government, together with such further papers as may be necessary."

M. DUZMANS (Latvia) insisted that these texts ought to be included in the report also.

M. COT (France), Rapporteur, proposed that they should be published in the annex to the report.

This proposal was adopted.

The CHAIRMAN proposed that the resolution should be referred to the Fourth Committee.

This proposal was adopted.

The CHAIRMAN then proposed that M. COT, Rapporteur to the Sub-Committee, should be appointed Rapporteur for the Assembly.

This was agreed to.

III. Discussion at the Plenary Meetings of the Assembly of the Draft Resolution proposed by the First Committee.

EXTRACT FROM THE TWENTIETH PLENARY MEETING

Held on Tuesday, September 24th, 1929, at 5 p.m.

President: M. GUERRERO (Salvador).

Amendment of the Covenant of the League of Nations as a Result of the General Adhesion of the Members of the League to the Pact of Paris for the Renunciation of War.

The PRESIDENT [*Translation*]. — The first item on the agenda is the examination of the report of the First Committee concerning the amendment of the Covenant as a result of the general adhesion of the Members of the League to the Pact of Paris for the Renunciation of War (Annex).

(On the invitation of the PRESIDENT, M. Cot (France), Rapporteur, and, in the absence of M. Scialoja, Chairman, M. Limburg (Netherlands), Vice-Chairman of the First Committee, took their places on the platform.)

The PRESIDENT [*Translation*]. — The Rapporteur will address the Assembly.

M. COT (France), Rapporteur [*Translation*]. — Mr. President, Ladies and Gentlemen, the signature and ratification of the Pact of Paris by the majority of the States Members of the League of Nations has raised a problem for public opinion. As far back as a year ago M. Politis, the distinguished representative of Greece, defined the terms of this problem in a striking speech before the Assembly, and the Lithuanian delegation submitted the first resolution designed to bring the Covenant into line with the Paris Pact.

Since then the idea has made headway and, at the beginning of the present session, the British delegation, supported by a number of other delegations, asked that Articles 12 to 15 of the Covenant should be re-examined with a view to bringing them into harmony with the Pact. Further, the Peruvian delegation proposed that the Assembly should appoint a committee of five members to consider amendments to be made in the Covenant so as to include in it the Pact for the General Renunciation of War. The First Committee was thus faced with a twofold problem: there was first the question of principle—whether it was desirable to amend the Covenant in the way proposed; and secondly a question of method—namely, what steps should be taken to amend the Covenant.

Summarising the work of the First Committee, I should like very rapidly to deal with both these questions.

The question of principle raised no difficulty: the actual principle of the amendment of the Covenant met with no opposition in the First Committee.

It was, of course, obvious that no legal necessity existed to amend the Covenant in consequence of the signature of the Pact for the General Renunciation of War. The Briand-Kellogg Pact, indeed, does not conflict with the Covenant. It extends and supplements it, and the legal position of the States Members of the League which have also signed the Briand-Kellogg Pact is clearly defined by these two international treaties taken in conjunction. But, though no legal necessity exists, there did exist—to adopt the expression used by one member of the First Committee—a political necessity.

The matter at issue, the prohibition of recourse to war, is too vital a question to be known only to jurists accustomed to handling and comparing texts. The man in the street, it was urged, must be made acquainted with the present legal position: he must not be faced with the paradox of a League of Nations whose Members in 1928 solemnly declared that they absolutely renounced recourse to war and whose charter, notwithstanding, still permits recourse to war.

May I point out also that there is a psychological consideration to be taken into account? The amendment of the League Covenant and the inclusion therein of the provisions of the Briand-Kellogg Pact would constitute tangible evidence of the progress actually made during the last ten years.

In 1919, no one dared to prohibit war absolutely; we stopped short at a sort of compromise between the desire to banish war from international relations and the old conception of State sovereignty which covered the right to resort to war.

Since then, international co-operation, thanks to the League, has been the rule of international life, and to-day we have reached the point when the view prevails that it is undesirable that recourse to war, which has been definitely renounced, should still figure in the Covenant.

But though we were agreed on the principle, the question of method had still to be considered. You may indeed wonder why we did not ourselves proceed with the revision of the Covenant and why the First Committee does not come to the Assembly to-day prepared to lay before you the amendments necessary to bring about the desired modification. The reason is that when more fully considered, the problem was seen to be a very delicate one.

In the first place, certain delegations had some scruples in the matter. It was only at the first day's discussion of the question in the Committee that the British delegation submitted definite amendments, and a number of delegates felt that, in a matter affecting the Covenant, they must have time for consideration and be given an opportunity, if necessary, of referring to their Governments.

Further, the Pact of Paris, notwithstanding its conciseness, is perhaps not as simple as it appears at first sight. Its conclusion was preceded by negotiations and conversations which certainly did not restrict its scope, but simply defined it, so that we have to include in the Covenant, not merely the formulæ of the Pact, but the prohibition ensuing from it, exactly as that prohibition stands and without modification.

I might mention in conclusion that slightly divergent tendencies became apparent in the Committee—tendencies which, in my opinion, could very easily be reconciled.

Some members had in mind simply a literal adaptation, as it were, a correlation of the texts. Others thought that since resort to war was to be eliminated from the Covenant, something else should be substituted for it. It was suggested, for example, that it might be expedient henceforth to abandon the distinction laid down in Article 15 between majority and unanimous recommendations of the Council.

The complexity of the matter thus became apparent almost immediately, and that is why, although it quickly agreed on the principle, the First Committee is unable to submit texts and ask you to adopt them. The Committee considered the most practical means of attaining the desired result as quickly as possible and decided on the appointment of a Committee. The question arose: should the Governments be consulted before this Committee starts work? We thought that, if a preliminary and compulsory Government consultation was arranged, the examination of the question might be so delayed that, when the Eleventh Assembly meets next year, we should still have to wait.

It was agreed, then, that the Council should be asked to appoint a Committee consisting of eleven members, which should meet during the first quarter of 1930. Meanwhile, the Secretariat will be requested to transmit to all States Members of the League the report which we submit for your adoption and to which the concrete proposals of the British delegation are annexed. In this way the Governments, although not obliged to do so, will at least have an opportunity of studying the question at leisure and be able to put any suggestions before the Committee of Eleven. The latter, unlike ourselves, will thus have the necessary data and ample time to draft the texts necessary to bring the Covenant of the League into perfect harmony with the Briand-Kellogg Pact.

In conclusion, therefore, we trust that the question which we ask you to decide at once in principle by adopting our resolution will be sufficiently ripe in all its details next year, and that considered texts may then be submitted to you.

You will then be able to complete the achievement of harmonising those two great instruments, the Covenant and the Paris Pact.

We have the honour to submit to you the following draft resolution:

“ The Assembly:

“ Taking note of the resolution submitted to it on September 6th on behalf of various delegations that, in view of the large measure of acceptance obtained by the Pact signed at Paris on August 27th, 1928, whereby the parties renounced war as an instrument of national policy in their relations with one another, it is desirable that Articles 12 and 15 of the Covenant of the League of Nations should be re-examined in order to determine whether it is necessary to make any modifications therein; and

“ Taking note also of the resolution proposed by the Peruvian delegation on September 10th recommending that a report should be obtained as to the alterations which were necessary in the Covenant of the League in order to give effect to the prohibitions contained in the Pact of Paris:

“ Declares that it is desirable that the terms of the Covenant of the League should not accord any longer to Members of the League a right to have recourse to war in cases in which that right has been renounced by the provisions of the Pact of Paris referred to above;

“ Instructs the Secretary-General to communicate to all the Members of the League a copy of the amendments to the Covenant of the League which have been proposed for this purpose by the British Government, together with such further papers as may be necessary;

" Invites the Council to appoint a Committee of eleven persons to frame a report as to the amendments in the Covenant of the League which are necessary to bring it into harmony with the Pact of Paris. This Committee should meet in the first three months of 1930, and in the course of its labours should take into account any replies or observations which have been received from the Members of the League by that date. The report of the Committee will be submitted to the Members of the League in order that such action as may be deemed appropriate may be taken during the meeting of the eleventh ordinary session of the Assembly in 1930. "

The PRESIDENT [*Translation*]. — His Excellency M. Cornejo, first delegate of Peru, will address the Assembly.

M. CORNEJO (Peru) [*Translation*]. — Mr. President, Ladies and Gentlemen, I shall be very brief.

As the Rapporteur has just said in his admirable speech, the Peruvian delegation had the honour to propose that a Committee should be set up with a view to bringing the Covenant into line with the Kellogg Pact. This proposal, together with the British proposal, was referred to the First Committee.

In that Committee, the British delegation proposed the amendments it would like to see made in Articles 12, 13 and 15 of the Covenant.

I had the honour to be a member of the Sub-Committee and I supported the amendments submitted by the British delegation. As the Rapporteur has explained, we decided to acquaint the Governments with those amendments and to set up the Committee I had suggested.

That Committee will have to consider, not only the British amendments and suggestions by Governments, but also any suggestions that may be made with a view to securing complete concordance between the Briand-Kellogg Pact and the Covenant. In that connection, I should like to make a suggestion for the consideration of the Council, the Assembly and the Committee.

I am convinced that in future war will be impossible. Small countries will not be able to make war against the will of great Powers, and the great Powers, which are evenly balanced against each other and, besides, have general interests in common, will not be able to flout the world conscience by bringing about a catastrophe.

The world conscience might perhaps tolerate a war between small countries, but I am sure it would never forgive any great country that dared to launch a fresh catastrophe. The jurists must, however, provide for every contingency. Let us suppose the contingency which I declare to be impossible does actually arise. A strong country attacks a weak country. Its attack is sudden; its victory crushing. In a fortnight, it occupies the small country's capital and imposes a treaty on its victim. The war is waged contrary to the Kellogg Pact, contrary to the League, contrary to world opinion. Will that treaty of peace be recognised by the League? You might just as well make a murderer his victim's heir.

But, as Talleyrand said, "*Si cela va sans dire, cela ira mieux en le disant*". I should like a Committee to consider a formula, a statement, specifying that a treaty of peace imposed after an unjust war waged in defiance of the Kellogg Pact and the Covenant will not be recognised.

To be victor in peace is very different from being victor in war. History tells us of wars won by generals and lost by diplomats. When it is known that a war, even though victorious, can bring no profit, that will obviously mean the end of war. Thus, if the League evolves a formula stating clearly and definitely that any country which still contemplates war as an instrument of national policy may be sure—over and above the fact that victory is always problematic—that it will lose the peace, I am convinced that next year's Assembly will have taken a decisive step towards the preservation of peace.

The PRESIDENT [*Translation*]. — Mrs. Swanwick, delegate of the British Empire, will address the Assembly.

Mrs. SWANWICK (British Empire). — Mr. President and fellow delegates, I only want in a very few words to thank very heartily the Rapporteur for the most admirable report that we have had from him, which has put so clearly the salient points in this great question. I want only to emphasise one particular aspect to which he alluded: that is, the definitely popular side. I stand before you, so to speak, naked and unashamed, as an habitual popular propagandist and I want to say to you that the people do not and will not understand that there is one law and not two, until these texts have been collated. We must of all things not forget that, if we want to make peace in this world, we must have the peoples of the world at the back of their Governments. In those countries where Governments are chosen by their people, the people are of particular importance. We must make the law clear to the people, and that is not impossible. The lawyers are quite clever enough to do that if they think it worth their while to try to do it. Sometimes they do not seem to be thinking of making it clear to the people.

The second point is that we must make the obligation of the Pact of Paris more sacred and more binding even than already and, by incorporating it in the Covenant of the League, we shall have cleared the minds of our people everywhere and have made the Covenant dearer and more sacred to them. We must, in fact, perfect this great organ of peace, and I think, when we have done that, we shall be able to say to the simple people all the world over: "If with all your hearts you truly love me, you shall surely find me"—find, that is to say, peace. Until we have got the great mass of the peoples in all the world with that feeling in their hearts, my friends, we are not safe against war. Some of us feel that there are still ghosts that are walking, that are unlaid. But, when we have done this, we can say to those countless millions of ghosts of boys who were sent to the filth, the torture and the death of the trenches, and to the millions

of babes who came into that tragic inheritance—we can say to them, in the words of that great *Liedersaenger*, the greatest of all song writers, “Now at last may the dead rest in peace”. “Alle Seelen ruhen in Frieden”.

The PRESIDENT [*Translation*]. — If no one else wishes to speak, I shall consider the resolution submitted by the First Committee adopted.

The resolution was adopted.

Annex.

RESOLUTION ADOPTED BY THE ASSEMBLY ON SEPTEMBER 24TH, 1929, ON THE PROPOSAL OF THE FIRST COMMITTEE.

The Assembly:

Taking note of the resolution submitted to it on September 6th on behalf of various delegations that, in view of the large measure of acceptance obtained by the Pact signed at Paris on August 27th, 1928, whereby the parties renounced war as an instrument of national policy in their relations with one another, it is desirable that Articles 12 and 15 of the Covenant of the League of Nations should be re-examined in order to determine whether it is necessary to make any modifications therein; and

Taking note also of the resolution proposed by the Peruvian delegation on September 10th recommending that a report should be obtained as to the alterations which were necessary in the Covenant of the League in order to give effect to the prohibitions contained in the Pact of Paris:

Declares that it is desirable that the terms of the Covenant of the League should not accord any longer to Members of the League a right to have recourse to war in cases in which that right has been renounced by the provisions of the Pact of Paris referred to above;

Instructs the Secretary-General to communicate to all the Members of the League a copy of the amendments to the Covenant of the League which have been proposed for this purpose by the British Government, together with such further papers as may be necessary;

Invites the Council to appoint a Committee of eleven persons to frame a report as to the amendments in the Covenant of the League which are necessary to bring it into harmony with the Pact of Paris. This Committee should meet in the first three months of 1930, and in the course of its labours should take into account any replies or observations which have been received from the Members of the League by that date. The report of the Committee will be submitted to the Members of the League in order that such action as may be deemed appropriate may be taken during the meeting of the eleventh ordinary session of the Assembly in 1930.

Appendix.

AMENDMENTS TO THE COVENANT PROPOSED BY THE BRITISH DELEGATION.

Article 12 (1) to be amended to read as follows:

“The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree that they will in no case resort to war.”

Article 13 (4) to be amended to read as follows:

“The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto.”

Article 15 (6) to be amended to read as follows:

“If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that as against any party to the dispute that complies with the recommendations of the report they will take no action which is inconsistent with its terms.”

Article 15 (7) to be amended to read as follows:

“If the Council fails to reach a report which is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice other than a resort to war.”

[Distributed to the Council, the
Members of the League and
other interested Governments.]

Official No.: **C.514. M.173.** 1929. V.

Geneva, October 31st, 1929.

LEAGUE OF NATIONS

MINUTES OF THE CONFERENCE

REGARDING

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

AND THE

ACCESSION OF THE UNITED STATES OF AMERICA TO
THE PROTOCOL OF SIGNATURE OF THAT STATUTE

Held at Geneva from September 4th to 12th, 1929.

Series of League of Nations Publications

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LIST OF DELEGATES AT THE CONFERENCE.

- Australia :* Sir William Harrison MOORE, K.B.E., C.M.G., B.A., LL.D.
- Austria :* Dr. Marcus LEITMAIER, Ministerial Adviser.
- Belgium :* M. Henri ROLIN, Barrister at the Brussels Court of Appeal, Legal Adviser at the Ministry for Foreign Affairs.
- Brazil :* M. Mario DE PIMENTEL BRANDAO, Ambassadorial Counsellor.
- Bulgaria :* His Excellency M. Vladimir MOLLOFF, Minister for Finance.
- British Empire :* Sir Cecil James Barrington HURST, G.C.M.G., K.C.B., K.C., Legal Adviser to the Foreign Office.
- Canada :* The Right Honourable Sir George Eulas FOSTER, G.C.M.G., B.A., D.C.L., LL.D., Senator.
- Chile :* His Excellency M. L. DE PORTO-SEGURO, Envoy Extraordinary and Minister Plenipotentiary in Berlin.
- China :* His Excellency Dr. CHAO-CHU-WU, Envoy Extraordinary and Minister Plenipotentiary at Washington, Member of the Permanent Court of Arbitration.
- Colombia :* His Excellency Dr. Francisco José URRUTIA, Former Minister for Foreign Affairs, former President of the Senate and of the Chamber of Deputies, Envoy Extraordinary and Minister Plenipotentiary in Switzerland.
- Cuba :* His Excellency M. Guillermo DE BLANCK, Envoy Extraordinary and Minister Plenipotentiary, Permanent Delegate accredited to the League of Nations.
- Czechoslovakia :* His Excellency Dr. Stephen OSUSKY, Envoy Extraordinary and Minister Plenipotentiary in Paris.
- Substitute :*
M. Arnost HEIDRICH, Head of the Czechoslovak League of Nations Office.
- Denmark :* M. Georg COHN, Head of Department at the Ministry for Foreign Affairs.
- Dominican Republic :* His Excellency M. Maximo VASQUEZ, Envoy Extraordinary and Minister Plenipotentiary in Paris.
- Estonia :* M. Auguste SCHMIDT, Assistant Minister for Foreign Affairs.
- Finland :* His Excellency M. Rafael ERICH, Former Prime Minister, Envoy Extraordinary and Minister Plenipotentiary.
- Substitute :*
Baron Aarno YRJO-KOSKINEN, Envoy Extraordinary and Minister Plenipotentiary, Secretary-General of the Ministry for Foreign Affairs.
- France :* M. Henri FROMAGEOT, Legal Adviser to the Ministry for Foreign Affairs.
- Substitute :*
M. René CASSIN, Professor at the Faculty of Law in Paris.
- Germany :* Dr. GÖPPERT.
- Greece :* His Excellency M. Nicolas POLITIS, Former Minister for Foreign Affairs, Envoy Extraordinary and Minister Plenipotentiary in Paris.
- Guatemala :* His Excellency Dr. Carlos F. MORA, Envoy Extraordinary and Minister Plenipotentiary in Berlin.
His Excellency M. L. DE PORTO-SEGURO, Envoy Extraordinary and Minister Plenipotentiary of Chile in Berlin.
- Hungary :* His Excellency M. L. GAJZAGO, Envoy Extraordinary and Minister Plenipotentiary.
- India :* Sir William Ewart GREAVES, Late Judge of the High Court, Calcutta.
- Irish Free State :* Mr. John A. COSTELLO, Attorney-General.
- Italy :* His Excellency Professor Vittorio SCIALOJA, Minister of State, Senator former Minister for Foreign Affairs.
M. Massimo PILOTTI, Counsellor at the Court of Cassation.

- Japan:** His Excellency M. Isaburō YOSHIDA, Envoy Extraordinary and Minister Plenipotentiary in Switzerland.
- Latvia:** His Excellency M. Charles DUZMANS, Permanent Delegate accredited to the League of Nations.
- Liberia:** Dr. Antoine SOTTILE, Doctor of Law, Chargé d'Affaires, Permanent Delegate of Liberia accredited to the League of Nations.
- Lithuania:** His Excellency Professor A. VOLDEMARAS, Prime Minister, Minister for Foreign Affairs.
Assistant Delegate:
His Excellency M. V. SIDZIKAUSKAS, Envoy Extraordinary and Minister Plenipotentiary in Berlin.
- Luxemburg:** His Excellency M. Joseph BECH, Minister of State, Prime Minister.
Assistant:
M. Albert WEHRER, Doctor of Law, Legal Adviser to the Ministry for Foreign Affairs.
- Netherlands:** Jonkheer W. J. M. VAN EYSINGA, Doctor of Law and Political Science, Professor at the University of Leyden.
- New Zealand:** The Honourable Sir James PARR, K.C.M.G., High Commissioner in London, former Minister for Education and Justice, former Postmaster-General.
- Nicaragua:** Dr. FRANCISCO TORRES FUENTES, Member of the Nicaraguan Supreme Court of Justice.
- Norway:** Dr. Arnold C. RAESTAD, Lawyer, former Minister for Foreign Affairs.
- Panama:** His Excellency M. J. D. AROSEMENA, Minister for Foreign Affairs.
- Paraguay:** His Excellency Dr. Ramón V. CABALLERO DE BEDOYA, Envoy Extraordinary and Minister Plenipotentiary in France.
- Persia:** Dr. Parwiz KHAN KITABGI, Legal Adviser to the Ministry for Foreign Affairs.
- Peru:** His Excellency M. Mariano H. CORNEJO, Envoy Extraordinary and Minister Plenipotentiary in Paris.
- Poland:** Count Michel ROSTWOROWSKI, Former Chancellor of the University of Cracow, Member of the Court of Arbitration at The Hague.
M. Szymon RUNDSTEIN, Legal Adviser to the Ministry for Foreign Affairs.
- Portugal:** Dr. José Lobo D'AVILA DE LIMA, Professor at the University of Lisbon, Legal Adviser to the Ministry for Foreign Affairs.
- Roumania:** His Excellency M. Constantin ANTONIADE, Envoy Extraordinary and Minister Plenipotentiary accredited to the League of Nations.
- Salvador:** His Excellency Dr. J. Gustavo GUERRERO, Former Minister for Foreign Affairs, Envoy Extraordinary and Minister Plenipotentiary in France.
- Siam:** His Highness Prince VARNVAIDYA, Envoy Extraordinary and Minister Plenipotentiary in London, Permanent Delegate accredited to the League of Nations.
- Spain:** His Excellency M. Cristóbal BOTELLA, Doctor of Law, Legal Adviser to the Embassy in Paris.
- Sweden:** Baron E. MARKS DE WÜRTEMBERG, Former Minister for Foreign Affairs, President of the Svea Court of Appeal.
- Switzerland:** His Excellency M. Giuseppe MOTTA, Federal Councillor, Head of the Political Department.
Expert:
M. Camille GORGÉ, Head of Section in the Political Department.
- Uruguay:** His Excellency Dr. Alberto GUANI, Envoy Extraordinary and Minister Plenipotentiary in France.
- Venezuela:** His Excellency M. C. Zumeta.
Substitute:
M. J. M. HURTADO-MACHADO, Counsellor of Legation, Chargé d'Affaires in Berne.
- Yugoslavia:** His Excellency M. Ilija CHOUMENKOVITCH, Envoy Extraordinary and Minister Plenipotentiary, Permanent Delegate accredited to the League of Nations.
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FIRST MEETING (PRIVATE, THEN PUBLIC.)

Held on Wednesday, September 4th, 1929, at 11 a.m.

President: Jonkheer W. J. M. VAN EYSINGA.

1. Election of the President.

The SECRETARY-GENERAL opened the meeting and asked the Conference to elect its President.

M. OSUSKY (Czechoslovakia) proposed Jonkheer van Eysinga (Netherlands) as President of the Conference.

M. POLITIS (Greece) seconded the proposal.

Jonkheer VAN EYSINGA was unanimously elected President.
(Jonkheer van Eysinga took the Chair.)

The PRESIDENT thanked the Conference for the great honour done to the country which had the privilege of having in its territory the seat of the Permanent Court of International Justice. He thanked M. Osusky personally for proposing his name and his colleagues for the way in which they had received the proposal.

2. Question of the Publicity of the Meetings.

The PRESIDENT proposed that, before considering the agenda, his colleagues should settle a few questions of procedure.

He assumed that they would agree to hold the meetings in public as in 1926. He thought, however, that it might be desirable to begin by an exchange of views in private. If his colleagues approved that suggestion, he would ask all those who were not present in an official capacity to be good enough to withdraw.

The proposal of the President was adopted and the Conference continued to sit in private.

3. Election of the Vice-Presidents.

The PRESIDENT suggested that, as in 1926, the Conference should first appoint its Vice-Presidents.

Sir James PARR (New Zealand) wished to congratulate the President on being in the Chair again, as he had been in 1926. It had not been possible to do much in 1926, when the question before the Conference was the application of the United States of America to join the Permanent Court on certain conditions. Coming from the country which was most remote from Geneva, he found further evidence of the fact that the League spirit of conciliation, the judicial spirit, was growing, in that they were meeting again under the chairmanship of Jonkheer van Eysinga to deal with one matter at least which was closely related to the unsuccessful proceedings of 1926.

He desired to propose as Vice-Presidents the representatives of Colombia (Dr. Francisco José Urrutia) and Siam (H. H. Prince Varnvaidya), who had the necessary knowledge and experience to take the Chair should anything unforeseen prevent the President from attending.

His Highness Prince VARNVAIDYA (Siam): said he was very grateful to the New Zealand delegate for proposing his name. As, however, he was the head of a delegation, he feared he might not be able to find sufficient time to accept the honour of being Vice-President of the Conference. He would be glad to withdraw his candidature if the Conference thought one Vice-President would be enough.

The PRESIDENT said he thought he was expressing the feelings of the whole Conference when he asked His Highness not to insist on withdrawing but to be good enough to accept the office of Vice-President. His colleagues would try to make his duties as light as possible.

The Conference elected Prince VARNVAIDYA (Siam) and M. URRUTIA (Colombia) Vice-Presidents of the Conference.

4. Question of the Appointment of a Committee on the Credentials of Delegates.

The PRESIDENT thanked the New Zealand representative for his reference to the events of 1926. It had then been thought unnecessary to appoint a Committee on Credentials. The position at the present time, however, was rather different, as it was hoped to conclude the session by the signature of certain documents. It might, therefore, be desirable to appoint

a small Committee on Credentials, which would see to the observance of the rules that should govern every self-respecting Conference, while ensuring sufficient elasticity to allow the various delegations from countries which in many cases were very distant from Geneva to sign the documents which it was hoped to draw up at the end of the session.

If the Conference approved his suggestion, the General Committee of the Conference would, at the next meeting, submit a proposal as to the composition of the Committee on Credentials, which would, he was sure, discharge its duties in the spirit he had just indicated.

The President's proposals were adopted.

5. Rules of Procedure of the Conference.

The PRESIDENT suggested that, as had been the case in 1926, the Conference might quite well dispense with a Committee to draw up Rules of Procedure. The delegates were accustomed to work together and already possessed very good Rules in those of the Assembly and its Committees. The Conference might refer to those Rules when necessary.

This proposal was adopted.

6. Agenda of the Conference.

THE PRESIDENT thought that all his colleagues were aware of the nature of the agenda (see note by the Secretariat concerning the provisional agenda, reproduced as Annex 1). In pursuance of a decision of the Council, the delegates were met together as representatives of the States parties to the Statute of the Permanent Court of International Justice.

Everyone knew that the present judges would complete their first period of nine years on January 1st, 1931, and that, at the last session of the Assembly, the French delegation had made a proposal which subsequently became a collective proposal. That proposal was intended to secure a re-examination of the Statute of the Court. He would emphasise the word "re-examination" because, on the one hand, there was no desire to restrict the scope of this examination and yet, on the other, there was no wish to re-open a discussion of the Statute as a whole, which dated from 1920.

A general discussion might indeed lead very far afield. It was probably for that reason that all idea of a general revision was abandoned in favour of the more restricted idea of re-examination.

The Assembly resolution had been discussed by the Council and the latter had appointed a small Committee of Jurists which had met at Geneva in March 1929 under the Chairmanship of the eminent Italian jurist and statesman, M. Scialoja. The Committee was fortunate in having the assistance of a large number of jurists appointed by the Council and also the very valuable advice of those with the best knowledge of the daily routine of the Court. He referred to the President of the Court, M. Anzilotti, the former President, M. Huber, and the Registrar, M. Hammarskjöld.

There had also been the financial standpoint to be considered, and the Committee had been glad that the Council had invited the Chairman of the League's Supervisory Commission to take part in its deliberations and give it the benefit of his advice, so that decisions might be reached with a full knowledge of their financial bearing.

The first result of the work of the Committee of Jurists was the draft proposal, accompanied by a very clear and instructive report over the signatures of M. Fromageot and M. Politis. All the members of the Conference were acquainted with that work, which would be found in document A.9.1929.V (Annex 2).

Such was the first question which the Council had referred to the Conference for a decision.

In the second place, the Council had, a few days previously, laid another question before the Conference, the one to which Sir James Parr had just referred, namely, the question of the accession of the United States of America to the Statute of the Court.

Early in 1926, the United States Senate had adopted a resolution that was evidence of its desire to accede to the Statute with certain reservations (Annex 3). The 1926 Conference at which the United States had not been represented, devoted four full weeks to considering those reservations. In the end, a document had been drawn up and studied in all countries, particularly in the United States of America. Then there had been silence for some time.

Happily, at the end of 1928, the United States again took up the matter and did so at the very moment when, by a fortunate coincidence, the Committee of Jurists was meeting at Geneva. Mr. Elihu Root, who had also been invited by the Council to participate in the re-examination of the Statute, was entrusted with the duty—and I think everyone will be gratified to hear this—of bringing a letter from the United States Secretary of State asking that the negotiations with regard to the accession of that country to the Statute of the Court might be re-opened (Annex 4).

The Committee of Jurists was thus confronted with a double task. It had, first, to re-examine the Statute and, subsequently, to consider the letter from the United States Government. The second part of the work was dealt with in a report signed by Sir Cecil Hurst, to which was attached a very important document, namely, the draft Protocol to which the President had referred when he had said that it was hoped to sign, amongst others, a certain document before the members of the Conference left Geneva (Annex 5). Such was their second task.

There was a third point in that connection which did not come within the purview of the Conference. Nevertheless, it was of great importance to the whole series of questions which the Conference had to bear in mind. He referred to the financial problem which M. Omsky, had been good enough to explain to the Committee of Jurists. That problem came

within the competence of the Assembly. The Conference was aware that, under Article 32 of the Statute, a resolution of the Assembly was required for most financial questions. He was glad to be able to inform the Conference that the Chairman of the Fourth Committee of the Assembly, where that question had been raised on the previous day, had expressed a desire to place the item on the agenda of the first meeting in the following week.

He thought it would be best to deal first with the question of the accession of the United States of America to the Statute of the Court, for that was doubtless the matter in which everybody was most interested. Subsequently, the Conference could re-examine the articles of the Statute of the Court. He made this suggestion the more readily because he understood that the Secretary-General had a statement to make in that connection, which he was sure the Conference would be very interested to hear.

The SECRETARY-GENERAL then made a communication to the Conference in the following terms :

“ Mr. President, Gentlemen, — I thank you for giving me the opportunity of making this statement to the Conference.

“ I am informed from a sure source, which I cannot divulge but on which the members of the Conference can absolutely rely, that the Secretary of State of the United States of America, after careful consideration, is of opinion that the draft Protocol drawn up by the Committee of Jurists would effectively meet the objections set forth in the reservations made by the United States Senate and would constitute a satisfactory basis for the United States to adhere to the Protocol and Statute of the Permanent Court of International Justice, dated December 16th, 1920. After the States signatory to the Protocol of Signature and the Statute of the Permanent Court have accepted the draft Protocol, the Secretary of State will request the President of the United States for the requisite authority to sign, and will recommend that it be submitted to the Senate of the United States with a view to obtaining its consent to ratification.”

The Conference decided to treat this statement as confidential for the time being.

(The Conference went into public session).

7. Question of the Order in which the two items on the Agenda should be discussed.

The PRESIDENT explained that he wished to make good a slight omission on his part. He had forgotten to remind the Conference that the subject matter of the Protocol had been referred by the Council to the Assembly, and that the First Committee of the Assembly, which had worked very expeditiously, had referred it to the Conference, so that it was duly authorised to consider the question. Sir Cecil Hurst's report and the draft Protocol were embodied in document A.II.1929.V. which had been distributed to all the delegations (Annex 5).

M. G. DE BLANCK (Cuba) informed the Conference that he had been instructed by his Government to make the following statement :

“ The Senate of the United States of America, after considering the present Statute of the Permanent Court of International Justice, formulated, on January 27th, 1926, five reservations concerning the accession of the United States to that Statute. The second sentence of reservation No. 4 reads as follows :

“ ‘ The Statute for the Permanent Court of International Justice, adjoined to the Protocol, shall not be amended without the consent of the United States.’

“ This reservation has already been admitted, and is to be found in Articles 1 and 3 of the draft Protocol concerning the accession of the United States to the Permanent Court of International Justice, as adopted by the Council of the League and communicated by that body.

“ If it is agreed and laid down that the Statute cannot be modified in future without the consent of the United States, it is perhaps rather an unusual proceeding for the States signatory to the Statute to meet for the purpose of modifying that Statute at the very time when they are considering the question of the accession of the United States to the Permanent Court of International Justice.

“ Since the United States of America are not represented at this meeting, we should merely examine the Protocol for the accession of the United States to the Statute of the Permanent Court, without modifying that Statute until the United States is a party.

“ Any modifications of this Statute at the present time would make it necessary for the United States Government to submit to the Senate : (1) the Protocol on the reservations and (2) the new Statute. If the United States Senate put forward a single amendment to the new Statute, our efforts would be nullified and we should be obliged to forego the co-operation of the United States.

“ It would therefore be more logical to postpone all definite decisions and refrain from discussing modifications to be made in the Statute until the United States, having signed the Protocol on the reservations, takes part officially in our work and is a party to such agreements as may follow.

“ The modifications to be made in the Statute would not seem to be of a very urgent nature. In the text to be inserted in place of Article 3, we read : ‘ The Court shall consist of fifteen members’. The utility of this phrase is not very apparent. Article 3 of the present Statute actually authorises the Assembly to increase the number of judges to fifteen.

“ Nor does the proposal that the Court should remain in permanent session and should no longer hold an annual meeting on June 15th appear to be necessary. Hitherto, unless I am mistaken, the Court has held eight ordinary and nine extraordinary sessions. I do not include its preliminary meeting.

“ In eight years—that is to say, from January 30th, 1922, to the present date—or in ninety-six months, it has been in session for thirty-seven months—in round figures—has pronounced sixteen decisions, an average of two a year, and has given about the same number of advisory opinions. Even supposing that the work of the Court increases, we do not think it would be indispensable for it to remain in permanent session. The judges at The Hague would have absolutely nothing to do for the greater part of the year. Consequently, my Government feels that there is no reason why men of such high qualifications should remain at The Hague when they could, without any derogation from their duties, be of service to mankind in other spheres. If Article 23 were omitted, there would naturally be no need to maintain Article 17.

“ The Permanent Court in permanent session would simply mean an increase in the allowances provided for under the new system ; this would lead to increased expenditure by the Court and a proportionate increase in the contribution of each State Member of the League, amounting in all to more than half a million florins (one million Swiss francs). The present economic situation of most State Members would seem to preclude such increased expenditure.

“ We also think it necessary to point out that it would be very difficult, if not impossible—at any rate in the case of judges from distant countries—to persuade these judges to reside at The Hague. Nor do we see how distinguished jurists could be inducted to sever their connection with their countries, to restrict, in fact, a part of their intellectual or scientific activity, in order to become administrative officials. More could be said on this subject, but we do not think it necessary to enlarge further on the disadvantages of such a situation.”

The PRESIDENT thanked the delegate of Cuba for his interesting statement. As that statement would be published, everybody would be able to study it. M. de Blanck would not, he thought, object to the previous question being examined as soon as the Conference came to discuss the second point on its agenda.

He therefore called upon the Conference to discuss, first of all, the question of the Protocol of Signature. It would thus have adequate time to study the Cuban delegate's statement.

M. FROMAGEOT (France) said that, if the question raised by the Cuban delegate was to be discussed later, he would reserve his observations. Was it well, however, to adjourn discussion of the Cuban declaration until the question of the accession of the United States of America had been examined ? By this means, the question would, to a certain extent, have been prejudged and would not remain fully open.

The Conference had met, in the first place, to consider whether any alterations ought to be made in the draft Statute. In the previous year, the Assembly had approved the French delegation's suggestion that it would be desirable—and that before 1930—to consider whether any modifications ought to be made in order that the elections might take place in the following year in conformity with the revised Statute.

As a matter of fact, the alterations were not very radical ; they did not affect the fundamental principles of the Court. The Government of the United States of America had been invited to participate in the work, and the Committee of Jurists had had the great honour and pleasure of receiving Mr. Root in the spring of the present year. Mr. Root had made useful suggestions, the traces of which would be found in the proposals for the revision of the Statute. Consequently, as far as he could see, the Government of the United States was aware of the proposals that had been made.

To say that the matter was not urgent was contrary to the opinion of a large number of Governments represented at the Assembly. The latter, indeed, had held that the question was as urgent as the accession of the United States. In those circumstances, without entering into a discussion of the objections which had been raised by the delegate of Cuba, he felt bound to say that he did not think it advisable to defer the discussion until a decision had been taken on the question of accession. It was true that the two questions were connected, but obviously they could not be discussed simultaneously.

The PRESIDENT thought M. Fromageot was right in stating that the two questions could not be considered simultaneously. That was precisely why he had ventured to suggest that they should be considered *serialim* ; first, the Protocol of Signature, and then the question of the revision of the Statute. He thought that the Conference was agreed on that point.

In conformity with his Government's instructions, the Cuban delegate had submitted to the Conference a very interesting and very general declaration. He thought it would be desirable to peruse that document quietly without interrupting the discussion on the Protocol of Signature. He would ask M. Fromageot if he could not agree to that course, since questions of procedure involved a considerable loss of time, and it would be both desirable and interesting to begin the examination of the fundamental issues.

M. POLITIS (Greece) pointed out that, when a short time before, the President had proposed that the Conference should first examine the question of the accession of the United States of America to the Protocol of Signature and then the amendments to the Statute of the Court, he had not raised any objection, although he would have preferred the inverse order because he thought that the Conference was unanimous in its desire to conduct its work on the basis of the two reports prepared by the Committee of Jurists with the assistance of the distinguished representative of the United States of America.

It now appeared to him that the situation was not quite the same. The Conference had heard the Cuban delegate's declaration, which raised, so to speak, the previous question. Unless he was mistaken, the representative of Cuba desired the Conference to deal with only one of the two questions, namely, that of the accession of the United States, on the grounds that the other question was not yet mature and should not be considered at the present juncture.

Certainly, the opinion of the Conference with regard to the accession of the United States to the Protocol of Signature might undergo a change if the Conference found itself obliged to abandon the amendments to the Statute. He also thought that insurmountable obstacles would arise later.

M. Fromageot had recalled the intentions of the 1928 Assembly when it had unanimously accepted the idea proposed by the French delegation—supported as it was by nineteen other delegations—to the effect that urgent action should be taken to revise those points in the Statute which experience had shown would benefit by amendment.

The work had been conducted with all possible speed in the hope that the 1929 Assembly would ratify the Protocol that had been drawn up, and that by 1930 the various Governments would also have had all the time they required to consider and ratify it.

If, however, as the honourable delegate for Cuba proposed, only the question of the accession of the United States were considered, there would not merely be too little time to consider the amendments, but there would be no time to consider them at all, unless a new conference were convened at which the United States was represented. In point of fact, the United States would agree to the Statute as it stood. Therefore, according to Article 3 of the Statute, no modification could be made without the participation of all the Contracting States, and the United States would by then have become a Contracting State.

If, on the contrary, they first secured the co-operation of the United States in remodelling the Statute, it would not be necessary, after the Statute had been remodelled and if it were accepted by the United States, to convene a conference, with the participation of the United States, until the necessity for further alterations was felt.

That was how he saw the question. The point was a particularly serious one in view of the declaration of the Cuban delegate. He was of the opinion that, as the previous question had been raised, the Conference could not continue its discussions without reaching an agreement on the question of method.

M. URRUTIA (Colombia) said he thought it was not for the Conference to determine the questions which it had been convened to consider. The nature of the Conference had already been specified in a Council resolution which fixed the agenda and indicated the subjects which the Conference was called upon to consider.

He asked the President to be good enough to cause the Council resolution adopted at Madrid, on the strength of which the Conference had been convened, to be read. The Secretary-General had invited the various Governments to send their representatives to a Conference to consider certain definite questions. In conformity with the Council's invitation, the Governments represented at the Conference had agreed to send delegates to discuss the items on the Conference's agenda. It would be most unusual, after the Governments had accepted that invitation and sent their representatives to the Conference, if the latter were to say: "We shall not discuss these questions, but others of our own choice".

He thought it was necessary carefully to define the questions which the Conference had been called upon to consider. He did not think its members were at liberty to alter the nature of the Conference. That might have been possible at the time when the Council was taking its decision, but the character of the meeting had now been fixed by the Council resolution and the invitation had been sent out to the various Governments.

The PRESIDENT explained that all he had meant to suggest was that the discussion on the previous question might have been opened at another time. Since, however, it had commenced, he would raise no objection to the point being settled.

All that the previous speakers had said was correct. The agenda of the Conference, as fixed by the Council, comprised two questions: (1) the accession of the United States to the Statute of the Court and (2)—an item which had been placed on the agenda as a result of the Assembly resolution of the previous year—the revision of the Statute itself. From a chronological point of view the order ought, as M. Politis had pointed out, to be reversed. In that connection, he thought it was not possible to alter what was, if he might say so, the very foundation of the Conference. He quite agreed with those who said that it ought also to consider the amendments to the Statute of the Court. He believed, moreover, that all the speakers shared that opinion and that it would be difficult to accept the Cuban delegate's proposal. He thought his colleagues were unanimous on that point. Ideas might differ as to the order to be followed, but it would obviously be advantageous to deal first with the question of the Protocol. The other question ranked first in seniority, but he did not feel that that was an essential point. Was there any object in continuing further the discussion on the fundamental points of the Conference?

M. POLITIS (Greece) said, with regard to the question raised, that he would strongly urge the Conference to reverse the order of the items. He ventured to remind it that, chronologically, the question of the amendments had been raised first; in actual fact, the Council had decided to convene a Conference to study the amendments to the Statute of the Court. Only later did it decide to add the question of the accession of the United States of America.

The principal problem before the Conference—as far as it was possible to establish a parallel between the two questions—was that of the amendments to the Statute of the Court. The accession of the United States of America was a secondary, though he admitted a very important, question. If the Conference followed that order in its discussions, it would be acting in conformity with all the previous history of the question. The only excuse for reversing the above order and discussing the second question first would be some absolutely urgent reason of convenience or method, which he, for one, failed to perceive.

But that was not all. In addition to the considerations to which he had already referred, there were considerations of a practical nature deriving from the problem itself as now

enunciated. If, first of all, an agreement was reached regarding the question of the accession of the United States of America to the Statute of the Court the Conference might find itself somewhat hampered later on when it came to consider the amendments to the Statute. If, however, as the Council intended, and in accordance with the instructions received, the Conference first discussed the amendments, it would not be in any way embarrassed when it came to consider the question of the accession of the United States to the Protocol.

M. DE BLANCK (Cuba) wished merely to ask one question. Could the Conference, in spite of the opinion of the Council, discuss only one question, reserving the other for a subsequent meeting? He would be glad if the Conference would answer "Yes" or "No".

The PRESIDENT announced that he would read the documents once more. He did not think there could be any ambiguity.

The Conference owed its existence to a decision of the Council to convene a Conference of "States Parties to the Statute of the Permanent Court of International Justice, to meet at Geneva on Wednesday, September 4th, 1929, with a view to examining the amendments to the Statute and recommendations formulated by the Committee of Jurists". The invitation might have been refused; but, as a matter of fact, all the members of the Conference were present as representatives of Governments which had accepted the invitation. Consequently, the Conference had to examine the question of amendments to the Statute, as well as the other earlier question—which had been raised as far back as 1926—of the accession of the United States to the Statute of the Court.

As M. de Blanck had put the question very clearly, he would reply to him equally clearly and say that the Conference had to deal with both questions. He had only proposed postponing the consideration of one of them in order that the members of the Conference might have time to study the documents.

M. VOLDEMARAS (Lithuania) thought that the solution of the problem was not so difficult as it appeared to be. It was quite obvious that the Conference was called upon to pronounce on the two questions, and that it was entitled to change the order in which they were to be discussed. When the Council instructed the Conference to study the Protocol and alterations in the Statute of the Permanent Court of International Justice, it had no knowledge of the fact which has just been communicated to the Conference. There could be no doubt that, if the Council were asked for an opinion, it would reply that the Conference ought certainly to take that occurrence into account. He supposed that the delegate for Cuba had felt called upon to read his statement before the fundamentals of the matter were discussed as he was of opinion that the statement might affect all the subsequent discussions. That was why he had proposed that the examination of the first question should be adjourned.

As, however, the two questions were closely allied, the discussion of one of them would in either case have some bearing on the other.

There were several ways of avoiding the difficulty.

The Conference might consider the second item on the agenda, reserving its right to refer to the same problem later if necessary. That method might be good or bad, but it was worth consideration. It was certain that some of the work might prove to be a sheer loss of time if it were found necessary to go back on what it did; theoretically, however, the method was possible.

The second way would be to endeavour to ascertain the general opinion of the Conference. The arguments that had been put forward have revealed two opposite standpoints which appeared, for the moment at least, to be irreconcilable. It might be desirable to suspend the meeting in order to ascertain the Conference's opinion.

There was still one more point which it might possibly be desirable to elucidate.

They were starting on the assumption that the United States would very shortly become a member of the Court. The Conference might suspend its work, as the delegate for Cuba proposed, and wait until the United States accepted the Protocol and sent a delegate to participate in the task of revising the Statute, since revision in the absence of a representative of the United States might prevent the United States Government from ratifying.

The possibility of the immediate accession of the United States was, however, a mere supposition. All the members were speaking, to a certain extent, on behalf of the United States Government by endeavouring to ascertain the solution which would be most acceptable to that Government; but what would be simpler than to sound that Government's opinion? If the United States said that it was aware of the proposed amendments and saw no objection to their adoption, who could prevent the Conference from discussing them? On the contrary, if the United States did not approve them, all the discussions would be a pure waste of time and it would be necessary to adjourn the question.

He did not see how it was possible to ascertain the exact opinion and dispositions of the United States of America without consulting that country. He therefore thought it might be desirable to suspend the work of the Conference.

M. CORN (Denmark) said he thought the Conference had been called upon to consider two different questions which it was its duty to examine, namely, the amendments to the Statute of the Permanent Court and the question of the accession of the United States of America to the Statute of the Court.

The previous question raised by the delegate for Cuba was, strictly speaking, a matter for the Governments to decide when they came to determine whether it would be desirable to ratify the results of the work of the Conference. The answer would depend mainly on the attitude adopted by the Government of the United States with regard to the Conference's

proposals. That, however, was no reason why the Conference should not immediately discuss the problems which it had been called upon to examine. He therefore supported the view that it should adhere to the agenda which had been drawn up in conformity with the Council resolutions.

Sir Cecil HURST (British Empire) said he shared the views of his Danish colleague. He hoped the Conference would decide not to accept an adjournment of the question but come to a decision forthwith. It had been pointed out that the Conference had upon its agenda two questions, and it was clearly within the power of the Conference itself to decide upon the order in which they should be taken. To ask for one of those questions to be adjourned and dealt with some time in the future seemed to him to be inconsistent with the purpose for which the Conference had been summoned.

He thought it a little illogical for the representative of a State which was represented on the Council to make such a demand, because, after all, the Conference was meeting in pursuance of an invitation which had issued from the Council, of which Cuba was a Member. Cuba, as a Member of the Council, had concurred in the issue of an invitation which Cuba as a State had accepted, that invitation being intended for the purpose of performing some particular work. Surely it was a little illogical for the representative of Cuba to ask the Conference not to do that particular piece of work at all.

M. Politis had addressed an appeal to the Conference to reverse the order which had been proposed by the President and to take first the amendments to the Statute and then the proposed Protocol for the accession of the United States of America. Were the question to be decided from the point of view of pure logic, he quite agreed that M. Politis would be right; but he ventured to suggest that, for practical reasons, the Conference should, on that occasion, adopt a course which might not be strictly logical.

Might he explain shortly why he thought that procedure reasonable? The Conference was, in reality, about to undertake two tasks. One, it was hoped, in view of what had been said that morning, would be a short task; the other might take longer. If the short task could be completed quickly, it would be a reason for dealing with it first.

Great public interest was attached to the accession of the United States to the Statute of the Court. If that part of the work could be finished and if the Assembly could be presented with a draft Protocol framed upon the supposition and in the sure hope that the United States was prepared to accept it, the Assembly and the world at large would, he thought, be glad to have that report quickly. It would then be unnecessary to inform them that the Conference was dealing with a mass of detailed proposals relating to the Statute of the Court and that the other question was standing over until the question of amending and introducing such detailed amendments had been finished. Surely the Assembly would be entitled to become a little impatient if such a procedure were adopted, even though logically—as he admitted—it would be more correct. Therefore, he hoped that M. Politis would not press for the President's proposal to be reversed and would be content to deal first with the question of the accession of the United States to the Statute of the Court.

Might he add one reason which seemed to him to be a very pertinent one to bear in mind? The Conference was about to deal with a series of proposed amendments to the Statute of the Court in the preparation of which a distinguished member of the United States had taken part. The results of all the work of the Committee of Jurists had been printed in one document; therefore, the announcement that had been made that morning, to the effect that there was every reason to believe that the United States was content with the proposals on one point, was made at a moment when that country had full knowledge of the detailed amendments which it was proposed to introduce into the Statute of the Court. Consequently, if the agreed amendments did not depart very appreciably from what had been proposed by the Committee of Jurists, there would be no reason to assume that they would cause any umbrage or difficulty to the United States. It could be assumed that, had there been any doubt as to the effect which the adoption of those changes might have, the United States Government would hesitate as to whether or not the Protocol was satisfactory. That fact, he felt, made it safe as well as practicable to adhere to the President's proposal and deal first with the question of the draft Protocol for the accession of the United States to the Statute, a work which he hoped would be completed quickly.

M. OSUSKY (Czechoslovakia) said that the situation was being obscured by constant references to the Council's resolutions. The Council had requested the various countries to appoint delegates to consider two questions and, simultaneously with these two questions, a report by the Committee of Jurists.

One delegate had proposed that one of these questions should be omitted from the agenda. It would be necessary, therefore, to take a decision on that point.

The PRESIDENT said he had thought it would be possible to discuss the basic principles that morning. He noted, however, that it was already half-past twelve and that the Conference was still discussing the previous questions. He did not want to close the meeting until it had settled its agenda. He repeated that it was for practical reasons and on account of the worldwide interests at stake that he had proposed to begin with the question of the accession of the United States, although he recognised that, logically, the reverse order would have been preferable. He adhered to his opinion on that point.

With regard to the very definite question raised by M. de Blanck as to whether the Conference could omit one of the items from its agenda, his reply was in the negative.

M. POLITIS (Greece) said that, after the appeal made him by his friend, Sir Cecil Hurst, he would not insist. He hoped, however, that Sir Cecil would excuse him if he said that there ought to be a limit to the disregard of logic. Thus, if the Conference adopted Sir Cecil's view, he merely asked that, in the documents distributed to it, the title "Conference for the Revision of the Statute of the Permanent Court of International Justice" should be replaced by, "Conference for the Accession of the United States to the Statute of the Permanent Court of International Justice". In that way, the title and the contents would be in agreement. Having made that reservation as a concession to his conscience, he would raise no further objection.

The PRESIDENT stated that, on the last point, he agreed with M. Politis.

M. URRUTIA (Colombia) supported the President's proposals. He desired, however, to make it clear that the Conference was convened for the purpose of revising the Statute of the Court, that the invitation was framed in the same sense and that it made no reference to the United States reservations.

He asked, moreover, that the invitation might be read, as that had not yet been done.

M. OSUSKY (Czechoslovakia) again gave it as his opinion that the Conference should take a decision regarding M. de Blanck's proposal. If that were rejected, it would then have to fix the order in which it would consider the two questions.

The PRESIDENT explained that M. Osusky's wishes would be met.

He understood that, with very few exceptions, all the delegates were agreed that they should deal with both questions and should begin with that of the accession of the United States.

At the next meeting this question could be examined in detail.

The proposals of the President were adopted and it was agreed to meet again at 4 p.m.

(The meeting rose at 12.40 p.m.)

SECOND MEETING (PUBLIC).

Held on Wednesday, September 4th, 1929, at 4 p.m.

President: Jonkheer W. J. M. VAN EYSINGA.

8. Question of the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice: Adoption of the Draft Protocol prepared by the Committee of Jurists.

The PRESIDENT proposed that the Conference should examine the question of the accession of the United States of America to the Protocol of Signature of the Statute of the Court (Appendix to Annex 5). He thought that everyone would be glad to hear a statement by the Rapporteur of the Committee of Jurists for that question. He asked Sir Cecil Hurst to say a few words on this subject.

Sir Cecil HURST (British Empire) assumed that his colleagues did not want any elaborate explanation of the contents either of the report of the Committee of Jurists or of the draft Protocol. He felt sure that all the members of the Conference, would have studied the report and made themselves acquainted with the contents of the draft Protocol. Possibly, all he needed to add were some small explanations that might be helpful to the members of the Conference in deciding upon the attitude they would adopt.

It was true that his name appeared in the report as Rapporteur; but those who were members of the Committee of Jurists knew quite well that, although he had prepared the rough draft of the report before it was presented to the Committee, it had been very carefully revised in collaboration with Mr. Root himself. The members of the Committee of Jurists had felt that, in framing the scheme which they hoped would enable the United States to adhere to the Court, they were dealing with a question which was of particular interest to the United States member of that Committee. It was, therefore, not unnatural that they should have endeavoured to ensure that the terms of the report which was submitted to the Committee should have the full concurrence of the United States member of the Committee, even though he might not be the Rapporteur.

Sir Cecil Hurst was aware that many of the members of the present Conference had been present at the previous Conference in 1926. Those members would remember that the great difficulty with which they had then been faced was the reservation included by the United States as part of the fifth paragraph of their reserves:

"Nor shall it [*i.e.*, the Court] without the consent of the United States entertain any request for any advisory opinion touching any dispute or question in which the United States has or claims an interest."

In 1926, the Conference, being deprived of the active participation of a representative of the United States in its work, had been unable to find a satisfactory method of overcoming the particular difficulty by which the League was at that time confronted. It was only at a later stage that it had become possible to understand what was the position, what was the difficulty that underlay the United States desire to secure the acceptance of that reservation, what it was exactly that underlay the hesitation displayed on the European side of the Atlantic in the acceptance of that reserve. It had then become clear that what really was at the bottom of that reserve was, on both sides, a little fear as to the effect which acceptance might have. There was on the one side, he thought on the side of the United States, a feeling, when the reservation had been framed, that, through the machinery of the Court and by asking the Court for its opinion in any advisory capacity, cases might be dealt with which really affected the interests of the United States.

As the Committee of Jurists said in their report :

“ The discussions in the Committee have shown that the conditions with which the Government of the United States thought it necessary to accompany the expression of its willingness to adhere to the Protocol establishing the Court owed their origin to apprehension that the Council or the Assembly of the League might request from the Court advisory opinions without reference to interests of the United States which might in certain cases be involved.”

There had been some hesitation, as was shown in that paragraph, on the part of the United States ; but there had also been some hesitation on the part of the Members of the League. Again, the report says :

“ Those discussions have also shown that the hesitation felt by the delegates to the Conference of 1926 as to recommending the acceptance of those conditions was due to apprehension that the rights claimed in the reservations formulated by the United States might be exercised in a way which would interfere with the work of the Council or the Assembly and embarrass their procedure ”.

It was in face of that mutual want of confidence on both sides that, when the Committee of jurists met in March 1929, Mr. Root had made the very helpful suggestion that the real way of bridging the difficulty was to ensure some method by which the two parties would be put in contact so that, if a question arose in the Council regarding which any Government desired to secure the advisory opinion of the Court, there might be some method through mutual direct contact, by which the League could assure the United States, and the United States on the other hand could assure both itself and the Council, that there was no intention to prejudice in any way the interests of the other party.

Mr. Root's real contribution to the work in March had been embodied in another paragraph of the report :

“ Furthermore, mature reflection convinced the Committee that it was useless to attempt to allay the apprehensions on either side, which have been referred to above, by the elaboration of any system of paper guarantees or abstract formulæ. The more hopeful system is to deal with the problem in a concrete form, to provide some method by which questions as they arise may be examined and views exchanged, and a conclusion thereby reached after each side has made itself acquainted with the difficulties and responsibilities which beset the other. It is this method which the Committee recommends should be adopted, and to provide for which it now submits a text of a Protocol to be concluded between the States which signed the Protocol of 1920 and the United States of America ”.

He would also venture to read the next sentence, because that, again, from the point of view of the members of the Conference, was a very important one :

“ The note of February 19th, 1929, from the Secretary of State of the United States makes it clear that the Government of the United States has no desire to interfere with or to embarrass the work of the Council or the Assembly of the League, and that that Government realises the difficulties and the responsibilities of the tasks with which the League is from time to time confronted. It shows that there is no intention on the part of the United States Government of hampering, upon unreal or unsubstantial grounds, the machinery by which advisory opinions are from time to time requested. The Committee is thereby enabled to recommend that the States which signed the Protocol of 1920 should accept the reservations formulated by the United States upon the terms and conditions set out in the articles of the draft Protocol. This is the effect of Article 1 of the draft now submitted.”

There lay the real explanation of the proposal that was before the Conference, namely, that it should secure the acceptance by the United States of the Statute of the Court because it was in a position to accept the United States reservations, just as the United States was in a position to assure itself that no prejudice to its interests was possible in requests by the League for advisory opinions from the Court, because both parties saw that this simple method of getting in touch for the discussion of any question was bound to ensure an arrangement satisfactory to both.

Such was in reality the essence of the proposal now submitted.

The machinery by which this result was to be achieved was provided for in the terms of the Protocol. With goodwill on both sides there would be no difficulty whatever in finding the appropriate channel of communication; that communication might be effected through a diplomatic channel or directly, or it could be effected by local representatives. With goodwill, there was and could be no difficulty.

The very gratifying communication which had been made to the Conference that morning proved, he thought, that the Government possibly most interested in the question was prepared to accept the scheme as it had been laid before the Conference. That being so, he could only trust that the Governments which were represented at the Conference would likewise find that the scheme which had been laid before it was adequate for their purpose. Most of the delegates were lawyers, and it was the habit—he was almost tempted to say the bad habit—of a lawyer whenever he read a document to think that he could see possible improvements in it. He had no doubt that most of the members of the Conference thought so on the present occasion. In view, however, of the communication made at the morning meeting, he would express the hope that it would not be necessary to make any modifications.

The PRESIDENT thanked Sir Cecil Hurst for his statement.

M. FROMAGEOT (France) wished merely to state that they had heard with deep satisfaction that morning the communication made to them by the Secretary-General of the League of Nations with regard to the Protocol and the opinion of the Government of the United States. In the light of that communication, and after hearing the remarks of his British colleague, he thought he might say that, subject to ratification, he could sign the Protocol on behalf of the French Government without any alterations.

M. PILOTTI (Italy) associated himself with M. Fromageot's statement. On behalf of the Italian Government he was prepared to sign the Protocol as it stood.

Sir George FOSTER (Canada) said that the present situation was a source of great satisfaction to him, as a member of the 1926 Conference, which had had under consideration the resolutions of the United States Senate and its reservations. Difficulties had been encountered at that time, but the work and the result of the work of the Conference had by no means proved a failure; it was the inevitable first step which had necessarily to precede ultimate achievement.

He had listened to the statement of Sir Cecil Hurst, and he thanked him for the candid and frank confession he had made with reference to the peculiar temperament and disposition of the legal fraternity. At first he had thought of suggesting that the laymen should have a turn that afternoon and that the lawyers should be satisfied with the laurels won in previous well-contested fields; but now that the lawyers themselves had made that approach it would be a good thing for the laymen to join hands with them, thanking them for all the help they had given, refreshed by the frank confession they had made, and feeling sure that in years to come, chastened by this experience, they would come to the assistance of the laymen in all such progressive and helpful efforts for the establishment of peace.

The whole kernel of the trouble, as had been explained, had simply been lack of contact and conference. If there had not been such lack of contact and conference in 1926, three years' delay would probably have been saved.

In the presence of the document now before the Conference, which had been so carefully examined and by such an authority, there were only two things that could be done—accept its conclusions, or undertake a revision of them section by section and article by article. He personally would have the strongest objection to undertaking to dissect, tear up, and then patch up a document which had been so ably prepared, and which he considered to be excellent. He would have the strongest objection to such a procedure, even if it succeeded, because the document in question had received the imprimatur of a legal mind from the United States of America, which was in agreement with and which had assisted in the formation of this Protocol.

He did not think it was necessary for him to say anything in praise of Mr. Root. One observation alone he desired to make. Mr. Root stood pre-eminent in the United States without reference to party or to faction, and consequently when the League had the collaboration of a gentleman of such capacity and influence it would be a gratuitous if not a hazardous undertaking to disturb the conclusions which had been reached jointly with him, since it was certain that those conclusions, with the great influence of Mr. Root and his friends behind them, would have every chance of being accepted by the United States of America.

Coming as he did from a country which was a neighbour of the United States, a neighbour of the best pretensions and on the best grounds of friendship, he experienced great joy to find that (although later than had been hoped) there was now a good prospect of the United States of America, that large and populous neighbour of Canada, having a seat upon the Permanent Court and thus adding to its prestige and its influence.

For a hundred years there had been perfect peace and amity between those two countries of the North American Continent. The United States had been beside Canada long before the great war; it had been beside Canada through all that period of anxious anticipation and desire which preceded the entry of the United States into the war. Canada had been the neighbour of the United States and by its side ever since, always praying that, step by step, without compulsion, and from its own conscience and desire, that country would take a greater and greater part with Canada in the work of assuring world peace. 1926 and 1929! What a different situation existed now, not only in Europe, not only in other countries of the

world, but, perhaps more than anywhere else, in the United States of America itself. That was another step forward towards the period when contact and conference would settle the affairs of the world and would bring about the certainty of ultimate peace.

On behalf of the Government which he represented, and in his personal capacity, he was glad to say that he accepted the Protocol as it stood, without alteration.

Prince VARNVAIDYA (Siam) declared that the Siamese Government had no amendments to propose. He was therefore prepared, on behalf of his Government, to accept the draft Protocol as it stood.

M. GÖPPERT (Germany) considered the draft Protocol to be wholly satisfactory and stated that the German Government could accept it.

M. OSUSKY (Czechoslovakia) said that, without considering whether the method proposed was the only one which might solve the problem or was indeed the best solution, the Czechoslovak Government was glad that a formula had been found to allow the accession of the United States to the Court of Justice and had instructed him to declare forthwith that he would sign the Protocol without modification.

M. ZUMETA (Venezuela) declared that the Venezuelan Government would sign the draft Protocol as it stood. He would, however, at a more propitious moment, submit certain additional considerations.

M. ANTONIADE (Roumania) said that the Roumanian Government welcomed the accession of the United States to the Protocol of Signature of the Statute of the Permanent Court at The Hague. He agreed with the draft Protocol as submitted and was ready to sign it.

M. DE BLANCK (Cuba) declared that his Government was also prepared to sign the draft Protocol.

M. SCHMIDT (Estonia) said that he was authorised by his Government to sign the draft Protocol without any alteration.

M. GORGÉ (Switzerland) said that the Swiss Government was also prepared, if all the members of the Conference agreed, to sign the draft Protocol as it stood.

He wished, however, in connection with Article 5, not to submit an amendment, but to ask Sir Cecil Hurst for an explanation.

Article 5 began as follows :

“ With a view to ensuring that the Court shall not, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest, the Secretary-General . . . ”

Was there not a contradiction—a textual if not a logical one—between that sentence and the last two paragraphs of the article ? Cases might arise in which the Court would give effect to a request for an advisory opinion even when the consent of the United States had not been obtained.

He wondered whether the text would not be clearer if drafted thus, for instance :

“ With a view to ensuring that the Court shall not, without having requested the opinion of the United States . . . ”

There was no doubt as to the general interpretation to be given to the article, but he would like to have the opinion of the Rapporteur on the point to which he had referred.

Sir Cecil HURST (British Empire) said he trusted there was no such contradiction as his Swiss colleague feared. It must be remembered that the Conference was approaching a question of which the limits were somewhat dominated by the terms of the Senate resolution (Annex 3) which said in its fifth paragraph :

“ That the Court shall not render any advisory opinion except publicly after due notice to all States . . . nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest.”

It was desirable, for the satisfaction of public opinion in the various countries concerned, that the Conference should as far as possible make it clear that on the new basis provided for, that of actual contact, the Conference was in a position to accept the reserves made by the United States ; that was to say, the conditions which were to be found in the Senate resolution. It was from that Senate resolution that the words had been taken which came at the beginning of Article 5, namely :

“ With a view to ensuring that the Court shall not, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest . . . ”

Up to that point the words were merely a quotation from the Senate resolution. It was in reality a method of saying: "For the purpose of giving satisfaction to the fifth condition embodied in the Senate resolution, the Secretary-General shall, through any channel designated for that purpose, inform the United States etc.". This method ensured that there would be contact between the parties, so as to give satisfaction to that condition as laid down by the United States. If the result of the discussion were such as not to give satisfaction to the United States, it would be remembered that the United States had the power to withdraw if necessary.

Consequently, he did not think there was really any contradiction between the terms of that article and those of the remainder of the Protocol. The words to which importance had been attached by his colleague were merely a quotation from the Senate resolution.

M. GORGÉ (Switzerland) said that he was entirely satisfied with Sir Cecil Hurst's very clear explanations.

The representatives of SWEDEN, AUSTRALIA, DENMARK, CHILE, BELGIUM and BULGARIA expressed the willingness of their Governments to sign the draft Protocol in the form submitted.

M. BOTELLA (Spain) observed that the adoption of the Protocol by the Council, on which Spain was represented, sufficed to demonstrate the Spanish Government's opinion with regard to the report of the Committee of Jurists.

Sir William GREAVES (India) said he desired to make the same declaration on behalf of the Government of India. India was a country to which the rule of law was dear, and it was a great pleasure to his country that the United States of America was prepared to declare its adherence to the Protocol establishing the Court on the terms of the draft which was being considered by the Conference that afternoon.

M. RUNDSTEIN (Poland) said he was happy to be able to state, on behalf of his Government, that Poland would accept the Protocol without any change. He would venture to repeat the phrase which terminated Sir Cecil Hurst's noteworthy report, namely, that:

"With the acceptance of the Protocol, further progress had been made in establishing the reign of law among the nations of the world and in diminishing the risk that there might be a resort to force for the solution of their conflicts."

M. CHOUMENKOVITCH (Yugoslavia) made the same declaration on behalf of the Yugoslav Government, which was prepared to sign the draft Protocol in the form in which it had been submitted to the Conference.

The PRESIDENT said that, unless he was mistaken, the Conference was unanimous, since he himself could vouch for the approval of the Netherlands.

As the delegate for Canada had very aptly pointed out, very considerable progress had been made in the last three years. What action should be taken on this unanimous vote?

The Council had referred the matter to the Conference on the assumption—he referred to the Council resolution—that the recommendations of the Jurists would be approved by the Assembly. The First Committee of the Assembly, and then the plenary meeting of the Assembly, had, so to speak, left the matter to the Conference and asked it to express an opinion in the first place.

That being so, he thought the only possible course was to refer the matter back to the First Committee, informing the Chairman of that Committee of the result of the discussions of the Conference and at the same time communicating that result to the President of the Assembly.

M. ROLIN (Belgium) wondered whether it was desirable to divide the results of the work into two parts. That morning the delegate of Cuba had pointed out to the Conference something which, even if it were not an obstacle, might prove to be a difficulty, if the President's suggestion was followed.

If the United States was officially informed of the signature of the Protocol—for he supposed that that was the intention—before the Statute had been revised, in other words, before the United States could be notified that the revision carried out in agreement with Mr. Elihu Root had also been approved, it might be found that the United States had acceded to the Protocol without any reference to the amendments to the Statute which would thus, for the time being, remain suspended in mid-air.

Would there be any objection to deferring the reply for some days and awaiting the close of the Conference, so that the Council might inform the Government of the United States of the approval of the Conference both of the Protocol and of the new Statute? Personally, he was in favour of that procedure.

M. PILOTTI (Italy) said he was not sure that M. Rolin's objection was justified. It was not for the members of the Conference to sign the Protocol. The Conference was not the Assembly; it was only a Conference of States Members of the Court. It could only say that it had examined the draft Protocol and had found no objections to it. The First Committee of the Assembly could then go on with its work, unless it discovered any objections of its own.

For the present, however, the Conference could form no opinion as to the final results. All the members were convinced that their—or their Governments'—signatures were necessary, but it was not yet time to affix them. The United States could only accede to the Protocol when the members of the Conference had completed their work, and they would certainly not affix their signatures to the Protocol until the Conference had disposed of its agenda.

M. YOSHIDA (Japan) said he shared the views of his Belgian colleague. He did not think that there was any objection on the part of the Japanese Government, but, so far, he had not received instructions. He was not, therefore, prepared to sign immediately.

The PRESIDENT said he understood that the Conference had been unanimous with regard to the Protocol. Had not the Japanese delegate voted in its favour?

M. YOSHIDA (Japan) replied that he had not voted in its favour, but did not vote against it.

The PRESIDENT observed that a number of delegates had not yet received full powers, but Japan was represented on the Council, and the fact that the Council had approved the Protocol seemed to prove that Japan had no objection to it.

M. YOSHIDA (Japan) said he presumed that his Government had no objection.

Sir Cecil HURST (British Empire) said he would like to address one question to the President of the Conference. M. Rolin's proposal troubled him a little because it seemed that there was one small point for which provision had still to be made. The effect of the draft Protocol was to impose a certain limitation on the method of work followed by the Council or by the Assembly of the League. Under the Covenant, both the Council and the Assembly had the right to ask the Court for advisory opinions, and in the terms of the Covenant there was no limitation upon the powers of the Council and of the Assembly to ask for those opinions. Now, the effect of the draft Protocol, if it were accepted by all the parties concerned, would be to impose some small limitation upon the right of the Council and of the Assembly in the matter of asking for advisory opinions, because, in those cases where there was a possibility of the interests of the United States being affected, there would be a preliminary interchange of views with the United States before that opinion was asked for from the Court.

He understood, however, that the draft Protocol, before it was submitted to the Conference, had been approved by the Council. That approval by the Council intimated that, so far as the Council was concerned, it was prepared to accept that small limitation upon its powers. He thought, however, that there was still one technical step to be taken: the Assembly for its part must accept the draft Protocol in order to signify its acceptance of such limitation upon its powers of asking for an advisory opinion. If that view were right, he felt that the step of referring the draft Protocol, as accepted by the Conference, back to the Assembly or the First Committee—he treated them as one for that purpose—was a step that had to be taken quite irrespective of signature. He therefore thought it desirable not to wait, as M. Rolin had suggested, but to send it as soon as possible to the Assembly in order that the latter might play its part in the general acceptance, the bringing into force of the whole scheme.

M. ROLIN (Belgium) did not wish to prolong a formal discussion such as that which had taken place at the morning meeting, but he would point out that the importance of informing the First Committee of the results of the first part of the work of the Conference, to which M. Pilotti had referred, was not very great.

As regards the amendments to the Statute, the position was the same. In this case, also, the approval of the Assembly was necessary, since the Court was the Court of the League as well as of the States. In these circumstances, there was no more reason to go at once before the Assembly than to complete the work of the Conference and then go before it. The only point which seemed to M. Rolin to be important, and which he had raised at the morning meeting after hearing the statement by the Cuban delegate, was that, contrary to what some of the members had thought, the Conference was acting imprudently in giving an official and final character to the approval by the members of the League of the draft Protocol, while the approval of the Statute as amended by the States and by the League was not yet final. Such a procedure might cause the United States Government or Senate to take a decision regarding the existing Statute and the Protocol, whereas they were asked to take a decision on the amended Statute and the Protocol. These considerations could be examined later, and, if the majority of the Conference then desired to transmit the decision of the Conference to the First Committee, he would raise no objection.

The PRESIDENT remarked that he had intended to draw M. Rolin's attention to the same points which Sir Cecil Hurst had put forward. The Assembly had still to be consulted before the slightly modified procedure regarding advisory opinions contemplated for the United States became an accepted fact. Since the First Committee had worked with such speed, the Conference would perhaps be well inspired to follow its example. As M. Rolin had pointed out, there would be a certain element of uncertainty until all the questions had been settled. That was inevitable. He thought, however, that, since an opinion had been given by the Conference, it would be desirable to transmit that opinion to the Assembly immediately in order that the First Committee and the Assembly might reach a decision regarding the slight variation in procedure embodied in the Protocol. If M. Rolin did not insist, and if no other objection were raised, that course might, he thought, be adopted.

*The President's proposal was adopted.*¹

The PRESIDENT observed that the Conference had thus completed the first point on their agenda. He proposed that before it considered the other item—the problem of the revision of the Statute—it should adjourn for a few minutes.

(The meeting was adjourned at 5.30 p.m. and resumed at 6 p.m.)

¹ The text of the letter sent by the President of the Conference to the President of the Assembly and to the Chairman of the First Committee is included in Annex 6.

9. Revision of the Statute of the Permanent Court of International Justice.

The PRESIDENT observed that the Conference had now to consider the second point on its agenda: The re-examination of the Statute of the Court. That morning the members had heard a statement by the representative of the Cuban Government. The statement itself constituted a previous question. He understood that the Cuban delegate proposed that the matter should be deferred until a later meeting.

He would venture to point out that the Conference was dealing with work which had already been begun by the 1928 Assembly.¹ The French delegation, for the reasons he had mentioned to the Conference that morning, had proposed that the Statute should be re-examined in view of the general re-election of the judges that would take place during the Assembly of 1930. That meant that it would be necessary to make haste, and that was why the Council had sought to adopt the most expeditious procedure possible. It had convened the Conference to deal with the question, in order that the 1929 Assembly, then in session, might take cognisance of the results. He therefore thought that it would be difficult to entertain the Cuban delegate's suggestion. It would, however, be for the Conference itself to decide that point. He repeated that, in his opinion, it could not do otherwise than continue to follow the line of conduct traced for it by the Council, namely, to proceed with the re-examination in order to be able to submit proposals for new or modified articles to the Assembly.

He thought that the various points of view with regard to the question raised by the Cuban delegate had all been expressed that morning. The Conference was, therefore, in a position to take a decision.

Did it agree to continue the discussion along the lines laid down in 1928?

Noting that there was no opposition, he thought that M. de Blanck would not object if the Conference continued the discussion, it being understood that M. de Blanck maintained his point of view.

M. DE BLANCK (Cuba) said that he did maintain his point of view, but raised no objection; it would be useless to do so, as he already knew the opinion of the Conference concerning his proposal.

The PRESIDENT suggested that the Conference should take the report by M. Fromageot and M. Politis, as its starting-point (Annex 2). He would therefore ask M. Fromageot to explain the main outlines of the report and the modifications proposed by the Committee of Jurists.

M. FROMAGEOT (France) said he first wished to remind the members of the Conference of the circumstances under which the re-examination of the Statute of the Court had been proposed, decided upon and begun, and the spirit in which the work had been commenced.

As the President had pointed out, the original suggestion had been put forward by the French Government.

The French Government had thought that it would be desirable, after eight or nine years' experience, to consider whether certain improvements should not be made in the Statute of the Court, without affecting the essential framework, which had already proved to be solid, and without claiming to reverse any of the principles in virtue of which the Court had received almost universal international recognition. If that were the case, the French Government also thought that it might be desirable, before the total re-election which was due in the following year, to establish beyond all doubt the conditions under which the Court would work for the next nine years.

It would be regrettable—the French Government had thought—for elections to take place in 1930 without any attempt to make good such shortcomings as had been observed. During the judges' term of office it would be inadvisable to alter the rules of an institution for the proper working of which those judges were responsible. At the time of their election, the judges were entitled to know what the institution was to which they were being elected, and what obligations acceptance of their election implied.

Before all else the Permanent Court of International Justice was at the service of the various Governments; the Governments were not at the service of the Court.

The French Government had therefore submitted its proposal to the Assembly, which had adopted it unanimously. The Council had been requested to organise the work and had for that purpose constituted a Committee of legal experts, and had also, in conformity with the Assembly's wishes, invited a representative of the United States Government to participate. The Conference knew who that representative had been and the prestige that attached to his personality and name. To expatiate on Mr. Root's qualifications would be mere presumption on his part.

The President and Vice-President of the Permanent Court of International Justice had also been good enough to join the Committee. They had, as the members of the Committee would remember, expressed their views on many occasions, and very wise those views had proved to be. They were accompanied by the Registrar of the Court, who was perhaps one of those who were most intimately acquainted with the working of that institution. Consequently, from the technical standpoint of the working of the Court, from the legal standpoint of the principles involved, and from the standpoint of American opinion and the possibility of American approval, all precautions had clearly been taken to conduct the work with prudence and with a full knowledge of the facts.

¹ The resolution adopted by the Assembly on September 20th, 1928, is quoted in Annex 2.

Those were the conditions under which the examination of the Statute of the Court had been contemplated. The actual procedure had been as follows :

As soon as the Committee met, it naturally had to ascertain how the Court was expected to function. When it had been established nine years previously, there had been much doubt as to its future activity. A short while previously, Sir George Foster had reminded the Concast their minds back still further and compared 1926 and that in 1929. But if the delegates difference was still greater ; they would perceive what great progress had been made along the path of the judicial and juridical settlement of disputes between States.

The number of arbitration treaties had grown and multiplied. The habit had been formed of applying to the Permanent Court. Public opinion throughout the world had a confidence in that Court which would, it was to be hoped, never be deceived. That confidence was growing. Public opinion was convinced that there—as somebody had said to him a short while previously—they would find healers of souls ; that was to say, doctors whose duty it was to mitigate or cure all maladies, great or small, which might embitter international relations.

Everything should be done to ensure that the body entrusted with so momentous a task should fulfil that task as the nations expected. There must be no risk of seeing such hopes disappointed.

What, then, should be the character of the Court ? It should be, above all, a truly judicial body consisting of judges versed, not merely in the ways of men, like national judges, but in the ways of Governments and nations ; judges with a thorough legal training, who would never give an arbitrary decision, and whose judgments would always be perfectly sound at law. When decisions were sound at law they would be sound at equity ; the law, when properly applied, could never result in injustice. Law was justice. There could be no law without justice or justice without law.

The judges must conform to the character of the Court, which was a purely judicial organ constantly at the disposal of the parties, namely, the Governments. It would be hard to justify to the public a Court which only met when the affairs or convenience of its judges allowed. The Court should be permanently available and open to Governments just as the doctor should be constantly at the disposal of his patients. Naturally, when there were no patients the doctor was free, but when a patient called for his attendance he must be there to do his duty—and do it wholeheartedly. He trusted that his colleagues would excuse this simile, but it applied to the Court which owed its devotion, its wholehearted devotion, at all times and at all seasons, to the Governments which required its help. As soon as two Governments applied to the Court to settle some difference or dispute which had arisen between them, as soon as they counted on the Court to avoid or mitigate, if not a rupture, at least very strained relations, it was necessary that the Court should be there to render the service which the two Governments demanded of it.

Viewing the question from that angle, as the Committee of Jurists had done in the spring, the Conference would inevitably, on examining the Statute in its present form, come to the conclusion that certain, though not by any means serious, modifications were necessary to ensure that the Court should be the truly judicial and permanent body which he had outlined.

It would be seen from the report before the Conference that, in the case of some of these changes, it had been thought unnecessary to embody them in the form of amendments to the text of the Statute ; such changes in the working of the Court could be effected by means of ordinary assembly resolutions or recommendations. That, if it had been possible, would obviously have been the simplest and most convenient way to have made all the necessary alterations ; but, unfortunately, it was not possible. In certain cases only did it seem that the desired result could be obtained by means of an Assembly recommendation.

He would quote as an example the Committee of Jurists' conclusion that it would be preferable for the judges to be familiar with at least the two official languages of the Court. That might seem rather a peculiar statement ; nevertheless, it was not unnecessary. As everyone knew, the two official languages of the Court were English and French, and the judgments were drawn up in those languages. Was it not, therefore, natural to insist that the judges should be acquainted with those languages ? It did not seem necessary to mention that in the Statute. But it was nevertheless advisable to recommend that persons who knew neither French nor English, nor even one of these two languages perfectly, should not be put forward as candidates.

He quoted another example. He had declared earlier in his speech that it was desirable that the judges should have not only a solid legal training, so that they might be expected to avoid giving arbitrary decisions, but should also possess some knowledge of the political life of nations. It had not been thought necessary to modify the text of Article 2 of the Statute nor to mention this concept of practical experience coupled with sound doctrinal knowledge. It had been thought that an Assembly recommendation would suffice to ensure that the Governments at the time of voting or the national arbitration groups would, when called upon to submit candidates, pay due attention to that point.

Finally, in order that foreign Governments might be sure that the candidate proposed to them possessed the necessary qualifications, it had been thought that it would be advisable, when putting forward the names of candidates, to indicate the reasons for which the candidate in question was held to be qualified for the post. That, it would be noticed, figured as a recommendation.

He repeated that it had not been thought necessary to alter the text of the Statute in order to insert those provisions.

On the other hand, when the Committee came to consider the question of the number of judges, it had felt that the Statute would have to be modified. Experience had shown that, under the existing system of eleven ordinary judges and four deputy-judges, the ordinary judge whose home was overseas might, for certain reasons, be prevented from coming to The Hague. The Court would then be made up by calling on the deputy-judges.

In the early days, as he had observed at the outset, it had been thought that the Court of Justice would not have very much to do. That was why the Statute had laid down that it would only sit in ordinary session during the vacation, namely, after June 15th. The ordinary judges who lived in distant countries, to whom he had just referred, were more or less justified in reasoning thus: "I have been appointed to come and work at The Hague on and after June 15th; it was never understood that I should have to go there in the winter." Cases, however, were laid before the Court, and the Court had to meet. What happened then? The Court called in the deputy-judges. Which deputy-judges? Those who were available, namely, the European judges. The result was that, in the summer, cases would be heard by a normally constituted Court, whereas in the winter they would be heard by an almost exclusively European Court.

Was it in keeping with the Statute of the Court or with the intentions of the Assembly of the League that the Court should not represent the outlook and legal concepts of the various countries? There was a very wise clause in the Statute to the effect that the Court should consist of persons representing the various forms of civilisation; that was to say, the various intellectual and legal traditions and conceptions. He did not need to explain to so distinguished an assembly of lawyers how profound were the differences which, on certain points, separated the legal concepts and laws of the various countries. It was not necessary to go very far from France in order to find legal concepts often diametrically opposed to those of his own country. On how many points, indeed, did the Anglo-Saxon outlook and theory differ from Continental juridical ideas?

It was desirable that the Court should represent those various points of view. Under the existing system of European deputy-judges sitting whenever the Court was not in ordinary session during the summer months, the Court frequently lacked that worldwide character which had been intended by the Assembly.

It was also argued that, from a financial point of view, the system of deputy-judges had its drawbacks. He admitted that financial questions were not his domain and he would therefore not dwell on the point.

The Committee had sought to discover means for obviating these difficulties. It had come to the conclusion that the deputy-judges might be replaced by ordinary judges, it being understood that all the judges should hold themselves permanently at the disposal of the Court. But that conclusion raised another difficulty. Several of the judges came from Asia, while others came from America. Could those judges be reasonably expected to live for nine years in Europe? He did not say necessarily at The Hague, but in London, Brussels, Paris or Berlin—that was to say, within a reasonable distance of The Hague—and to abandon their homes for so long a period? That did not seem to be either fair or desirable. It was not fair, for such judges would not be in the same position as European judges; it was not desirable, for it would be a bad policy to keep the judge away from his home and country for so long a period, since he would thus lose contact with the general march of ideas and social progress and development in his own land.

But, just as diplomatic agents remained at their posts for a number of months or years and then went back on leave to their country in order to get into touch once more with the national atmosphere, it had been thought that it would be fair to the judges, and desirable in the interests of the Court, that members of the Court coming from overseas might—as proposed in the report—be granted six months' leave every three years in order to revisit their homes and families and re-acquaint themselves with their countries' progress, so that they might bring to the Court the effective and useful contribution of their particular national outlook.

The suggestions with regard to the disqualification of judges from undertaking other work were based on the same grounds. When the judges had been appointed nine years previously, it had been thought that members of the Permanent Court of International Justice would be in much the same position as members of the Court of Arbitration, and that their title would be little more than an honour involving only slight duties. It had, indeed, been laid down that they could not occupy administrative or political posts elsewhere; but there had been no very stringent rule regarding the possibility of their engaging in other professional work. At the present time such an arrangement entailed serious disadvantages. The Court had plenty to do. It had won for itself too high a place in the esteem, opinion and confidence of the nations to allow of its members engaging in any other "professional activity" than that of judge. He thought the President would remember that the expression he employed was exact. It was a reminiscence of the participation of Mr. Root in the work, since Mr. Root himself had proposed it and caused it to be adopted.

He did not wish to criticise or even to be suspected of criticising. Criticism would be entirely unjustified. The Court as then composed consisted of persons who were absolutely trustworthy in every respect. They had, however, been appointed under certain conditions and, consequently, they continued—as they were perfectly entitled to do—to abide by those conditions. Any criticism on that account would, he thought, be unfair. But it was necessary to consider the future and to make other arrangements for the nine-year period which would commence in the following year.

M. Fromageot added that, with regard to changes in salaries, M. Osusky was better qualified than he to furnish the Conference with all the explanations it might require. He would merely

observe that the Committee felt that, as the judges would be permanently at the disposal of the Court, it would be better to accord them an annual salary than an allowance for each day during which they were present at The Hague.

There was just one more point, namely, the advisability of making the changes immediately. The Conference must not think that these changes were not urgent. The conclusions of the Committee were either sound or unsound. If they were sound, the Conference should—subject to any alterations it might decide to make—accept them. If they were unsound, the Conference should reject them. If, however, the Conference concluded that some action was necessary, that action must be taken before the election in 1930. The changes must be confirmed and signed during the present session of the Assembly. It was important that they should be ratified by the Governments before the next elections. If the Conference did not act thus, it would be wasting its time; because, otherwise, the elections would take place in accordance with the 1920 rules, and from 1930 to 1941 it would be impossible to make any changes in the Statute—for it would not be very loyal towards the judges elected in 1930 to alter their obligations and duties in the course of their term of office. If, then, the Conference decided to act, it must act immediately.

Such were the explanations he had thought it desirable to offer the Conference. He was sure that his colleague, M. Politis, was prepared, like himself, to give the Conference any other explanations it might desire.

The PRESIDENT thanked M. Fromageot for his very interesting statement, which would greatly help the Conference when it came to consider the articles of the Statute.

He asked the Conference to be good enough to allow its President to fix the date of the next meeting, which would be indicated in the *Journal* of the Assembly.

This proposal was adopted.

10. Appointment of the Committee for the Verification of Credentials.

The PRESIDENT said that all that now remained was to appoint a Committee for the Verification of Credentials, to which he had referred that morning, it being understood that the Committee would take its decisions on a very liberal basis.

If the Conference would allow the General Committee to make a suggestion, he would propose the delegates of ROUMANIA, BRAZIL, JAPAN, GERMANY, ITALY, PANAMA, and PERSIA.

This list was adopted.

(The meeting rose at 6.55 p.m.)

THIRD MEETING (PUBLIC).

Held on Thursday, September 5th, 1929, at 4 p.m.

President: Jonkheer W. J. M. VAN EYSINGA.

11. Revision of the Statute of the Permanent Court of International Justice (continuation).

The PRESIDENT thought that, after the very interesting explanations given by M. Fromageot on the previous day regarding the re-examination of the Statute, it would be advisable to commence the examination of the question and study the report by the Committee of Jurists, which might be taken as the starting-point for the discussion. The Conference would remember that the report in question had been drawn up by M. Fromageot and M. Politis (Annex 2).

The first speaker down to address the Conference was M. d'Avila de Lima, delegate of Portugal, who desired to refer to certain points of a more or less general character.

M. D'AVILA DE LIMA (Portugal) said that, as a delegate coming for the first time to a League Conference, but representing one of the original Members of the League, he wished first of all to greet his colleagues. He hoped they would see nothing more in his remarks than a legitimate desire for information in one who was always ready to learn. His desire for information was allied with a sincere admiration for an institution which represented the most important progress, from an international standpoint, of which the modern world could boast.

In truth, the Permanent Court of International Justice—this could not be asserted too often since there were still persons who entertained doubts as to its efficacy—was beyond all question the material realisation of a great and generous desire of all the nations, which even the earliest precursors of the League had had in view.

That desire had, it was true, already been partly realised in the form of various analogous institutions, such as the Central American Tribunal, the International Prize Court, and also the Permanent International Court of Arbitration, though, of course, they differed as regarded their composition, jurisdiction, and the force of their judgments.

Those who made their membership of the Permanent Court of International Justice dependent upon absolute legal, or rather statutory, dissociation from the League of Nations, could neither forget nor deny that it was Article 14 of the Covenant which had made it possible to fulfil that long-cherished dream.

He wondered whether those whose ambition it was that the constitutional organisation of the League should reproduce the classic division of the three great governmental powers would have to experience the bitter disappointment of seeing the tie severed between the Covenant and the Permanent Court of International Justice—except, of course, as far as the purse was concerned.

If anyone should think he were criticising any of the wise decisions reached by the majority of the United States Senate, he wished to reply that that was not the case, since it was a well-known fact that often truth was stranger than fiction.

Nevertheless, he felt bound to give expression to certain doubts which he felt with regard to the draft for the revision of the Statute of the Permanent Court of International Justice, the provisions of which, though avowedly conditional, were alleged to have been rendered necessary by the number of litigious questions or requests for opinions submitted to the Permanent Court.

He had experienced some difficulty in collecting data concerning the average judicial output of the Permanent Court, which did not seem to him to be exceptionally high as compared with the work of certain national Supreme Courts. But since it was natural that the powers of the distinguished members of the Court should not be overtaxed, the above statement might be more readily accepted than others concerning the composition and working of the Court.

He proposed to examine those statements in order to throw light on the subject and not because he differed with the general trend of the proposed changes.

The first suggested alteration was that the number of ordinary judges should be increased. It would seem that the bench of the Permanent Court was to be enlarged in much the same way as the Council of the League had been enlarged, the only difference being that the increase was effected by altering the name of one of the constituent elements of the Court, or, rather, by abolishing or incorporating the deputy judges. This would, to a certain extent, lend to the Court a form of internal economy different from that of almost all similar national courts or even from that laid down in the statutes of private corporate bodies. But if the number of judges were increased, how was it that the same number was maintained for the constitution of a quorum? He ventured to suggest that, instead of such an increase, and in view of the arguments advanced in favour of that increase, it would have been preferable to have introduced the division to be found in many bodies of procedural law—for instance, in the Portuguese Supreme Court, where the judges were divided into two groups which worked alternately or separately except in cases that called for hearing by the full Court.

He would now touch on another, at least for him, doubtful point, namely, the question of the disqualification of the judges from engaging in other occupations. In that connection, he thought the text did not go far enough. It seemed illogical to prohibit the judges of the Permanent Court of International Justice from engaging in any other occupation of a professional nature and yet to allow them to act as arbitrators in questions which might possibly, though contrary to expectation, come before the Permanent Court on appeal.

Why had it not been laid down that candidates for the post of judge should possess very high qualifications and university degrees?

In terminating his remarks on that aspect of the text, he ventured to raise one last question with regard to the matter of incompatibility. Would it not be desirable to fix in the Statute—as was done in so many national laws—an age-limit, after which the person who had filled a post of such high responsibility would be entitled to a reasonable pension?

Finally, he felt bound to express doubts of another kind which would cause him to hesitate in giving his vote. Would it not be preferable definitely to limit the consequences of an interpretation *a contrario sensu* of Article 17 by specifying that the prohibition expressed and implied in that article also applied to national cases and arbitration tribunals? Would it not also be desirable to require assessors to submit a *curriculum vitæ* similar to that which the permanent judges were required to submit, naturally taking into account the special technical qualifications necessary in each case? Should the intervention of the International Labour Office in labour disputes be obligatory *ex officio* as laid down, or merely optional after a request had been submitted by the parties and had been judged admissible by the Court, as was the case with committees of experts, in accordance with the rules of ordinary procedure?

After expressing all those doubts, he earnestly hoped that the President would not regard him as invested with certain of the attributes of a devil's advocate in respect of the revered Permanent Court of International Justice.

The PRESIDENT said that all the members had listened to the Portuguese delegate's speech with interest. He thought the Portuguese delegate would agree that M. Fromageot and M. Politis should be asked to reply to the questions raised with regard to certain articles of the Committee's preliminary draft, when those articles came up for discussion.

M. D'AVILA DE LIMA (Portugal) agreed with the President's suggestion.

The PRESIDENT proposed that the Conference should consider what might be termed the first part of the preliminary draft, which did not call for the modification of any particular article of the Statute, but merely put forward a recommendation calculated to heighten the value of the Court:

“ The Committee decides to advise the Assembly to adopt the following recommendation :

“ The Secretary-General, in issuing the invitations provided for in Article 5 of the Statute, will request the national groups to satisfy themselves that the candidates nominated by them possess recognised practical experience in international law and that they are at least able to read both the official languages and to speak one of them ; he will recommend the groups to attach to each nomination a statement of the career of the person nominated showing that he possesses the required qualifications.”

M. Fromageot had so definitely emphasised the importance of that recommendation that he felt it was unnecessary for him to comment on the text.

M. RAESTAD (Norway) said that, as a Norwegian delegate, he would not have many observations to make on the work in which he had participated as a member of the Committee of Experts. The Norwegian Government, however, did not think it necessary to recommend that candidates should possess recognised practical experience in international law. Briefly stated, its reasons were the following. The question had for many years been discussed in all its aspects, particularly the point whether the qualifications for international judges should expressly include practical experience in international law.

In 1907, the Hague Conference had adopted a proposal by M. Renault which was very similar to the text in the Statute and which only mentioned competence. In 1920, the subject had been very thoroughly discussed, particularly the point whether practical experience should be added as a necessary qualification. The decision had gone against such an addition. In point of fact, when it had been necessary to select an international judge, a whole host of qualities were asked for and were obviously necessary. It had been said in 1920 that to call for competence as the present Statute did was tantamount to requiring experience, which was included in “ competence ”. It would be better to say that practical experience was one of the sources of competence. There were, however, others—just as there were other qualities required of an international judge—and his Government did not see why, by adopting that recommendation, there should be instituted three kinds of sources for determining the qualities necessary for a judge : first, the Statute, which was obligatory ; secondly, the recommendation, which was not obligatory ; and, finally, general considerations which did not need to be stated, since they would always be taken into account.

He had also one comment to make, which related mainly to a matter of form. He thought that the procedure of putting forward a recommendation was rather out of place in that connection. Ordinarily, when a recommendation was put forward, every State was left free to take the necessary action within the framework of its own laws. In the present case, however, the point was how to determine the necessary qualifications for an international judge. He felt that such a decision should be based on only two sets of criteria : the conditions laid down in the Statute, and such conditions as the national groups themselves saw fit to impose.

There was still one further point of form : the whole text would subsequently be considered by another country which was not represented at the Conference, namely, the United States of America. The United States might or might not accept the amendments the Conference voted ; but it would be a rather novel procedure to reject or accept a recommendation. Recommendations were generally made at the end of the work, whereas, as the Cuban delegate had rightly pointed out, the work of the Conference was far from being completed.

That was why the Norwegian Government did not consider it necessary to make that recommendation.

M. FROMAGEOT (France) observed that the question had been discussed at great length by the Committee of Jurists, and the same arguments as those just put forward had been very carefully considered. The fact that a question had been previously raised had not been regarded as a reason for its exclusion. On the contrary, the Committee had felt that the moment had come to profit by experience and supply to a certain extent what might seem to be deficiencies in the Statute.

The Committee felt that it would be undesirable to embody any very rigid formula in the text of the Statute, and had therefore voted in favour of a recommendation. The result of that recommendation would be that the national groups would receive an invitation at the time of the elections, an invitation in which the Secretary-General would draw their attention to certain desiderata. That act would not in any way affect their independence. In actual fact, however, there was nothing more than a recommendation, so that other countries which might be called upon to participate in the election of judges in the future would be absolutely entitled to do what they liked.

He did not therefore see any sufficient reason for going back on a proposal put forward almost unanimously by the Committee of Jurists. He asked the Conference to adhere to the text submitted.

Baron MARKS VON WÜRTEMBERG (Sweden) said he agreed with the Norwegian delegate's observations. He did not think it necessary to emphasise practical experience in international law as a qualification. He was afraid that other qualities might be sacrificed and that misunderstandings might arise.

M. ROLIN (Belgium) said he wished to make two observations on points of form. The Conference was considering making a recommendation, but he noted that the text was worded thus :

“ The Committee decides to advise the Assembly to adopt the following recommendation . . . ”

The question was therefore not one for the Conference, but for the Assembly alone.

Moreover, the phraseology of the suggestion put forward by the Committee was not by any means that of a recommendation. It really constituted a resolution, or formal instructions, issued to the Secretary-General. The only hint of a "recommendation" was an indirect one to the national groups which would have to make proposals.

M. COHN (Denmark) said he agreed with his Norwegian colleague's observations.

The Danish Government attached great importance to a practical acquaintance with international law; but it was necessary to take into account also practical experience on the Bench. Such qualities were rarely united in one and the same person outside the judges of the Court, and his Government felt that it would be dangerous to lay too much stress on a knowledge of international law alone. He thought it would be preferable simply to lay down that the Court should always include a number of persons who had already served as judges.

M. YOSHIDA (Japan) said that he would like to be enlightened on one point. He had heard an explanation of the qualifications that were desired. The document said "required qualification". He would like to know whether that was to be made the rule. The French text said "requis". He did not understand the meaning of "requis" in French; "required" in English seemed to him to impose a duty.

Sir William Harrison MOORE (Australia) remarked that his difficulty with regard to the suggested recommendation was of rather a different kind from those which had been expressed by the various members who had addressed the Conference. The recommendation in question was one which had to be acted upon not by a Court but by a great number of groups differently constituted in different countries. He thought, therefore, that, even in passing a recommendation, the Conference ought to be sure that the recommendation would be understood. It had been said that the national groups would act upon it or not as they thought fit. Before deciding whether they would act on it or not he was sure that they would desire to know precisely what it meant. He himself had some difficulty in knowing what was meant by "recognised practical experience in international law". It appeared to assume that there was something that was universally recognised as practical experience. He did not quite know what that was.

Did it mean that if, for instance, a man had been a very distinguished professor of international law, but had not acted in an official capacity outside his academic work, that he would be excluded? Or, to take a case at the other extreme, a case which might present itself not at all uncommonly in Great Britain: the case of a man who had reached a very great eminence at the English Bar, the kind of man who might look for the highest judicial office in England. It might have devolved on him a few times in the course of his practice to be called on to advise clients in a matter involving a question of international law. He might occasionally have had to plead before the Courts in a matter which incidentally could, if it came before the Court of a particular country, be considered as a matter of international law. Was that type of experience in its turn to be regarded as "recognised practical experience in international law", or was it intended to exclude all those who had not been primarily engaged, in the course of their professional work, in handling international legal questions?

His remarks were not made in any controversial spirit; he personally was really in doubt as to what was intended.

M. BOTELLA (Spain) said that, without making any criticism or expressing any opinion, he would like to know the reasons which had led the Committee of Jurists to specify one of the qualifications judges should possess, without mentioning the others.

M. POLITIS (Greece) gathered from the remarks of the previous speakers that the intentions of the Committee of Jurists in putting forward its draft recommendation had not been properly understood.

It should not be forgotten that Article 2 still remained. That article enumerated the qualifications necessary under the present Statute. The Committee of Jurists did not propose any modification in that text. It had, however, been asked whether it would not be desirable to amplify it. A preliminary proposal had been put forward; but, after further consideration, the Committee decided that it would be preferable to leave the text as it stood, and invite the national committees to bear in mind not only the conditions laid down in Article 2—which still held good—but also to ascertain whether the candidates possessed recognised practical experience in international law.

The text of Article 2 merely said "recognised competence in international law." It was open to doubt whether the words "recognised competence" were sufficiently explicit to connote, beyond all doubt, both academic competence and practical experience.

The Norwegian, Swedish and Danish delegates had expressed an opinion that the word "competence" included both these things. But directly there was the slightest doubt on the point he thought there could be no objection to propounding, in the form of a recommendation, the idea that some did not think that the word "competence" included with sufficient clarity the idea of practical experience.

He thought it was the Danish delegate who had said that the execution of this recommendation might result in the exclusion of magistrates who had acquired their theoretical and practical knowledge of international law in the exercise of their judicial functions. On the contrary, several delegates, including himself, thought that such persons would be ideal candidates for the post of judge at the Permanent Court of International Justice.

But what was meant by "experience"? Where could the line be drawn and at what point could it be said that a person had had no experience? He thought it would be difficult to define such ideas with mathematical precision by means of words. But surely when it was said of a man that he was "experienced", everyone knew what was meant. When it was said that a man was fairly conversant with a certain subject that meant that he knew enough to express an opinion or undertake some work in that connection.

With regard to the case suggested by one of his colleagues, of an expert who had devoted his life to the study of law, but who had never had occasion to see at first hand how matters worked out in practice, there could be no doubt that book-knowledge was not always an adequate preparation for the realities of international life, and the questions which came up, and would come up before the Court in increasing numbers, were definitely practical problems. To solve those problems it was necessary to be acquainted, to a certain extent, with the value of the facts on which an opinion had to be given. He did not think the Committee had had any particular cases in view; it had merely been thought that there was some danger that theorists who lacked practical experience might make, he would not say bad judges, but judges not so good as those who combined practical experience with their academic knowledge.

With regard to the hypothesis of the practitioner who might aspire to the highest judicial office in his country and who had been called upon once or twice to deal with international questions, the point was, did that man possess practical experience? He could not say. If the person in question had only dealt with these problems as a passing phase, he could not be said to have practical experience. If, however, he had had to deal with them often—and in every country there were lawyers who specialised in international questions—M. Politis would say that that man had experience of international law and was consequently also competent from a scientific point of view.

In other words, no textual formula could supply an adequate answer to such questions. The Committee had thought that the expression in Article 2 "recognised competence in international law" called for amplification in the form of a recommendation. The national committees were invited to take certain points into consideration, and that was all.

The authors of the proposal had never intended to attack any particular category of individuals—indeed, there was no question of individuals at all. Their only aim was to improve, if possible, the composition of the highest international tribunal. They therefore thought that it would be well to indicate all the conditions that might contribute to the choice of the best candidates. That was the object they had in view in proposing that text to the Conference.

M. YOSHIDA (Japan) said that he was very grateful for the explanation given by the delegate for Greece. He had understood the matter in that sense. But, although Article 5 had been mentioned in the draft recommendation, there was no reference to Article 2. That had been the cause of his doubt.

He ventured to make another observation. The recommendation said: ". . . will request the national groups to satisfy themselves that the candidates . . ." The Greek delegate had explained that the Committee had decided not to include any further requirements than those embodied in Article 2. It seemed to him however that "a request to . . . satisfy themselves" was a kind of requirement. He would like to be enlightened on that point too if possible.

The PRESIDENT thought that this was a question of drafting.

If no one else wished to speak, he would like to revert to the question of procedure raised by M. Rolin. The Belgian delegate had said that the Conference should not trespass on the prerogatives of the Assembly. In this connection he would point out that the Conference had been obliged to do so on several occasions, and so had the Committee of Jurists in the case of the financial clauses, seeing that the Statute expressly provided for a resolution by the Assembly. He had come to the conclusion that it would be desirable to draft the texts in provisional form without further delay. Those texts might later take the form of an Assembly resolution or recommendation.

As had already been pointed out, the Assembly could vote a recommendation only; the decision itself would lie with the national groups. In that connection it would doubtless be desirable to adopt a slightly better wording than that of the original text, and M. Rolin had been good enough to make a new proposal which would be distributed later, but which he would doubtless be willing to read to the Conference immediately. The Conference would be asked to give its opinion after the text had been distributed.

M. ROLIN (Belgium) said that his only intention had been to emphasise the non-imperative character of the recommendation and to indicate the exact nature of such a resolution. The persons to whom he had shown it had not raised any objections to the text he was about to read, but the Conference would make up its mind when the text had been distributed.

In reply to M. Botella's remarks, he had pointed out that the Rapporteurs in no wise intended to supersede Article 2 of the Statute.

The text he proposed was as follows:

"The Conference recommends that, independently of the requirements laid down by Article 2 of the Statute of the Court, the candidates nominated by the national groups should possess recognised practical experience in international law and that they should be at least able to read both the official languages of the Court and to speak one of them; it also considers it desirable that to the nominations there should be attached a statement of the careers of the candidates showing them to possess the required qualifications.

“ The Conference decides to transmit this recommendation to the Assembly of the League of Nations in order that eventually it may be brought by the Secretary-General to the knowledge of the national groups.”

It was in the best interests of the signatory groups that they should know that, within the countries called upon to vote upon the merits of the candidates, there existed a definite opinion that certain qualities were, if not indispensable, at any rate desirable. Such was the precise scope of the recommendation.

The PRESIDENT said that the document would be typed in both languages if possible and that the Conference would then be called upon to vote.

M. BOTELLA (Spain) wished merely to inform M. Rolin that he had not forgotten the existence of Article 2 of the Statute. He noted, however, that Article 2 mentioned “ recognised competence in international law ”. As he held that practical experience was one of the conditions which determined such recognised competence, he had been curious to know why certain conditions had been mentioned and not others.

The PRESIDENT asked M. Botella whether he wished to go into that point further.

M. BOTELLA (Spain) replied in the negative. He had merely wished to explain his desire for enlightenment.

I. *Composition of the Court.*

The revised text of Article 3 was read as follows :

“ The Court shall consist of fifteen members.”

The PRESIDENT pointed out that the Conference had next to consider the first of the amendments which referred to the composition of the Court. On that point he would merely remind the Conference of M. Fromageot's statement on the previous day explaining that it would be desirable to abolish the post of deputy-judge and raise the number of ordinary judges to fifteen. The total number of judges would therefore remain the same.

In that connection, the representative of Portugal had raised a question to which a reply would certainly be given during the discussion.

M. RUNDSTEIN (Poland) said that the new wording of Article 3 of the Statute led him to offer a few observations. As the Conference was aware, the second paragraph of Article 3 had been omitted in order to avoid the risk of an exaggeration which might occur if the possibility of further increasing the number of members were maintained. For his part, he did not see any disadvantage in maintaining such a possibility, the right of increasing the number of members of the Court being reserved to the Council and the Assembly. It must not be forgotten that, in the fairly near future possibly, the duties of the Permanent Court might increase. There had been, he would remind his colleagues, a marked tendency to accept and apply the optional Clause. Moreover, the General Act prepared by the Assembly at its ninth session would not be without effect in extending the jurisdiction of the Court. The Court might then become overworked and, if international justice were not in a position to settle international disputes rapidly, it might lose some of its value. Consequently, steps would have to be taken to remedy such long delays and it might become necessary to revise the Statute once more. It would be tiresome to go over the same ground again and again.

To avoid the difficulty to which he had referred, the rights conferred on the Council of the Assembly under the existing Article 3 should be confirmed. He did not say that it would be advisable to fix a definite number of judges. The maximum number at present was twenty-one ; but, in order to obviate possible sources of friction, it might be desirable to accord full powers to the Council and the Assembly, and not mention a maximum number. It would be sufficient to adopt for paragraph 2 of Article 3 the following wording:

“ The number of judges may hereafter be increased by the Assembly upon the proposal of the Council of the League of Nations.”

In this way no maximum would be fixed.

He quite understood the serious disadvantage of having too many judges. There might also be financial difficulties. But, possibly, it might become necessary to increase the number of judges from fifteen to seventeen, and the slow and complicated procedure of revision would be avoided if the Council and the Assembly possessed the necessary power.

He wished to draw the attention of the Conference to the fact that paragraph 2 of Article 3 of the Statute had been drafted on the proposal of Mr. Root, who had been a member of the Committee of Jurists in 1920. Mr. Root had very wisely remarked that the number of judges would increase progressively in accordance with the new requirements of international justice.

That was why he proposed that paragraph 2 of Article 3 should be maintained without fixing any maximum.

M. CORNEJO (Peru) said he thought that the number of judges was a very essential point for a Court. To alter the number of the judges might be equivalent to altering the nature of the Court, which, instead of being a bench to lay down the law, would become a mere jury.

He thought it was a very good idea to abolish the post of deputy-judge and fix the number of judges at fifteen. Article 3 provided for fifteen judges and six deputy-judges, making twenty. That would depend on the number of cases the Court had to hear—and their importance. But he hoped that the Conference would definitely determine the number of judges, whether that number was fifteen or twenty. If the Council and the Assembly were allowed constantly to increase the number of judges according to circumstances, the position would cease to be compatible with the accepted opinion of such a tribunal as the Permanent Court of International Justice.

To sum up, experience had shown that it would be very desirable to abolish the post of deputy-judge. He also hoped that the Conference would, on the basis of the recommendation made by that great lawyer, Mr. Root, fix the number of judges definitely.

If, after technical enquiry, it was found that the number would have to be increased, a special conference could be summoned. But he did not think any general discretionary power should be accorded; he felt, indeed, that such discretionary power would not be in keeping with the dignity of the first international tribunal that had been set up.

M. RAESTAD (Norway) said he ventured to recommend that the Committee's draft should be adopted as it stood. He would only quote one of the reasons which militated in favour of following that course, namely, the share which, it was hoped, the United States of America would take in organising the Court. The reservations of the United States Senate did not mention any possible increase in the number of judges, and he thought it would not be very desirable to re-invest the Council and the Assembly with power to increase that number. There were other reasons besides, but he would merely mention that one.

M. DE BLANCK (Cuba) reminded the Conference that he had on the previous day stated the reasons for which his Government was opposed to increasing the number of judges. It had not been proved that the moment had come for such an increase; the work of the Court did not warrant so many judges as were proposed.

He thought, therefore, that the present text of Article 3 should not be modified. Everyone recognised not only the merits of the Court but that it had done its duty—which he knew that no one had criticised. And now it was wished to change the composition of the Court! M. de Blanck was in favour of maintaining Article 3 as it stood.

M. BRANDAO (Brazil) wished to ask one question. Was the Conference discussing the number fifteen, or the general desirability of increasing the number of judges?

The PRESIDENT replied that, if he had rightly understood the previous speakers, the Conference was not opposed to abolishing the post of deputy-judge. That was the main object of the change; as a result of the change the number of judges would remain the same—fifteen.

The only point on which the Conference was not yet agreed was whether the possibility of increasing the present number of judges should or should not be maintained. In that connection the Committee of Jurists, which had considered the matter, stated that there would be a risk of an exaggeration which might cause misconception if that possibility were maintained. His own opinion was that the fewer the judges the more efficient the Court. The Court could not work properly if there were too many judges, and that was why it had been said that fifteen was already a considerable number. Owing to other provisions which the Conference would consider subsequently and which occurred in Articles 23 and 25, the normal number of judges might be slightly decreased by the absence from time to time of certain members of the Court on leave and by other exemptions. It might therefore be said that, in practice, the actual number of judges would be about eleven.

He thought that in those circumstances the number should not be increased and that fifteen judges was already quite enough for a Court that must work efficiently.

Sir George FOSTER (Canada) said that, when the Court was instituted, it had been said that the expenditure for ten judges would be all that was necessary to maintain the Court in proper dignity and action. It had been said that there was no business to be done, and that it was problematical what amount of business would develop from year to year. It had been rather strongly objected in some countries that the League had gone ahead a little too rapidly, and that the expenditure in this respect had been perhaps greater than the necessities of the case demanded. It was an experimental affair. That experiment had lasted for ten years and, as far as he could gather, the Committee of Jurists had come to the conclusion that there was permanent work for a Court of Judges and that the development of that work had been such, during the past ten years, that it was quite possible to anticipate not a decrease, but an increase, for the ensuing period of years; but to what extent it would actually develop nobody, not even the members of the Committee of Jurists, could give a definite opinion.

The period of review had now arrived. The Committee of Jurists had reviewed the situation, the past procedure, the past accumulation of cases, the progress and nature of the business and the greater importance of the business from year to year—in fact, the whole situation, and had come to the conclusion that, at the present time, a survey of the field justified the appointment of fifteen judges, making all judges equal. He thought that it would be fair to follow the result of that investigation, in which he had no doubt the opinions of the judges then acting had been at the disposal of the Jurists' Committee.

It had been said that the United States might join the Court, and then there would be more cases. He hoped that would be so. His objection, however, to making the number of judges indefinite was that this would impose upon the Council and the Assembly every year of their existence a canvass for more judges. He had had a somewhat extensive experience in politics and there were Courts of Justice in Canada. He knew from experience that, if the provision in question had existed there so that the Council or Cabinet could increase the number of judges in the Supreme Court as they thought fit, there would have been ten times as many judges as now existed, and those judges would not have been fully employed. He wanted to avoid for the Council and the Assembly what would, he feared, be a persistent canvass. It might be said, "Here is another little State; it has done its duty, it has progressed, it is a real supporter of the League of Nations, but it has no judge on the Court. Put in a judge for it": Then another equally deserving little State would want a judge, too. If one State could have a judge, why could not another? Did not the Conference see that this would turn the Council and the Assembly into something very like a political machine? He did not want this.

Let the fifteen judges be appointed, and let them set to work. Then, if in the course of ten more years it became apparent that new rules were required owing to developments and that there should be some amendment to the Rules of the Court, and if the business in the Court became clogged, another review of the whole situation could be made and it would be possible to proceed in an orderly fashion and within certain bounds, for even the League of Nations could not be accorded an entirely free hand.

M. DE BLANCK (Cuba) pointed out that the Assembly already possessed the right of increasing the number of judges and had not up till then misused its power.

The PRESIDENT observed that he only had before him the printed text of the report. Did anyone propose an amendment to that text?

M. RUNDSTEIN (Poland) proposed to add to the text the following provision:

"The number of judges may hereafter be increased by the Assembly, upon the proposal of the Council of the League of Nations."

The PRESIDENT put this amendment to the vote.

The amendment was rejected.

The PRESIDENT then put to the vote the text of the Committee of Jurists.

M. DE BLANCK (Cuba) said he voted against that text.

The Committee's text was adopted.

2. Election of Judges.

The revised text of Article 8 was read as follows:

"The Assembly and the Council shall proceed independently of one another to elect the members of the Court."

The PRESIDENT pointed out that the change in this article was simply a result of the abolition of deputy-judges.

The revised text of Article 8 was adopted.

3. Resignation of a Judge.

The revised text of Article 13 with the addition of two new paragraphs at the end was read as follows:

"The members of the Court shall be elected for nine years.

"They may be re-elected.

"They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

"In the case of the resignation of a member of the Court the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations.

"This notification makes the place vacant."

The PRESIDENT did not think that the reasons for the change proposed by the Committee had been explained. He would therefore venture to ask either M. Fromageot or M. Politis to be good enough to indicate the reasons for adding two new paragraphs to that article.

M. POLITIS (Greece) said he thought the report set out the reasons which had led the Committee to propose the addition. The article provided for the case of the resignation of a judge, which was not provided for in the existing text of the Statute. The question had, however, arisen in practice and doubts had been felt as to the procedure to be adopted in such cases. The Committee had considered that it would be desirable to supply the omission and to take the view that, once a resignation had been transmitted to the League of Nations, it must be regarded as final; but that, nevertheless, the resignation should be transmitted to the League

by the President of the Court, in order that he might, if desirable, be able to satisfy himself that the decision of the judge concerned was irrevocable. Consequently the Committee had proposed to add to Article 13 the two paragraphs in question.

Sir William Harrison MOORE (Australia) thought that it might be necessary to insert two or three words in the last paragraph. In the last paragraph but one it was stated, "In the case of the Court for transmission to the Secretary-General of the League of Nations". This text indicated two acts, one to follow on the other. In the last paragraph it was said, "This notification makes the place vacant". Should it not be said that it was the notification to the Secretary-General which made the place vacant, and not the other?

M. POLITIS (Greece) suggested the text "This latter notification makes the place vacant".
The revised text of Article 13 thus modified was adopted.

4. *Filling of Occasional Vacancies.*

The revised text of Article 14 was read as follows :

"Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of the League of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Council at its next session."

The PRESIDENT observed that this modification was another lesson drawn from the experience of recent years. He thought it was a very wise and prudent proposal.

The revised text of Article 14 was adopted.

5. *New Article 15.*

The revised text of Article 15 was read as follows :

"A member of the Court elected to replace a member whose period of appointment has not expired will hold the appointment for the remainder of his predecessor's term."

The PRESIDENT explained that the former Article 15 disappeared and would be replaced by part of the former Article 14. That was merely a drafting question.

The revised text of Article 15 was adopted.

6. *Functions and Occupations Incompatible with Membership of the Court.*

The revised text of Article 16 was read as follows :

"The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

"Any doubt on this point is settled by the decision of the Court."

The PRESIDENT pointed out that this matter had been commented on very fully on the previous day by M. Fromageot in his general statement. The President reminded the Conference that the proposal was to add to the disabilities already defined in Article 16 of the Statute, which dealt with political and administrative functions, a proviso to the effect that judges must not engage in any other occupation of a professional nature.

M. DE BLANCK (Cuba) said he did not see why a judge should be prevented from being a professor in a university.

Eminent men should be useful to youth, to humanity. If it were desired that the Court should consist of officials of merit, excellent ones would be found in every country, but he did not think that this was what was desired. The Court should be composed of an *élite*.

Sir William Harrison MOORE (Australia) observed that he had also proposed to put the same question. It was not a matter in which he had any vested interest, because he had ceased to be a professor in a university; but, in the expression "political or administrative functions and other occupations of a professional nature", did they include academic and judicial positions?

M. FROMAGEOT (France) replied in the affirmative.

Sir William Harrison MOORE (Australia) said that he did not know whether the Committee of Jurists had taken into account the possibility of a judge engaging in a commercial or industrial occupation; for instance, by becoming the director of a public company or anything of that kind. It was a possibility which could not altogether be ruled out of account.

M. POLITIS (Greece) said that the object of the addition to Article 16 was to place the highest tribunal in the world on at least the same footing as national tribunals. It was not feasible that a man entrusted with such high and important responsibilities—which, it was hoped, would in the future absorb the whole of his time—could have any other occupation. Even if a judge had time to do so or his work left him a certain amount of leisure, there would be something incongruous in the fact that a person who might be called upon to give a decision in some international dispute was—owing to his practical duties as the director of a company or member of a board of directors, or even as the result of administrative functions in his

own country—indirectly involved in the dispute, not in the manner indicated further on, which was a case of special exclusion, but in a more general sense, or even if the judge were distracted from his work and had acquired other than judicial habits. That which was not permitted in national courts should *a fortiori* be prohibited in the International Court.

The question had been raised whether judges should also be precluded from engaging in academic duties. In so far as that meant occupying a post, he thought the prohibition should be maintained. For the reasons already stated, it would not be fitting that a member of the Court should be able to continue teaching in a university or in an academy where he had previously been professor. It might certainly be agreed that he should retain the title of professor as an honorary title: it might even be admitted that he should be accorded extended leave so that he might resume his professorial work when, his term of office coming to an end, he ceased to be a judge. But, so long as anyone was a member of the Permanent Court of International Justice, it was absolutely necessary, for the prestige of the Court and in the interests of justice, that he should devote his whole time and energy to his judicial functions.

Sir William Harrison MOORE (Australia) said that he was not advocating that a judge of the Court should be free to exercise any of the functions to which he had referred. He would strongly deprecate it, and he considered the work of the Court likely to be such as to occupy a judge's time fairly fully. But, in relation particularly to what he had asked as to taking part in business or assuming the directorate of any public company, he had in mind the possibility of positions which perhaps did not make any great call upon the judge's time and were not intended to make any great call upon that time; nevertheless, some industrial concerns might feel that the very nature of the judge's position and the distinction it implied made it desirable to have such a person on the directorate. It was no use, he thought, answering that possibility by saying that the distinction of the office itself would forbid a man lending his name or engaging in such occupations.

In Article 16, an attempt was being made to protect the Court from possible abuses, and the fact that provision of that kind was being made at all was an indication of the recognition of the Conference that undesirable, incompatible occupations were at any rate possible. He wondered whether, having gone so far in excluding occupations, in designating occupations which were inconsistent with the high office of Judge of the Court, the Committee ought not to have gone one degree further and mentioned the other matter as well.

The PRESIDENT thought that the text of the Article met all the points raised by Sir Harrison Moore. Doubtful cases were to be settled by the decision of the Court. Would that not meet his case?

Sir William Harrison MOORE (Australia) replied that he did not think so. If those points were enumerated which had been enumerated, and if the matter to which he had called attention were omitted, there could be no doubt that the Court would be obliged to say: "You are excluded from professions or occupations, but you are not excluded from becoming the director of a manufactory or a banking concern".

M. DE BLANCK (Cuba) proposed simply to say: "The members of the Court may not exercise any political function".

M. D'AVILA DE LIMA (Portugal) desired to know the opinion of the Rapporteur and the Conference on the question of an age-limit.

M. RAESTAD (Norway) said he agreed with Sir Harrison Moore's opinion. He did not think the fact of being a member of a board of directors could be regarded as constituting "an occupation of a professional nature". He thought it would be desirable to settle the point.

Sir William Harrison MOORE (Australia) asked whether the Conference would consider the insertion of the words "or business" after the word "professional", so that the phrase would run "nor engage in any other occupation of a professional or business nature". It might be a little difficult to render that in French.

The PRESIDENT replied that in French the term "*occupation professionnelle*" included business.

M. POLITIS (Greece) asked the President's permission to leave the question of an age-limit on one side for the time being. The Conference could return to that later. At the present time the point was to ascertain what was the meaning of the words "*occupation professionnelle*".

He noted with pleasure that his Australian and Norwegian colleagues agreed with him that a permanent occupation should constitute a disability, whether it were purely professional in the strict sense of the term or were some sort of business occupation, as suggested by his Australian colleague.

He suggested that the terminology had been very carefully considered by the Committee of Jurists. It had had the good fortune to include among its numbers both English-speaking and French-speaking members, and his English-speaking colleagues had been satisfied with the expression which, in their opinion, covered all the cases to which reference had been made. He did not think it necessary to add anything to the text. It would, however, be quite feasible to give an interpretation of the expression in the report which would accompany the resolutions. As the Court was to decide in cases of doubt, the explanations given in the report would make it possible for the Court to interpret the text in the exact manner the Conference desired.

The PRESIDENT thought that these explanations would doubtless satisfy the Conference.

Would M. Politis be good enough to give a few explanations concerning the question of the age-limit referred to by the delegate of Portugal ?

M. POLITIS (Greece) observed that, although the question had no connection with disabilities, he would willingly reply. That question might be linked up with the requisite conditions for election if an age-limit were regarded as a minimum or maximum limit below or above which no person could be nominated as a judge. But the expression "age-limit" might have another sense such as it ordinarily possessed in administrative or other careers, namely, that, when a person reached a certain age, he should cease to occupy his post and should be retired.

With regard to the first possibility, he thought that no special provision was necessary. If it were possible to discover young men who fulfilled all the requisite conditions for nomination as judges, and if those men obtained the approval of the Assembly or the Council, there could not be any possible disadvantage in their bringing to the Court, together with their competence and other qualifications, the ardour of their youth. Consequently, he did not think that there need be any question of age-limit from the point of view of elections.

Nor did he think it necessary to make provision now for exclusion owing to advanced age or to say that a man over 70, 75 or 80 years of age could not be elected. It was certain that, if there were any disadvantage, the electors would take that point into consideration. If the Assembly and the Council held that, in spite of the candidate's age, he should be appointed, it would probably be because his qualifications were so high that, even if he were only likely to be a member of the Court for a few years, those few years would nevertheless be of high value. From the point of view of election, therefore, he thought there was no need to provide for an age-limit one way or the other.

Should an age-limit be provided for retirement ? The Committee had not felt called upon to propose any rule in that respect. It had thought that, in an institution like the Court, for which it would be difficult to find properly qualified judges and in which experience would be acquired mainly in carrying out the high duties attendant on office, it would be both undesirable and contrary to the general interest that the Court should be deprived of the services of a judge because he had reached an advanced age. There, again, it had been possible to profit by experience. The Court had included among its members a distinguished English lawyer who had lived to the age of 84 and who had, up to the last minute, fulfilled his duties in a truly remarkable manner. At present, the Court still included a number of members of advanced age, nearly 80 years old, who, according to all accounts, met with their colleagues' unqualified approval.

He did not therefore think it would be desirable to lay down any strict rule which might exclude a magistrate who, though aged, was still able to render service to the Court. Article 18 of the existing Statute made provision for the possibility of a judge being unable to fulfil his duties. That article was worded :

"A member of the Court cannot be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions."

That clause might cover the case of old age when old age resulted in such a weakening of the faculties that the person in question was no longer capable of fulfilling the duties entrusted to him. The precautions which the authors of the 1920 Statute had taken should be noted. The other members of the Court had to be unanimous ; in other words the case would have to be absolutely clear. It would have to be absolutely obvious that the person in question was thenceforth quite unable to fulfil his duties. M. Politis thought that that guarantee was sufficient and that it was unnecessary to go any further. If the Conference went further, it would have to lay down a rule ; the rule would be rigid and would assuredly possess more disadvantages than advantages.

The PRESIDENT observed that the Conference had received a very definite amendment from the Cuban delegation, to the effect that disqualifications should not be increased but decreased. It would first of all have to take a decision on that amendment, which had a very wide bearing on the question. The Cuban delegation proposed that the first paragraph of Article 16 should be worded as follows :

"The members of the Court may not exercise any political function."

M. POLITIS (Greece) said that, unless he was mistaken, the effect of this proposal would be to abolish the disability to exercise an administrative function, as at present specified in the Statute. Would it be indiscreet to ask what were the reasons for putting forward such an amendment ?

M. DE BLANCK (Cuba) replied that he had merely been instructed to propose the amendment.

M. POLITIS (Greece) asked that mention should be made in the Minutes of the fact that the amendment had been put forward without any statement of reasons.

The vote was then taken on the Cuban proposal.

The Cuban proposal was rejected.

The PRESIDENT asked whether that vote meant that the Conference agreed to adopt Article 16 on the understanding that the words "occupation of a professional nature" were to be interpreted in the widest sense ; that was to say, to cover, for example, such an activity as being director of a company.

The revised text of Article 16 was adopted subject to the explanation of the President.

7. Article 17.

The revised text of Article 17 was read as follows :

“ No member of the Court may act as agent, counsel or advocate in any case of an international nature.

“ No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

“ Any doubt on this point is settled by the decision of the Court.”

Sir William Harrison MOORE (Australia) said that he was sorry to have to intervene again but as regards the first paragraph of Article 17 his Government was, in the first place, not satisfied that it was necessary in view of the provisions of Article 16 ; and, in the second place, it considered that if it were inserted it would, in spite of what was said in the report, raise the implication—which his Government desired to avoid—that members of the Court might act as agents, counsel or advocates in a case of a national character. Briefly, his Government considered that this paragraph was superfluous. He was aware of the discussion which had taken place in the Committee of Jurists on the subject. He simply brought the matter forward to see if there were any opinions on it.

The PRESIDENT asked whether satisfaction would be given to the Australian delegate if the words “ of an international nature ” were deleted.

Sir William Harrison MOORE (Australia) said he would have preferred to have the paragraph deleted altogether, but in a spirit of conciliation he would accept the President's suggestion.

The PRESIDENT thanked the Australian delegate, and added that if no further observations were forthcoming he would regard the proposal of the Committee of Jurists as adopted.

The revised text of Article 17 was adopted with the omission of the words “ of an international nature ”.

(The meeting rose at 6.45 p.m.)

FOURTH MEETING (PUBLIC).

Held on Friday, September 6th, 1929, at 4 p.m.

President: Jonkheer W. J. M. VAN EYSINGA.

12. Revision of the Statute of the Permanent Court of International Justice (continuation).

Amendment Proposed by M. Rolin to the Text of the Recommendation proposed by the Committee of Jurists.

The PRESIDENT opened the discussion on M. Rolin's amendment to the text of the recommendation made by the Committee of Jurists (see Annex 2, document A.9.1929.V).

The revised text of the recommendation read as follows :

“ The Conference recommends that, independently of the requirements laid down by Article 2 of the Statute of the Court, the candidates nominated by the national groups should possess recognised practical experience in international law and that they should be at least able to read both the official languages of the Court and to speak one of them ; it also considers it desirable that to the nominations there should be attached a statement of the careers of the candidates showing them to possess the required qualifications.

“ The Conference decides to transmit this recommendation to the Assembly of the League of Nations in order that eventually it may be brought by the Secretary-General to the knowledge of the national groups.”

M. YOSHIDA (Japan) said that the Conference had heard on the previous day an explanation of the meaning of “ required qualifications ”. He still thought, however, that the point was not quite clear. To make the recommendation absolutely clear he proposed that the words “ to possess the required qualifications ” should be replaced by the words “ the qualifications required by the above-mentioned article ”.

Prince VARNAIDYA (Siam) observed that the qualification that candidates should possess recognised practical experience was not a new qualification, but was one to which particular attention should be called. In other words it was one of the qualifications included in the term “ competence ” which already existed in Article 2. The use of the words “ independently of the requirements ”, would not, he thought, be in keeping with the explanation given on the previous day. He would like some information on that point. He would suggest some such text as “ having regard to ” or even “ in expansion of ”.

M. RÆSTAD (Norway) said he had no doubt that the text proposed by M. Rolin was an improvement from the technical point of view. It did not, however, take into account the objections which he (M. Ræstad) had submitted to the Conference on the previous day.

He entirely agreed with the Siamese delegate's remarks. Obviously, the practical experience referred to in the amendment was not a condition independent of competence in international law. As the Spanish delegate had pointed out on the previous day, practical experience was one of the conditions or sources of competence in international law. The word "independently", at any rate, was therefore unsuitable.

He wished to remind the Conference that the whole point of his Government's objection was that it should avoid laying undue emphasis on any one condition or source of competence in the matter of international law, to the detriment of other conditions or sources. Mr. Root's name had been mentioned on several occasions in the course of the discussions. He would therefore remind the Conference that, in the summer of 1920, at the Hague Conference, when defining the essential qualifications for a judge of the Permanent Court of International Justice, Mr. Root had stated that, in his opinion, "the most important question was that of the means by which it would be possible to obtain judges with great judicial experience, who were in the habit of thinking judicially, and who possessed that broadmindedness which experience alone could bring. The experience gained in courts such as those, for instance, in which Mr. Loder and Lord Phillimore sat would be a most admirable qualification for the position of an international judge".

It would be a great pity to make any addition to the qualification specified in the Statute, an addition which, by laying emphasis on one single qualification, would overshadow certain other conditions which were of capital importance.

In the second place, he thought that a recommendation was out of place in that connection. In point of fact, who would make the recommendation? The Governments met together in conference? To whom would the recommendation be addressed? To the national arbitration groups at The Hague—to persons nominated by the Governments? As far back as 1920 one of the principles which had been admitted was that Governments should have no hand in the preparation of the lists of candidates. It might, of course, be argued that a recommendation made by a conference was not comparable with direct Government action. Nevertheless it was action of a sort.

Mr. Root had shared that view in 1920. He had also thought that the Governments would have their word to say when the Council and Assembly took their decision on the choice of judges. It would be prudent to leave the matter there.

Finally, if the Conference made the recommendation there and then, the United States would not be a party thereto. The recommendation would have been made by a body, a gathering of Government representatives, at which no representative of the United States of America was present. Who would then adopt the recommendation? The Assembly, where, also, the United States was not represented? To whom would the recommendation be addressed? To certain persons, among others, nominated by the United States? Was it really worth while creating such useless complications? Whatever the Conference did it would arrive at the same result as in 1920—the conclusion that, if it sought to define "competence in international law", it would soon find itself in a state of confusion.

M. FROMAGEOT (France) said that some had held that the words "recognised competence in international law" implied experience, while others did not. It would apparently be sufficient to say that recognised competence implied experience.

The PRESIDENT said he also thought that a slight modification on those lines would satisfy critics.

There would also be the small amendment proposed by the Japanese delegate.

M. POLITIS (Greece) declared that the proposed recommendation, namely, that the candidates should possess practical experience and some acquaintance with the languages, expressed an idea which was already implied in the present Statute.

The Conference would merely be interpreting Article 2 by stating that, in accordance with the spirit of that article, candidates should possess practical experience in international law. The same applied to the languages. Article 39 of the Statute provided that the Court should have two official languages. The judges of the Court were therefore bound to be, to a certain extent, acquainted with those languages. They must, as had been pointed out, be able to read both languages and have a practical working knowledge of at least one.

The Conference would therefore be within the limits of the interpretation of the existing Statute if it said: "The Conference recommends that, in conformity with the spirit of Articles 2 and 39 of the Statute of the Court, candidates nominated should, etc."

In order to meet the view expressed by the Japanese delegate the words "showing them to possess the required qualifications" might be replaced by the words "in support of their candidature".

M. ROLIN (Belgium) stated that he accepted M. Politis' two proposals.

He would simply say one word in reply to M. Raestad, who had asked whether the Conference could, in the absence of the United States, make a recommendation on behalf of the States signatories. The recommendation was of some importance, and there should be no doubt as to its nature. It was being made in the name of the Conference. Diplomatic conferences were entitled to give such opinions. Nobody could be offended if the Conference expressed the opinion or recommendation that Article 2 of the Statute should be interpreted in the manner indicated.

M. PILOTTI (Italy) asked whether the word "recommends" was the most suitable. According to M. Politis, the recommendation was merely interpreting Articles 2 and 39 of the

Statute. If that were so why not say : " The Conference is of opinion that, in conformity with Articles 2 and 39 of the Statute of the Court, the candidates nominated by the national groups should, etc." ?

M. RAESTAD (Norway) said he did not quite see how the amendment suggested by M. Fromageot could improve the situation. The whole gist of the objection was that one point was emphasised to the obscuring of others. If it were expressly stated that the words of the Statute implied one thing, other things would be relegated to obscurity.

The national arbitration groups at The Hague knew—or if they did not know it before they would learn it on reading the Minutes of the Conference's discussions—that practical experience was one of the elements of competence. It was not necessary to state the fact in writing. By so doing a misunderstanding might be created.

He had never meant to say that the Conference could not make a recommendation, but he held that the situation was somewhat complicated by the fact that the recommendation would be transmitted to the national groups, including the group of the United States, whereas the United States Government would not have participated in the making of the reservation. That was perhaps not a very serious point. But why should such complications be created when it was possible to avoid them ?

M. ROLIN (Belgium) suggested that the discussion might be concluded, for the question was not of sufficient importance to warrant an indefinite prolongation of the debate.

He wished, however, to reply to M. Politis. He did not think that the expression " recommends " should be altered. The Conference was not giving an authoritative and binding interpretation ; it was merely expressing a recommendation that the articles, or rather the spirit of the articles—he would emphasise that word in M. Politis' new draft—should be interpreted in the manner indicated by the Conference. It was expressing a wish to be communicated to the national groups, a wish interpreting, as had not previously been the case, Articles 2 and 39 of the Statute. It was expressing a recommendation by saying : " In conformity with the spirit of these articles . . . "

Replying to M. Raestad, he added that, the expression being of a personal nature, and Mr. Root having participated in the work of the Committee and the drafting of that recommendation, nobody could be offended if the Conference confirmed it. The words " required qualifications " having been omitted, the Conference could not seem to be imposing, through the Secretariat, any given interpretation on the national groups. It was not making it obligatory for the latter to give information, in particular, with regard to the linguistic abilities and practical experience in international law possessed by the candidates. Indeed, it no longer said that it regarded these qualifications as requisite ; but, since it asked for a general statement of the careers of the candidates which justified their candidature, it was expressing a hope that the said qualifications would include practical experience and a knowledge of the languages.

If the national groups accepted this invitation, the statement of careers would include indications on that point. If not, nominations might be made without any statement of career and they would still be perfectly valid. Or they might include statements of career without any reference to Articles 2 and 39, in which case they would still be equally valid.

He thought that such was the juridical nature of the conclusions which the Conference was asked to adopt, and that it could adopt them without any fear of exceeding its powers.

The PRESIDENT agreed that the matter had in all probability been sufficiently discussed. If M. Pilotti did not insist further, a vote might be taken, if a vote were necessary.

M. RAESTAD (Norway) asked that a vote should be taken in order that he might have an opportunity of voting against the motion.

The recommendation was adopted, with the modifications proposed by M. Politis, the Danish, Norwegian and Swedish delegations voting against.

8. *Permanent Functioning of the Court.*

The revised text of Article 23 was read as follows :

" The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court at the end of each year for the following year.

" Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years.

" Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court."

The PRESIDENT pointed out that the new text of Article 23 had been explained by M. Fromageot very clearly at an earlier meeting. He therefore did not think it necessary to give any further explanations and he invited the members of the Conference to submit their views.

M. CHAO-CHU WU (China) pointed out that the latter part of the first paragraph of Article 23 said, in regard to the vacations, that the dates and duration were to be fixed by the Court at the end of each year for the following year. Did that refer to the calendar or to the judicial year ?

In the second place, and that was perhaps the more important point, why should the judicial vacations be fixed from year to year and not made permanent? As he understood it, the whole purpose of the change was the idea of permanency. He therefore thought that the judicial vacations should be fixed, and only changed in exceptional circumstances. He was considering particularly the case of countries like his own which were very distant from The Hague. In the preparation of cases for submission to the Court, it was very important sometimes to know exactly when the Court would be in session and when it would be on vacations from year to year.

M. RAESTAD (Norway) observed that his country had submitted an observation in connection with the same paragraph, but in the opposite sense to that of the Chinese delegate. His country thought that it might very well prove impossible to foresee the division of the Court's work for the ensuing year. There might be a great deal to do in one term and much less work in another term. It was for this reason that it had suggested the omission of the words "at the end of each year for the following year". The sentence would then run: "The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court". Such wording would allow greater freedom, even in the sense referred to by the delegate of China.

He did not wish to make a proposal but merely to draw the Conference's attention to the point. He thought the last words of the first paragraph might be omitted.

Sir William Ewart GREAVES (India) said he would like to offer one suggestion for the consideration of the Conference. He, too, like the honourable delegate for China, represented a country situated at a great distance from The Hague, and he wondered whether it would not be possible to add at the end of the second paragraph of Article 23: "the time taken in travelling from The Hague to their homes by the quickest route". In other words, whether it would not be possible, with regard to the six months' leave which anyone who lived at more than five days' distance from The Hague was entitled to take every three years, to add the time of journeying from The Hague by the quickest route to that person's home.

He hoped the day would come when an Indian would be invited to sit on the Court at The Hague, when an Indian judge would be appointed for nine years. He would be entitled every three years to six months' vacation; in other words, he would be expatriated from India for nine years and would be entitled to eighteen months' leave during that period. But much of that time would be taken up in travelling from The Hague to any of the large centres in India from which such a judge would be chosen, and the six months' leave would be a good deal shortened if he were not granted the additional time necessary for travelling from The Hague to his home and back. The position was even more serious in the case of some other countries, for instance, New Zealand and Australia, and he supposed many of the South American States.

If his proposal commended itself to the Conference, it might be possible to add something to the second paragraph of Article 23, such as: "and to such additional leave as shall represent the time taken in proceeding by the quickest route from The Hague to their homes".

Of course the day was coming, he supposed, when travelling by air to all parts of the world would be feasible, in which case people would not have to spend much time travelling. But matters had to be taken as they were at present, and he suggested—he did not want to press it on his colleagues—that the Conference might consider, in the interests of those who might be appointed from distant parts of the world, whether it would be possible to give an additional consideration so far as leave was concerned.

Sir Cecil HURST (British Empire) remarked that he had intended to say a word with reference to the point raised by his Chinese colleague. He thought the point was a good one and that the wording as at present proposed was not the best. He ventured to suggest, as an alternative: "the dates and duration of which shall be fixed in the Rules of Court". He thought this text was a compromise between the two suggestions that had been made.

There was the following advantage in fixing the dates and duration of the vacation in the Rules of Court. The Rules of Court were printed in the volume that contained the Statute. It was, however, desirable for the practitioners and Governments who would be concerned with the preparation of cases that were coming before the Court that all the world should know the exact period and dates of the vacation. If the vacation were merely fixed by the Court, it would be published only in some separate document which it might not be so easy to see. If the text were included in the Rules of Court, it would be there for all the world to see. He thought this procedure better than including the text in the Statute; this would mean that no change could be made without the elaborate process of a new Protocol which would have to be ratified by all the States. In the existing Statute which provided that the Court should meet on June 15th, there was a provision to the effect that that date could be changed by the Rules of Court. The addition of the words "Rules of Court" would mean that the text was being kept within the original framework of the Statute. His colleague, M. Wu, had authorised him to state that he would be content with that change.

The PRESIDENT was very glad to hear that the Chinese delegate was prepared to accept the compromise suggested by Sir Cecil Hurst. Was M. Raestad of the same opinion?

Mr. RAESTAD (Norway) replied that he was.

M. POLITIS (Greece) thought that at that juncture in the discussion it was no longer necessary to reply to the Chinese delegate's question concerning the reasons for which the Committee had proposed the new draft. He thought the Conference would agree not to insert in the Statute either the date or the duration of the vacation and would leave the Court to fix both.

The only remaining difference of opinion was whether a definite provision should be inserted in the Rules of Court or whether the Court should be allowed greater freedom and enabled to fix for itself, whenever it thought necessary, the period of its vacation.

A decision in the Rules would certainly have some advantages, but it would also have certain disadvantages. Sir Cecil Hurst had pointed out the advantages. One of the disadvantages would be that the Rules could not easily be modified. A discussion on an alteration in the Rules might last for a long time, and any further change would lead to further discussion. In a period of nine years, the Court had only made two alterations in its original Rules.

He hoped that the business of the Court would continually increase. If at the present time the Court were able to accord itself a fairly long vacation either in the summer or at Christmas or Easter, a few years hence it might have so much work to do that it would be obliged to shorten its vacations. Possibly, also, experience might show that many of the Governments which would be its clients would prefer the summer to the winter period.

It would be very difficult to include a decision on that point not only in the Statute, on account of its immutability, but even in the Rules of Court, which themselves were not easy to alter. Possibly, before its vacation began each year, the Court might indicate the programme of its work for the following year. The question still remained as to how the Governments could be informed. He thought that would not be difficult. The decision would be public and would be reproduced in the Press, without prejudice of course, to the various forms of official notification.

He therefore proposed that the last words of the first paragraph of the new Article 23 should be omitted. The article would then read: "The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court".

The PRESIDENT pointed out that, in practice, M. Politis' proposal and that of Sir Cecil Hurst would produce almost the same result. If it were decided that leave should be determined in the Rules, it would probably be arranged that there should be included in the Rules a general provision including the possibility of allowing for exceptions if the number of cases to be heard was too great or concentrated in some particular period of the year. On the other hand, if the text proposed by M. Politis were adopted, it would not constitute an obstacle, since the reference to the Court was to be taken in its widest sense. In those circumstances, he ventured to ask Sir Cecil Hurst whether he could agree to M. Politis' text, which would lead to practically the same result as his own.

Sir Cecil HURST (British Empire) said that, if that was the general opinion, he was prepared to accept M. Politis' suggestion. It was M. Wu, however, who had raised the point, and he hoped that, if he withdrew his amendment, it would be with M. Wu's concurrence.

M. CHAO-CHU WU (China) confessed that, when making up his mind on the point, he had thought his objection could be removed by omitting the last few words, namely, by adopting the formula endorsed by the President. But Sir Cecil Hurst had, in conversation, persuaded him to adopt his own point of view. However, he quite agreed that there was really not much difference between the two formulæ, and, if the majority of his colleagues thought M. Politis' formula the best, he was ready to accept it, particularly as it was his original suggestion.

The first paragraph of the revised text of Article 23, as amended by M. Politis, was adopted.

M. POLITIS (Greece) thought that the observation made by the delegate of India merited careful consideration. His suggestion might be met by slightly re-drafting the text of paragraph 2; it read:

"Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years, not including the time spent in travelling."

The PRESIDENT asked whether Sir William Greaves could agree to that text.

Sir William Ewart GREAVES (India) said that he could.

The PRESIDENT observed that everyone agreed to state that the duration of the journey would be the normal duration as specified in the second paragraph of the revised text.

The revised text of Paragraph 2 of Article 23, as amended by M. Politis, was adopted.

M. BOTELLA (Spain) said that, in order to avoid any misunderstanding, he thought it necessary to have an official interpretation of the exact meaning of the article. It was stated that "the Court shall remain permanently in session". Did that mean that all the members of the Court would be obliged to have their residence at The Hague? Or might they remain at home awaiting a summons to attend the Court?

M. POLITIS (Greece) explained that, when it was stated that the Court should remain permanently in session and its members should be permanently at the disposal of the Court,

unless on regular leave, that meant that, if they foresaw there would be no business, they might leave The Hague. But they might only do so if they were absolutely certain that there would be no business during their contemplated absence, and if they did not go too far away, so that the President might recall them by telegram if he desired their presence.

When the draft had been prepared, an endeavour had been made to indicate a minimum —namely, that a judge must be at The Hague forty-eight hours after the President had summoned him. But, on reflection, it had been decided that it was impossible to fix too rigid a period. That a judge should be three days' journey away, from The Hague, for instance, would not be inadmissible. The judge must be at the disposal of the Court when the latter called upon him. But that did not imply compulsory residence at The Hague when there was nothing to do.

M. BOTELLA (Spain) said that the explanation given was satisfactory. He regretted, however, that the only result of that explanation for members of the Court whose homes were not quite near The Hague would be that they would have to stop at The Hague.

M. OSUSKY (Czechoslovakia) said that even further explanations than those just given by M. Politis would be found in paragraph 2. Provision was made for special leave for those whose homes were situated at more than five days' normal journey from The Hague. It might be deduced from that that judges whose homes were situated at a distance of less than five days' journey might go home practically whenever they liked.

The PRESIDENT asked, in connection with paragraph 3, what was meant exactly by "regular leave".

M. FROMAGEOT (France) said that this was leave accorded in the regular course of events. It meant "ordinary" leave as opposed to "extraordinary" leave.

The PRESIDENT asked whether judges might be summoned during the judicial vacations.

M. FROMAGEOT (France) said that the regular leave might be six months; but there might also be sick leave. Judicial vacations were not leave, and quite possibly during those vacations the Court might be called upon to give an advisory opinion on an urgent matter or have an urgent case laid before it. It would then be the duty of the judges to be present. The Court must be permanently at the disposal of the Governments. It was impossible to foresee what political or other circumstances might arise. At any moment the Court might be called upon to lend its services, pacify a dispute, or give an urgent opinion to the Council. It was to be hoped that the Court would thenceforth work on those lines, so that, in the future, months would not elapse before the Court could be convened.

The revised text of Article 23 as amended was adopted, the Cuban delegate voting against.

9. *Manner of forming the Court.*

The revised text of Article 25 was read as follows :

"The full Court shall sit except when it is expressly provided otherwise.

"Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

"Provided always that a quorum of nine judges shall suffice to constitute the Court."

The PRESIDENT observed that the revised text of Article 23 foreshadowed the possibility of the judges not all being present, and that the number eleven would be a normal number. On Mr. Root's proposal, the principle had been introduced that one or more judges might be dispensed from sitting, in order to prepare other cases. Thus the quorum of nine was reached. That was the reply to the question raised on the previous day by the Portuguese delegate.

The revised text of Article 25 was adopted.

10 and 11. *Special Chambers for Labour Cases and for Transit and Communications Cases.*

The revised texts of Articles 26 and 27 were read as follows :

Article 26. — "Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions :

"The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases, the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

"The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of 'Assessors for Labour Cases', composed

of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers and, as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding articles of the other Treaties of Peace.

“ Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present article, if the parties so request.

“ In Labour cases, the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.”

Article 27. — “ Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions :

“ The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

“ The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of ‘ Assessors for Transit and Communications Cases ’, composed of two persons nominated by each Member of the League of Nations.

“ Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present article, if the parties so request.”

M. D'AVILA DE LIMA (Portugal) said he did not wish to interfere with the structure of the report of the Committee of Jurists, but there was a point on which he wished to consult the Conference or the Rapporteur. He referred to the *ex-officio* intervention of the International Labour Office, which Office was authorised to acquaint itself with all the documents of the case. Those who had court experience were aware that in ordinary courts the calling of experts was never compulsory, but was left to the judge's discretion. In the present case, he thought it would also be preferable to say that the Court *might consult* the International Labour Office whenever it deemed such a course necessary.

M. COHN (Denmark) said that, without wishing to amend Article 27, he would like to put forward a recommendation which might perhaps be taken into consideration at some future date.

The Danish Government would have preferred the abolition of the special Chamber, for transit and communications cases referred to in Article 27. This Chamber had never sat up to the present, and the Danish Government would prefer that there should be constituted in its place a special Chamber for international commercial disputes ; for instance, questions connected with the most-favoured-nation clause, dumping, etc. Those questions were daily becoming more important. Such a Chamber would be of great use in guiding the trend of these affairs.

It was the custom of the Danish Government to insert as far as possible in all its commercial treaties a clause stipulating that the Permanent Court had jurisdiction, not only as regarded the interpretation, but also as regarded the execution of treaties and conventions.

M. POLITIS (Greece) pointed out to the Portuguese delegate that the Committee of Jurists had not in any way touched the existing provision in the Statute concerning the part to be played by the International Labour Office. It had thought that that was a minimum which might be maintained, since far wider claims had been submitted by the International Labour Office, claims which the Committee had not thought it advisable to admit. If the article in question were modified in any way without very imperative reasons, enormous difficulties would be encountered. It would consequently be wiser to leave the text as it stood.

The revised text of Articles 26 and 27 was adopted.

12. Chamber for Summary Procedure.

The revised text of Article 29 was adopted as follows :

“ With a view to the speedy dispatch of business, the Court shall form annually a Chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit.”

13. National Judges.

The revised text of Article 31 was read as follows :

“ Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

“ If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably

from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

“ If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to select a judge as provided in the preceding paragraph.

“ The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

“ Should there be several parties in the same interest, they shall for the purpose of the preceding provisions be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

“ Judges selected as laid down in paragraphs 2, 3 and 4 of this article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of this Statute. They shall take part in the decision on terms of complete equality with their colleagues.”

The PRESIDENT observed that the Conference had read the reasons for which it was considered undesirable to reconsider the question of national judges. The Committee had maintained the existing provisions and had inserted a paragraph stating that the system also applied to the special Chambers.

M. COHN (Denmark) said that he had a short observation to offer with regard to this article. It was agreed that the object of the work of the Conference was not to change the essential structure of the Permanent Court of International Justice, but only to make such amendments as had been shown by experience to be necessary or desirable.

The Danish Government adhered to the drafts prepared by the Committee of Jurists with regard to the new Article 31. That did not mean, however, that the question was one for which a different solution could not be contemplated. He did not maintain the view that it would be desirable entirely to forego the co-operation of national judges. He was aware that more or less decisive arguments could be invoked in favour of such co-operation. But if it were desired to maintain the provision, the two parties to the dispute should be placed on an equal footing.

It could hardly be denied that a State which had a representative of its own nationality among the permanent members of the Court was in a much more advantageous position than the State which had appointed a national judge for an isolated case only. The latter's representative could not immediately acquire the same authority and influence in the Court nor be so fully acquainted with the Court's procedure. It would, therefore, perhaps be a more satisfactory system if the two parties to the dispute could appoint a national judge in each case, the permanent member, a national of one of the two parties, retiring from the Bench during the consideration of the dispute in question. That would only be a further application of the rule laid down in Article 31, paragraph 3, of the Statute with a view to ensuring absolute equality as between the parties to the dispute.

The PRESIDENT observed that the Danish delegate's statement would appear in the Minutes.

The revised text of Article 31 was adopted.

14. Salaries of Judges.

The revised text of Article 32 was read as follows :

“ The members of the Court shall receive an annual salary.

“ The President shall receive a special annual allowance.

“ The Vice-President shall receive a special allowance for every day on which he acts as President.

“ The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

“ These salaries, allowances and indemnities shall be fixed by the Assembly of the League of Nations on the proposal of the Council. They may not be decreased during the term of office

“ The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court.

“ Regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.

“ The above salaries, indemnities and allowances shall be free of all taxation.”

The PRESIDENT observed that this question was one to which M. Fromageot had already referred in his statement. All the members of the Conference were aware of the present system. That system had been modified as the result of amendments to previous articles. He did not think it would be necessary to call for a statement of the reasons for which the new text of Article 32 had been proposed.

The revised text of Article 32 was adopted.

The PRESIDENT thought that the Conference would agree that the question of the application of Article 32, in particular the Assembly resolution which would be necessary in a matter

connected with credits, should be dealt with by the Assembly itself—in the Fourth Committee in the first instance.

M. OSUSKY (Czechoslovakia) pointed out that the Council had, at its Madrid session, referred the question to the Supervisory Commission. The latter had prepared a report which would be submitted to the Assembly.

M. POLITIS (Greece) asked whether the report was favourable.

M. OSUSKY (Czechoslovakia) replied that it was.

The PRESIDENT added that certain rules had been adopted with regard to details.

M. OSUSKY (Czechoslovakia) said that the Commission had proposed that the Assembly should adopt the system, but that certain details had had to be brought into line with it.

15. *Contributions of States not Members of the League of Nations.*

The PRESIDENT pointed out that no modification was proposed to Article 35. He thought the Conference would accept the reasons put forward by the Committee of Jurists.

Agreed.

16. *Amendment to No. 4 of Article 38.*

The PRESIDENT said that there was only a small drafting change in the French text of No. 4 of Article 38, which read as follows :

“ Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit.”

The words “ *différentes nations* ” having been omitted from the French text, it was proposed that they should be re-inserted in order to bring that text into line with the English text.

The revised French text of No. 4 of Article 38 was adopted.

17. *Procedure.*

The revised text of Article 39, paragraph 3, was read as follows :

“ The Court may, at the request of any party, authorise a language other than French or English to be used.”

The PRESIDENT observed that in this case also a slight change had been inserted which was intended to make it quite clear that the Court could, at the request of any one party, authorise a language other than French or English to be used.

He thought that that was already the admitted procedure of the Court.

The revised text of Article 39, paragraph 3, was adopted.

18. *Communication of Applications.*

The revised text of Article 40, paragraph 3, was read as follows :

“ He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court.”

The PRESIDENT said the proposal was to add to Article 40—which defined the manner in which disputes were laid before the Court—that the States entitled to appear before the Court should also be notified.

The revised text of Article 40, paragraph 3, was adopted.

19. *Direction of the Hearing.*

The revised text of Article 45 was read as follows :

“ The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President ; if neither is able to preside, the senior judge shall preside.”

The PRESIDENT pointed out that, in the present case, the proposal was to make an alteration in the English text of Article 45 to bring it into line with the French text.

The revised English text of Article 45 was adopted.

20. *Advisory opinions.*

The new Articles 65, 66, 67 and 68 were read as follows :

Article 65. — “ Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the Assembly or the President of the Council of the League of Nations, or by the Secretary-General of the League under instructions from the Assembly or the Council.

“ The request shall contain an exact statement of the question upon which an opinion is required and shall be accompanied by all documents likely to throw light upon the question.”

Article 66. — “ 1. The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

“ The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

“ Should any State or Member referred to in the first paragraph have failed to receive the communication specified above, such State or Member may express a desire to submit a written statement, or to be heard ; and the Court will decide.

“ 2. States or Members having presented written or oral statements or both shall be admitted to comment on the statements made by other States or Members in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statement to States or Members having submitted similar statements.”

Article 67. — “ The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States and Members of the League immediately concerned.”

Article 68. — “ In the exercise of its advisory functions, the Court shall apply Articles 65, 66 and 67. It shall further be guided by the provisions of the preceding chapters of this Statute to the extent to which it recognises them to be applicable to the case.”

The PRESIDENT said that it was necessary to supply another slight omission in the Statute. The existing Statute contained no reference to an extremely important part of the Court's work, namely, the giving of advisory opinions. Thus Article 14 of the Covenant was the only rule applying to that matter. The aim of the new Articles 65, 66, 67 and 68 was, so to speak, to consecrate the usage which had grown by introducing into the Statute a number of very important articles which the Court had found itself obliged to include in its Rules. There was a final provision to the effect that, in addition to the proposed articles, the Court should be guided by other articles of the Statute in connection with advisory opinions. He ventured to draw the attention to the letter sent by the Director of the International Labour Office to the Secretary-General of the League (Annex 7).

M. FROMAGEOT (France) asked to make a statement with regard to that document. The Conference would doubtless remember that Article 73 of the Rules of Court laid down that, in the matter of advisory opinions, the request should be communicated to all the Members of the League, to all States entitled to appear before the Court and to certain international organisations.

Those words were not to be found in the new text of Article 66. Rightly or wrongly, they had been deliberately omitted as a result of the observations submitted to the Committee by the President and Vice-President of the Court of Justice. The existing formula had seemed to be too comprehensive and liable to produce misunderstandings. Since, however, the International Labour Office might come to be disregarded, the Director of that Office had expressed his criticisms in the document to which the President of the Conference had just referred. The Director had drawn the attention of the Committee to the importance he attached to receiving notification of any admissible applications which might concern him. He therefore asked that the Registrar should send notification not only to every Member of the League and to every State entitled to appear before the Court, but also to the International Labour Office.

There did not seem to be any drawback in drafting the second paragraph of Article 66 thus : “ also . . . notify any Member of the League or State admitted to appear before the Court, as also the International Labour Office, considered by the Court (or should it not be sitting, by the President) as likely to be able to furnish information on the question . . . ”

In this way the wishes of the International Labour Office would be met and the possibility of abuses which might arise if more comprehensive terms were used would be avoided.

M. ROLIN (Belgium) said he was rather surprised at M. Fromageot's communication. The Director of the International Labour Office had pointed out to the Committee that in labour questions the Court had not merely sought the opinion of the Labour Office but also of international trade union organisations. The present text would make it impossible for the Court to ask for such an opinion, and he would be astonished if the Director of the International Labour Office were so readily to renounce a procedure which had given every satisfaction.

He therefore asked for the addition to the words “ as also the International Labour Office ” of the words “ and international organisations ”.

Sir Cecil HURST (British Empire) ventured to suggest that M. Fromageot's proposal, in order to satisfy the demand of the International Labour Office, seemed to go rather far. Would it not be sufficient if a provision were inserted more on the lines of the last paragraph of Article 26 ? Was it really necessary that the International Labour Office should be

introduced as a recipient of documents in cases which might not have the faintest connection with the work of the International Labour Office or labour cases ?

The PRESIDENT pointed out that the Conference was considering only labour questions. He thought it was agreed that the International Labour Office did not require to receive documents on any matters other than labour matters.

M. FROMAGEOT (France) said that obviously that was so. If an advisory opinion were asked of the Court regarding a frontier question, the International Labour Office would not seem to be particularly interested.

The PRESIDENT noted that it was a matter of drafting.

M. DE PIMENTEL BRANDAO (Brazil) asked whether it would not be desirable to consult the Director of the International Labour Office.

The PRESIDENT replied that this representative was present.

It was necessary to ascertain whether the Conference really wished to go as far as M. Rolin proposed. Would it not be sufficient to specify in the Protocol that the fact that a certain number of international bodies, States, and the International Labour Office had been mentioned by name did not preclude the possibility of the Court hearing certain natural or juristic persons whose identity could not, at that moment, be foreseen ? The article should not be regarded as restricting the Court's possibility of hearing, which must be as extensive as possible. If this were said in the report it would meet M. Rolin's desire.

M. FROMAGEOT (France) asked the representative of the International Labour Office to give his views on this point.

M. MORELLET (International Labour Office) said that the Labour Office's chief desire was that there should be no change in the procedure followed up to the present. The Rules of Court had employed a somewhat vague expression, probably on purpose, "the international organisations". Those included, on the one hand, an official organisation, the International Labour Organisation, and, on the other, unofficial organisations such as the international trade unions. The Court had already pronounced four times on labour questions, and on each occasion had consulted international organisations.

If the text proposed by the Committee of Jurists were adopted, the Court would not be prevented from consulting the international organisations.

At the same time, the proposed modification might be interpreted in a restrictive sense. The existing Rules of the Court provided for the consultation of international organisations, but the proposed text did not. That was what alarmed the International Labour Office, and at the meeting of its Governing Body both employers' and workers' delegates had expressed the hope that no change would be made in the procedure so far followed.

If the Minutes of the Conference mentioned that it was not the Conference's intention to preclude the consultation of international organisations or to modify the procedure hitherto followed, the International Labour Office would be satisfied.

M. FROMAGEOT (France) pointed out that, in the article under discussion, it was not a question of consulting any given organisation, but only of notifying a request, addressed to the Court, to one of those organisations.

The Court could always consult the International Labour Office under Article 26 and Article 68.

M. ROLIN (Belgium) said that he was more than ever convinced of the inexpediency of omitting the words "international organisations". Even if it were necessary to transfer to the Statute certain articles originally in the Rules of Court which limited the bodies to whom requests for opinions might be communicated, he did not think that this could ever be taken to mean—even if it were stated in a Protocol—that the Court would still be free to communicate the request to other international organisations in addition to all the organisations named.

A second observation was that, contrary to what had just been said, Article 26 of the Rules of Court, which might be regarded as vaguely implied in Article 68, undoubtedly referred to the International Labour Office, but did not refer to the other labour organisations.

Those other international organisations were not merely the international trade unions. He ventured to point out that at present there was a very large number of international bodies ; for instance, the Red Cross, the Institute of Intellectual Co-operation and the Institute of Agriculture, which might be very directly concerned in a request for an advisory opinion or might even address one on their own account to the Council. It would be most regrettable if the proceedings were not regularly submitted to them at the outset so as to enable them to offer an opinion.

It must be realised that they were no longer dealing with a League of Nations which only comprised independent nations ; there was gradually being built up a veritable international administration, beginning with the Secretariat of the League. If a dispute in any way affected the Secretariat of the League of Nations as an administration, he considered that it, too, should be notified of the request for an advisory opinion and should be heard.

He added that that would chiefly be the case in regard to labour questions, and specially in regard to requests for advisory opinions, since the Labour Organisation had the characteristic feature of comprising not only States but delegates of the working classes and of the employers' organisations, and requests for opinions might often concern the organisations themselves more directly than the States.

Was it not absurd to endeavour to treat in a different manner the international organisations directly concerned and the States which very often were quite indifferent to the solution of those problems?

He therefore urged the retention of the words "international organisations". Moreover, a very important safeguard existed against any risk of abuse—none had yet occurred—which was that the Court itself could judge how far such a communication was necessary.

He therefore asked that the Court should be trusted to see that notice was only given to the international organisations directly concerned.

M. DUZMANS (Latvia) said that, apart from the restriction that had just been examined, the Committee of Jurists had introduced another referring to the States Members of the League of Nations. The text of the Rules provided that the Registrar should automatically notify all Members of the League and all the States admitted to appear before the Court, whereas the new draft stipulated that the Court should be entitled to decide itself to whom the communication should be made. He would be glad to know what were the reasons which had led the members of the Committee of Jurists to make that restriction.

M. POLITIS (Greece) said that it was indeed a very important point, and he had to admit that there was a drafting error. In the text of the Rules transferred to the new draft of the Statute, the mention of international organisations had been deleted; but the Committee had failed to delete also the words "considered as likely to be able", which, as a matter of fact, applied to the international organisations. There could be no doubt that any Member of the League of Nations and any State admitted to appear before the Court were fully entitled to take part in the advisory procedure. There now remained the question whether the Conference would maintain the omission of international organisations or whether, as M. Rolin asked—and he was prepared to accept that view—those organisations should be included?

The PRESIDENT said that was a drafting question which had engaged the attention of the 1926 Conference for a long time. In the text of the second paragraph of Article 73 of the Rules of Court, as contained in the official edition of the Court, the word "*jugée*" occurred, but that might be a misprint for "*jugés*". The word referred, of course, both to all Members of the League and to all States admitted to appear before the Court. That was, moreover, the interpretation which the Court had adopted.

M. ROLIN (Belgium) asked why, if that were so, the text had not been rectified.

The PRESIDENT replied that it was the 1926 Conference which had raised the question and he thought that the Members of the Court did not wish to change the Statute after it had been signed in that form.

M. ROLIN (Belgium) said that advisory opinions would always be communicated to the United States of America. Hence, on the principle of equality, it should be asked that advisory opinions should be notified to all States. He did not think it possible to maintain this difference of treatment.

M. POLITIS (Greece) reminded the Conference that the debates of the Committee of Jurists had been attended by the President and Vice-President of the Court. As far as he remembered, neither of them had pointed out that Article 73 of the Rules contained a misprint, and it was therefore "*jugée*" that they had read. Hence, in the absence of any evidence to the contrary, he was obliged to read the text as printed in the official documents of the Court.

M. FROMAGEOT (France), wished to remind the Conference exactly in what circumstances the question had been examined during the meeting of the previous spring, in the presence of the President of the Court. According to the present Rules:

"The Registrar shall also, by means of a special and direct communication, notify any Member of the League or States admitted to appear before the Court or international organisation considered by the Court (or, should it not be sitting, by the President), as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements or to hear, at a public sitting to be held for the purpose, oral statements relating to the question."

On page 76 of the Minutes of the session held at Geneva in March 1929, however, it would be found that, in reply to M. Urrutia, who had asked him whether the Court interpreted the second paragraph of Article 73 and the first paragraph of Article 74 of the Rules of Court to mean that, in principle, international organisations could appear as parties before the Court, the President of the Court had pointed out "that international organisations of the kind referred to in Articles 73 and 74 could only be admitted in order to give information to the Court but not to plead. The cases of this kind which had so far arisen concerned a certain number of employers' and workers' organisations."

If, however, Article 73 as he had just read it were accepted, those international organisations appeared as genuine parties, since they were free to submit written statements within a certain time-limit or to make oral statements at a sitting of the Court. There was, therefore, an important and marked difference between that right given to international organisations to plead before the Court and the Court's right of asking them for information. While it was natural that the International Labour Office should be called upon to make oral statements, as had been done when advisory opinions had been asked of the Court in regard to labour questions, it was equally natural that, in view of the diversity, the large number and the very different character of those international organisations or trade unions, the Court should have some hesitation in allowing them to plead at a public sitting, and should prefer simply to reserve the right to ask them, if necessary, for information; in a word, to apply to them as experts in order to have sufficient information on a technical point to be able to form an opinion.

M. MORELLET (International Labour Office), in reply to M. Fromageot, said that, in his opinion, when the President of the Court had replied to M. Urrutia that the international organisations had never been parties before the Court, he had meant that only States could be parties before the Court. But, in the case of an advisory opinion, it was sometimes rather difficult to distinguish who was a party and who was not. As the Court did not pass judgment, in principle, there were no parties. In practice, however, there were; and the Court had recognised that since it had allowed *ad hoc* judges to sit in certain cases.

As a matter of fact, the International Labour Office had never been a party before the Court, but it had sent in written observations. Certain international organisations had found themselves in the same situation and had submitted oral and written statements like the International Labour Office.

The International Labour Office's attitude on the subject was purely conservative. It simply asked that no change should be made in a procedure which had been found useful in the past.

M. FROMAGEOT (France) thought that the International Labour Office was particularly competent to guide the Conference in that very special branch, and, if it thought that the best solution was to maintain the existing position, he was quite prepared to accept this view.

Sir Cecil HURST (British Empire) thought that the Conference was becoming involved in a discussion which was too detailed for a Conference of that magnitude. It had before it a recommendation from the Committee of Jurists. He read on page 9 of the report of the Committee of Jurists under Section 20: "The Committee considers that the essential parts of these provisions should be transferred to the Statute of the Court in order to give them a permanent character". With that principle, he took it, all the Conference was content. Apparently the Committee had not, as it ought to have done, transferred or proposed to transfer to the Statute quite the whole of the important element.

The hour was growing late and he was beginning to doubt whether the Conference would finish its work that night. If that were the case, there would be a further meeting of the Conference, and he would propose that the two gentlemen who acted as Rapporteurs for the Committee of Jurists, should be invited to prepare, with the help of the representative of the International Labour Office, before the next meeting, a text for submission to the Conference, which they were satisfied would follow the lines of the existing Rules of Court and would have the effect of introducing into the Statute the essential elements of those Rules of Court, making no change in the substance.

Three or four divergent interpretations of the Rules of Court had been given. He would have thought that, if the whole of Article 73 were read, it would be perfectly plain. In any case, if his proposal were adopted, he felt sure that the Conference would have, at the next meeting, a text which would meet all the requirements of the situation and which all the delegates would be able to adopt.

The PRESIDENT said that, if there was no objection to Sir Cecil Hurst's proposal, he would regard it as adopted.

Adopted.

The PRESIDENT asked whether there were any other proposals concerning Article 68.

Sir Cecil HURST (British Empire) said he was in the President's hands. The small amendment that he wanted to move to Article 68 was merely a new wording for the purpose of making the intention of that article more clear. The wording of Article 68 as he understood it, and as he thought everyone would agree, was intended to mean that, in addition to the specific provisions of Articles 65, 66 and 67, the Court, in dealing with advisory opinions, should be guided by this procedure so far as it was laid down in the Statute in contentious cases—that is, in cases where the parties submitted a dispute to the Court. He thought that that was without doubt the intention of the Committee of Jurists, and he should also have thought that it was fairly clear from the text; but he had had occasion to discuss at great length the whole of the question a few days previously with an enthusiastic gentleman from across the Atlantic, who had explained to him at length the anxieties which were felt in America with regard to the whole question of advisory opinions and the hope that was enter-

tained there that the procedure relating to advisory opinions would be assimilated, as much as possible, to the procedure in contentious cases. Sir Cecil Hurst had replied, "That is exactly what we have provided in the Statute", and had read to him this article, and he had said: "We do not understand it". So Sir Cecil Hurst had said: "Very well, I am quite prepared to ask that the Conference should make the text a little more clear", and it was for that reason that he would suggest that it should read—he was reading the second sentence of Article 68:

"It shall further be guided by the provisions of this Statute prescribing the procedure to be followed in contentious cases to the extent to which it recognises them to be applicable."

That he believed to be exactly what was intended. He believed it also to be the only correct interpretation of those words; and, therefore, if the sentence could be made a little plainer, and if by so doing the Conference could do good, he suggested it would be wise to make this small change.

M. RAESTAD (Norway) said he would like to have time to think over the proposal just made by the delegate of the British Empire, because the word "procedure" did not cover all that was indicated in the previous chapters.

The PRESIDENT said that the text proposed by Sir Cecil Hurst would be distributed and discussed at the next meeting.

M. FROMAGEOT (France) wished to second Sir Cecil Hurst's proposal. He had also had a conversation with the person mentioned by Sir Cecil Hurst. He thought that, if the Conference adopted the text proposed, it would reassure its friends across the Atlantic.

13. Question of the Appointment of a Drafting Committee.

The PRESIDENT said the Conference, having completed its first reading of the revised articles of the Statute, it would now be necessary to draw up a Protocol in which those articles would be ratified. In 1920, there had been an Assembly resolution, a Statute and a Protocol of Signature. That Protocol still remained to be drawn up. He did not think that that was the work of a large Conference like the present one. It would be preferable to set up a small Committee to prepare the document with the help of M. Fromageot and M. Politis. Did the Conference wish to appoint such a Committee or leave it to the General Committee to do so?

*The Conference agreed that its General Committee should appoint a Drafting Committee.*¹
(The meeting rose at 6.15 p.m.)

FIFTH MEETING (PUBLIC).

Held on Thursday, September 12th, 1929, at 10 a.m.

President: Jonkheer W. J. M. VAN EYSINGA.

14. Revision of the Statute of the Permanent Court of International Justice (continuation): Report of the Drafting Committee.

The PRESIDENT said that the Conference would remember that, at the last plenary meeting, it had instructed the General Committee to appoint a Drafting Committee. The latter had met on several occasions and the Conference had before it the results of its work in document C.A.S.C.10 (Annex 8).

He proposed that the document should be read point by point, but before this was done the delegate of Norway wished to speak on a point of order.

M. RAESTAD (Norway) pointed out that the recommendation in regard to the qualifications required of the candidates proposed by the national groups had been adopted by the Conference at its fourth meeting, but that no mention had been made of this vote in the Minutes.

¹ The delegates appointed by the Bureau to serve on the Drafting Committee were:

M. José Lobo D'AVILA DE LIMA (Portugal),
M. Guillermo DE BLANCK (Cuba),
Dr. GÖPPERT (Germany),
Sir Cecil HURST (British Empire),
Sir William Harrison MOORE (Australia),
M. PILOTTI (Italy),
M. RAESTAD (Norway),
M. ROLIN (Belgium),
M. YOSHIDA (Japan),

to whom were added MM. FROMAGEOT and POLITIS as Rapporteurs of the Committee of Jurists and Jonkheer VAN EYSINGA as President of the Conference.
M. de Blanck did not attend the meetings of the Drafting Committee.

On behalf of the delegations of Norway, Sweden and Denmark, he moved that a vote by roll-call should be taken.

The PRESIDENT reminded the Conference that it had voted by members rising in their places; but, as this subject was again on the agenda, there was no objection to acting on M. Raestad's motion. If there was no objection, the Conference would therefore vote on this question by roll-call.

This proposal was adopted.

The PRESIDENT proposed that the Conference should now proceed to study the Drafting Committee's report. As would be seen, and in order to reproduce the existing provisions of the Rules of the Court, a slight modification had been proposed in the text adopted at the first reading concerning advisory opinions.

The new text of Articles 66, 67 and 68 as revised by the Drafting Committee were before the Conference.

The President drew attention to a slight modification in Article 68. The Conference would remember that an agreement had been reached on the substance of the question, and that all that was needed was to find a good formula. Sir Cecil Hurst had suggested one on which there had been some discussion, and the text proposed to the Conference was now the following:

Article 68. — "In the exercise of its advisory functions, the Court shall apply Articles 65, 66 and 67. It shall further be guided by the provisions of the Statute prescribed to be followed in contentious cases to the extent to which it recognises them to be applicable."

M. FROMAGEOT (France) asked permission to give a few explanations regarding this matter.

When the Court or anyone else was asked for an advisory opinion, it was essential, if this opinion was to have any value, for the person consulted to have all the relevant documents and information at his disposal.

In contentious cases, when a decision had to be pronounced, the procedure naturally had to provide for both parties to be heard; both parties stated their case, and the judges therefore had all the arguments before them. The same ought to be the case in advisory opinions.

When an advisory opinion was asked for, the latter could have no value unless the person consulted could know all the relevant facts of the case in the same way as in contentious cases; he should know the arguments of both parties and both parties should adduce their evidence. It would be quite useless to give an advisory opinion after hearing only one side. For the opinion to be useful, both parties must be heard.

It was therefore quite natural to lay down in the Statute of the Court that, in regard to advisory opinions, the Court should proceed in all respects in the same way as in contentious cases.

He ventured to make this observation because he thought it was likely to allay certain apprehensions.

The PRESIDENT reminded the Conference that the Committee of Jurists had drafted the beginning of this article with the express object of pointing out that these were articles of the Statute which had to be observed, but that there was something further to be done. It thus wished to place greater emphasis on the second sentence. This, at any rate, was how he had understood it.

M. POLITIS (Greece) quite understood this point, but he thought it was expressed by the second part of Article 68. It was rather naïve to say that, in the exercise of its advisory functions, the Court should apply such and such articles. For example, Article 67, which, according to Article 68, had to be applied in connection with advisory opinions, read as follows:

"The Court shall deliver its advisory opinion in open Court . . ."

What did the reference in Article 68 add to this?

The PRESIDENT agreed that it added nothing.

M. POLITIS (Greece) thought that in that case it was unnecessary to say it. When a useless clause was inserted in a text, those who interpreted it always wanted to find some meaning for it.

The PRESIDENT agreed.

M. POLITIS (Greece) said that the first sentence was therefore useless and it would be sufficient to say, "In the exercise of its advisory functions the Court shall further be guided by the provisions of the Statute, etc."

It would further be understood and recorded in the Minutes that this Article 68 should definitely be taken in the sense just indicated by M. Fromageot.

The amendment proposed by M. Politis was adopted.

The PRESIDENT said that, no one having any objection to M. Fromageot's observation, and the latter having been entered in the Minutes, it would naturally be taken into account.

M. GÖPPERT (Germany) suggested that M. Fromageot's statement should not only be recorded in the Minutes but should be reproduced in the report to be submitted to the Assembly.

M. POLITIS (Greece) agreed.

The PRESIDENT said he did not know whether it would be possible to print a report and suggested that a letter, containing all the necessary information and in which M. Fromageot's idea might be inserted, would be sufficient.

Sir Cecil HURST (British Empire) desired, before proceeding to the next point, to go back to Articles 66 and 67. He wanted to ask that, at the end of the first paragraph of Article 66 and throughout the second paragraph of Article 66, and again in Article 67, the order of the words should be altered so as to put "members" before "States". It would be more logical, because it would be seen in the middle of Article 66 that the Registrar was to notify any Member of the League or State admitted to appear before the Court. That, really, was another variant of the old point about non-member States, and the subsequent reversal of the order might be thought to give a different meaning. He had asked M. Fromageot about this, the latter being the author of these paragraphs, and he saw no objection. It was merely a reversal of the order of the words.

M. FROMAGEOT (France) agreed that he had no objection to make.

The amendment proposed by Sir Cecil Hurst was adopted.

Articles 66 to 68 as amended were adopted.

Proposal of the Delegate of Brazil.

The PRESIDENT said that he had received from the delegate of Brazil a letter which had been inserted in the report and which all the delegates had read (Annex 8, page 75). In that letter M. Brandao drew attention to the position in which his country was placed, and which might be that of certain other countries.

As stated in the Drafting Committee's report, the President had thought it necessary to refer this letter to the Committee in order to save time. It had been considered that it would be advisable to give the small group of States which had acceded to the Statute of the Court of Justice but were not Members of the League an opportunity of participating in the election of the judges, since, in the conditions laid down in Article 4, this right was given to the Assembly and the Council. The question was whether a formal article should be inserted in the Statute or whether it would not be better to allow a certain latitude as regards application, since the case might perhaps take on a somewhat different aspect according to the State concerned.

In these circumstances, the Drafting Committee had thought it would be well to insert in Article 4 a new paragraph which would be found in the report (page 76), and which stipulated that, in the absence of a special agreement on this point—and such an agreement it was hoped would be concluded with the United States—the Assembly, on the proposal of the Council, would lay down the conditions under which a State which was a party to the Protocol of Signature of the Statute of the Court of December 16th, 1920, but was not a Member of the League, might participate in electing the members of the Court. Thus the country in question was given an opportunity of participating in the election of judges; but, in order that this clause might be applied with the greatest possible elasticity, the question was left to the Assembly on the proposal of the Council, which might meanwhile get into touch with the State concerned to settle the details of its participation.

The Brazilian delegation's idea had been very favourably received by the Drafting Committee, which had thought, moreover, that it did not refer to a single State but could apply to a category of States for which something had to be done, and it was in order to facilitate the Conference's task that the Drafting Committee had proposed the insertion of this new wording in Article 4.

At the same time, the Committee had considered the financial aspect of the question. In this connection it would be remembered that, in the United States reservation, it had already been mentioned that the United States, as on several other occasions when it had taken part in the League's work, was quite prepared to pay its share.

Brazil had acted in the same manner, and it did not seem necessary to have a special clause regarding this matter, any more than in the case of the United States. It was simply proposed to insert at the end of Article 35 a sentence stating that that clause—referring to the sharing of expenses by a State not a Member of the League but party to the case—would not apply if such a State was bearing a share of the expenses of the Court.

It was only fair, of course, not to make a State pay twice.

Such were the Drafting Committee's proposals to give satisfaction to States which were not Members of the League but were parties to the Statute of the Court.

M. FROMAGEOT (France) said that the last sentence of paragraph 3 of Article 35 perhaps did not quite solve the question before the Conference. The hypothesis was that of a State which, while a party to the Protocol of the Statute of the Court, was not a Member of the League. Was it not necessary to stipulate how and in what conditions the financial participation of this State in the activities of the Court should be regarded and settled?

In this connection, the last sentence to which he referred would not suffice. It simply said, "This provision shall not apply if such State is bearing a share of the expenses of the Court". It was not said how this State bore a share of the expenses of the Court or under what conditions. By whom would this be determined?

He thought, therefore, that this sentence should be deleted and a new paragraph corresponding to paragraph 1 of Article 4 should be inserted, to read as follows:

"In the absence of any special agreement on the subject the Assembly, on the proposal of the Council, will lay down the conditions under which a State which is party to the Protocol of Signature of the Statute of the Court, but is not a Member of the League of Nations, shall share in the expenses of the Court."

The PRESIDENT said that this point had been discussed, and the question could, of course, be settled on the lines proposed by M. Fromageot. He desired to point out, however, that, in the case of the United States of America, it had been considered quite superfluous to say anything about it in the Protocol.

M. FROMAGEOT (France) said that this was why the words "In the absence of any special agreement" had been employed.

The PRESIDENT said that it had already frequently happened that a State not a Member of the League had co-operated not only with the Court but also in the technical organisations, for example, and matters had always gone quite smoothly. In this connection the Committee of Jurists, speaking of Article 35, had said that it was not necessary to modify the last sentence of that article. It was sufficient to say that, in the case of the United States, which wished to pay its share in the general expenses, the last paragraph of Article 35 naturally would not apply. The Drafting Committee had thought that it would be enough to say the same thing quite generally. As a matter of fact, this question of sharing in the general expenses never involved any difficulties.

M. COHN (Denmark) said he did not oppose the very natural wish expressed in the new wording of Article 4. He simply desired to draw attention to a certain contradiction which existed between this new rule and the principle enunciated in Point 2 of the Preamble of the Protocol which the members of the Conference were going to sign, viz., that the Protocol would only be open to signature by the signatories of the 1920 Protocol and by the United States of America.

In his opinion, the new Protocol, including the Statute of the Court, should be open to signature by all the countries of the world, whether signatories or not of the 1920 Protocol. If the Conference did not wish to modify the text of the Preamble on this occasion, he ventured to propose that the statement he had just made should be inserted in the report of the Conference.

He ventured at least to propose the omission of the reference to the 1920 Protocol, so that in the new Article 4, paragraph 2, the words: "A State which is a party to the Protocol of Signature of the Statute of the Court of December 16th, 1920", should be replaced by the following words: "which has acceded to the Statute of the Court".

M. POLITIS (Greece) said, with regard to the drafting proposed for Article 4, that it seemed to him more logical to put the new text proposed for paragraph 2 in paragraph 3. In paragraph 2, which in principle referred to the method of election, the text, "in the absence of any special agreement on the subject", occurred; this meant that an agreement had to be reached on the question of principle, which was not the case.

And when it was said at the end of the first paragraph of Article 4, "in accordance with the following provisions", the reference was to the text of paragraph 2, which now figured as paragraph 3. He therefore thought it more logical to leave the text of Article 4 as it stood and to add a new paragraph 3 saying, "In the absence of any special agreement, the Assembly, on the proposal of the Council, etc."

He also proposed that no mention should be made of the date of December 16th, 1920, and that the words "on the subject" should be omitted from the text which would then form paragraph 3.

M. RAESTAD (Norway) preferred, as regards paragraph 2 of Article 4, M. Cohn's proposal, to say, "which has accepted the Statute of the Court but is not a Member of the League of Nations".

In the wording proposed by M. Politis, there was also, he thought, some inaccuracy. He proposed to use the word "accepted" because this was the word employed in the Protocol.

M. POLITIS (Greece) accepted M. Raestad's observations, which he thought quite justified.

The PRESIDENT said that the text "which is a party to the Protocol" would be replaced by the words "which has accepted the Statute of the Court".

Paragraph 2, which would become paragraph 3, was adopted with this amendment.

Article 4 as a whole was adopted.

The PRESIDENT, passing on to Article 35, asked M. Fromageot if he insisted on his observation.

M. FROMAGEOT (France) said that he did not.

The PRESIDENT said that Article 35 would then read as follows:

"The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant."

“ The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

“ When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.”

This text was adopted.

Draft Protocol relating to the Amendment of the Statute.

The PRESIDENT said that the Conference would now examine the draft Protocol relating to the amendment of the Statute, and would discuss the paragraphs one by one.

“ 1. The undersigned, duly authorised, agree on behalf of the Governments which they represent to make in the Statute of the Permanent Court of International Justice the amendments which are set out in the annex to the present Protocol and which form the subject of the resolution of the Assembly of the League of Nations of September . . . 1929.”

The Conference would no doubt leave it to the President of the Assembly to fill in the date, which he hoped would be that of the following Saturday.

This text was adopted.

“ 2. The present Protocol, of which the French and English texts are both authentic, shall be presented for signature to all the signatories of the Protocol of December 16th, 1920, to which the Statute of the Permanent Court of International Justice is annexed, and to the United States of America.”

M. ZUMETA (Venezuela) said that, when he had had the honour to announce his Government's accession to the Protocol, he had asked permission to submit certain supplementary considerations. With the President's permission he would now communicate them to the Conference.

He had had great pleasure in voting on behalf of his Government for the Protocol of accession to the Permanent Court of International Justice by the United States in accordance with the unanimous wishes of the signatory nations, because he was firmly convinced that, if the United States reservations were ever applied in connection with a dispute between American countries, the latter would always find a legal procedure for an agreement in conformity with law as well as a competent jurisdiction.

His was no blind optimism. The preoccupations inspired by the Monroe doctrine were in his continent every day losing some of the acuteness which they seemed to retain beyond the Atlantic. That doctrine had been, was and would be, at each stage of its development, only a variable factor made up of the resultant of two forces : the powerful unity of the United States as against the plurality of the other American republics. This factor was now affected by a new force, that of an inter-American spirit, public opinion and conscience, whose increasingly beneficent and effective influence was becoming supreme in both Americas and redounded to their credit from Washington to Buenos Aires and Santiago.

It was in that lofty sphere that a real continental agreement between their peoples could develop. It was in this inter-American spirit of loyal co-operation in the work of justice and peace on which the world was engaged that they hailed that Protocol, which created new ties of worldwide solidarity under the auspices of the League of Nations.

The PRESIDENT said that this declaration, which emphasised the great importance attached by Venezuela to the acceptance of the Statute by the United States, would naturally be recorded in the Minutes.

Paragraph 2 was adopted.

Paragraphs 3 to 7 and the last paragraph of the Protocol were adopted without discussion.

Annex to the Protocol of September . . . 1929.

The PRESIDENT said that on the first page of this annex the words “ There is no change in the English text ” should be in brackets.

M. POLITIS (Greece) pointed out that instead of “ new article ” the phrase “ new wording of article . . . ” should be adopted except as regards the articles which did not exist in the text of the 1920 Statute.

This was agreed to.

The text of the Annex was adopted with the changes indicated by the President and M. Politis.

The two paragraphs following the Annex were adopted with minor amendments.

Nature of the Resolution to be adopted by the Assembly.

The PRESIDENT said that the Drafting Committee had thought it well to prepare as completely as possible the various documents to be submitted to the Assembly. In that connection it had added a draft resolution.

(Chapter IV of the report and the draft resolution were read.)

The PRESIDENT presumed that there was no objection to the text and that the Drafting Committee's proposals were approved. He therefore asked the Conference to adopt the opening paragraphs of Chapter IV and the first paragraph of the draft resolution.

These texts were adopted.

The PRESIDENT said that the delegate of Norway had expressed a wish for a roll-call to be taken on the second part of the draft resolution.

M. RAESTAD (Norway) thought that it would be desirable to take a vote by roll-call, and said that he would move the insertion in that paragraph of the words "adopted by the Conference by a majority of . . . to . . ."

The PRESIDENT said that a vote by roll-call would be taken, members approving the proposed text saying "Yes" and members disapproving saying "No".

A vote by roll-call was taken and the text proposed was adopted by twenty four votes. (Austria, Belgium, Brazil, British Empire, Canada, Chile, China, Czechoslovakia, France, Germany, Greece, Guatemala, Irish Free State, Italy, Liberia, Lithuania, Netherlands, Persia, Peru, Roumania, Siam, Spain, Uruguay, Venezuela) to eight (Denmark, Finland, Hungary, Japan, Luxemburg, Norway, Poland, Sweden), with four abstentions (Estonia, Latvia, Switzerland, Yugoslavia).

The PRESIDENT said that these figures would, of course, be recorded in the Minutes. The question now was whether they should also figure in the resolution, as proposed by M. Raestad. He thought that, as a rule, a resolution did not state the number of votes by which it had been adopted. He was therefore in favour of leaving the resolution as it stood, and of mentioning the result of the vote only in the Minutes.

M. RAESTAD (Norway), asked permission to say a few words in support of his proposal.

As emphasised by those in favour of the recommendation, it was an opinion—it had even been called a personal opinion—and not an obligation. This opinion, therefore, had a moral value and if no mention were made of the majority by which the text had been adopted, it would appear as if it had been adopted unanimously.

This did not matter in other cases, but it did in that particular case. As it was a question of vital importance to the Court, he thought that it was in the interests of the Conference's work and in the interests of truth to insert in the text the number of votes by which the recommendation had been adopted. Thus everyone's attention would be drawn to the fact that there had been dissent, and people would be induced to study the reasons for the various opinions expressed.

He agreed that it was not usual to state the majority secured, but he thought that it was necessary to do so in that particular case.

M. POLITIS (Greece) wished to state briefly the reasons for which he was definitely opposed to its being mentioned that this recommendation had been adopted by a majority vote.

In the first place, it was contrary to all established practice. When a Conference had a text submitted to it, it either accepted or rejected it. If the question was one of principle on which unanimity was necessary, and if such unanimity was not obtained—even if the members were practically unanimous, *i.e.*, if a very large majority were recorded—the proposal voted on by the Conference was rejected.

When, on the other hand, it was a question of an observation which could be adopted by a majority, of a question of procedure and *a fortiori* of a simple recommendation—for a recommendation meant that there was no obligation and that no one was obliged to base his conduct on the principles indicated—a majority was sufficient for its adoption, but it was not necessary to say what the majority was.

As regards the fear that failure to mention this majority in the resolution might give a false idea of the situation, there were two replies to be made.

First, the Minutes were there to explain, not only that there had been no unanimity, but especially—and he wished to emphasise this point very strongly—that there had been very long debates in the Committee of Jurists and in the Conference, that, as regards the substance of the question, there had been no objection of principle, and that both in the Committee of Jurists and in the Conference it had been a question of expediency.

The Committee of Jurists had begun with the idea that the judicial character of the Court should be strengthened, and a few of the members had proposed to add a formal reference to practical experience in the text of the Statute itself. But in certain quarters it had been said that it was better not to put that requirement in the Statute but to be content with a recommendation. The Committee of Jurists had finally agreed.

He was greatly surprised that the discussion had been re-opened now. The Conference had not insisted on modifying the Statute of the Court or even on giving this expression of its opinion a more imperative character. It had accepted the idea of a recommendation, and also that it should be incidentally stated that the Secretary-General would draw attention to this recommendation, and that the national committees should do what they liked.

The second answer was that, if, despite the very clear explanations given in the Minutes, there was any apprehension with regard to the interpretation of that recommendation, and if prevented the delegations who had such scruples on the point from making formal declaration before the Assembly.

He thought that it would be a breach of the established procedure, which was a very useful one, if what was after all the opinion of the minority were allowed to prevail over that of the majority by weakening the latter's position. Such would be the effect of mentioning which the great majority of the Conference desired to submit to the judgment of the Assembly would thus be weakened.

For all these reasons, he considered that it was expedient to say only that the recommendation had been adopted, without mentioning a majority or minority.

The PRESIDENT thought that the question could now be put to the vote. If no one asked for a vote by roll-call, the vote would be taken by delegations rising in their seats.

M. Raestad's proposal was rejected, only ten votes being given in its favour.

The PRESIDENT thought that it was not necessary to count the abstentions, for he did not think that any delegation would abstain on a question of this kind.

15. Procedure for submitting the Protocols to the Assembly and for their Signature.

The PRESIDENT said that the first part of the results of the work of the Conference—the Protocol on the adherence of the United States to the Statute of the Court—had been sent to the Assembly. It would now be possible to do the same with this second draft Protocol.

The Secretary-General had informed him that the First Committee would meet on the following day, and he was going to ask the Chairman of that Committee to place at the beginning of the agenda all the questions relating to the Court.

He could also inform the Conference that the Fourth Committee had on the previous day adopted the three draft resolutions to be submitted to the Assembly regarding the financial aspect of their work.

It would therefore be possible, if the First Committee accepted the proposals of the Conference on the following day, for the Assembly in plenary session to deal with the various questions relating to the Permanent Court of International Justice on Saturday afternoon. He hoped that immediately afterwards the Protocols would be open for the signatures by those who were prepared to sign them.

In that connection, he might say that the Committee on the Verification of Credentials had examined the credentials submitted to it. It appeared from this examination that many of the representatives would be able to sign these two Protocols immediately. If everything went as expected, a large number of signatures might be affixed to this document on Saturday evening.

The question now was how the matter should be submitted to the First Committee and to the Assembly. He thought that, to save time, he might, if the Conference agreed, send a letter to the Assembly on behalf of the Conference relating all the points that had been discussed that morning and containing M. Fromageot's observations on advisory opinions. In that way the First Committee, and after it the Assembly, would have before them all the documentation of the Conference.

Naturally, the work of the Conference should have the best support before the First Committee and the full Assembly, and he thought that everyone would agree that this support would be ensured if the Rapporteurs of the Committee of Jurists—Sir Cecil Hurst as regards the question of the accession of the United States, and M. Fromageot and M. Politis as regards the other questions—would be responsible for acting as Rapporteurs on the different questions which were to be submitted to the Assembly.

He asked if he could count on the support of M. Fromageot and M. Politis. He had an idea that M. Fromageot was indicating his dissent.

M. FROMAGEOT (France) said that one Rapporteur was all very well but a second was superfluous.

The PRESIDENT said that perhaps it was generally so, but not in that case.

M. FROMAGEOT (France) said that M. Politis was such an excellent Rapporteur that both the speaker and the Conference would be grateful if he would assume this new task.

M. POLITIS (Greece) said that if M. Fromageot, for personal reasons, did not wish to continue this co-operation which he had found so pleasant, he would be obliged to do the work alone, and would respond to M. Fromageot's appeal by assuming the task which the Conference desired him to undertake. He was quite willing to do this, but he wondered whether the Conference would need a Rapporteur, since a sufficient account of its work would be given in the letter which the President was going to send to the Chairman of the First Committee. It would then be for that Committee to report to the Assembly.

The PRESIDENT said that M. Politis was the most suitable person for that purpose.

M. POLITIS (Greece) said that, if he was asked to represent the Conference before the First Committee on the question of the amendments, he was quite willing to do so; but he thought that the task would be a very light one, since the Committee would have all the

documents before it. It would therefore not need many oral explanations, but he would be at its disposal to give any explanations it might require.

The PRESIDENT thanked M. Politis on behalf of the Conference and said that he would make the same request of Sir Cecil Hurst, who was not present.

Before the Conference broke up he still had two questions to put to it.

In the first place, he supposed that, after the draft had been examined by the Assembly, the Conference would not have to meet again to sign the Protocols. It would be much more practical to ask the Secretary-General to prepare instruments which they could sign individually.

M. POLITIS (Greece) thought that, from the practical point of view, the President was right, and he hoped that this was the course events would take. But, in order to leave full freedom to the bodies which would have to decide on this question after the Conference, it would perhaps be well to proceed on the same lines as the Court did when it closed a debate. It definitely closed the debate but requested the parties to remain at its disposal in the event of its still needing them.

He thought that the most correct formula would therefore be the following :

The Conference believes that it has concluded its work, it submits the results of that work to the Assembly, and holds itself in readiness to meet again if further explanations are required of it.

The PRESIDENT agreed with M. Politis's view and therefore would not say that the Conference had completely finished its work. It would simply adjourn, while remaining at the Assembly's disposal if the latter desired it to meet again.

Further, he requested the members of the Committee on Verification of Credentials to remain behind so as to settle certain points of procedure still outstanding (See Annex 9).

16. Close of the Session.

The PRESIDENT thought that the Conference could consider that it had made a fresh step forward in a very important and delicate branch of international political and legal evolution.

He thanked all the members for their assistance, as well as the members of the Secretariat, who, as usual, had worked with great zeal and competence.

M. BOTELLA (Spain) thought he would be speaking for all the members of the Conference in thanking their distinguished President and in paying a deserved tribute to the intelligence, impartiality and tact with which he had guided the discussions.

The meeting rose at 11.45 a.m.

NOTE.

In accordance with the decision of the Conference, a letter setting out the results of its work in regard to the Revision of the Statute of the Permanent Court of International Justice was addressed by the President, on September 12th, 1929, to the President of the Assembly and to the Chairman of the First Committee (see Annex 10).

The text of the draft Protocol adopted by the Conference regarding the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice is reproduced in Annex 11.

The text of the draft Protocol adopted by the Conference on the Revision of the Statute of the Permanent Court is reproduced in Annex 12.

ANNEX 1.

**NOTE BY THE SECRETARIAT RELATING TO THE PROVISIONAL AGENDA
OF THE CONFERENCE.**

REVISION OF THE STATUTE OF THE PERMANENT COURT.

At its session of June last, the Council of the League of Nations adopted, on the proposal of its Rapporteur, the representative of Italy, the following resolution, in virtue of which the present Conference was convened :

“ The Council adopts the considerations and suggestions put forward by its Rapporteur. In view of the report which the Committee of Jurists has submitted to it on the question of the revision of the Statute of the Permanent Court of International Justice,

“ The Council decides :

“ 1. To instruct the Secretary-General to communicate the report of the Committee to the Members of the League of Nations and to the States mentioned in the Annex to the Covenant ;

“ 2. To convoke a Conference of States parties to the Statute of the Permanent Court of International Justice to meet at Geneva on Wednesday, September 4th, 1929, with a view to examining the amendments to the Statute and recommendations formulated by the Committee of Jurists ;

“ 3. To request the Supervisory Commission to present to the Assembly at its next ordinary session its opinion as to the measures proposed in paragraph 14 of the report of the Committee of Jurists.”

The First Committee of the Assembly, to which the Jurists' report has been referred by the Assembly, decided, on September 3rd, not to take up that part of its work until the present Conference had examined the proposed amendments to the Court's Statute and to invite the Conference to communicate the results of its labours to the Committee.

**II. QUESTION OF THE ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL
OF SIGNATURE OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.**

On June 12th, 1929, the Council had before it the report of the Committee of Jurists on the question of the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice and adopted, on the proposal of its Rapporteur, the representative of Italy, the following resolution :

“ The Council adopts, together with the draft Protocol annexed thereto, the report submitted to it by the Committee of Jurists on the question of the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice.

“ Accordingly, it instructs the Secretary-General :

“ (1) To reply to Mr. Kellogg's note of February 19th, 1929, and communicate to the United States Government, together with the present Council resolution, the text of the said report and of the said draft Protocol ;

“ (2) To make the same communication to the States signatories of the Protocol of December 16th, 1920, and to transmit also to those States the text of the resolution of the Senate of the United States, dated January 27th, 1926, embodying the latter's reservations.

“ In order that the Assembly, being, like the Council, a body whose procedure in regard to the method of seeking advisory opinions from the Court would be affected by the adoption of the Protocol proposed by the Committee of Jurists, may have an opportunity of expressing its opinion thereon, the Council decides to instruct the Secretary-General to transmit to the Assembly the report of the Committee and the draft Protocol and to place the question on the supplementary agenda of the tenth session of the Assembly.”

On August 31st, 1929 the Council of the League of Nations decided, for the reasons set forth in the report presented to it by its Rapporteur, the representative of Italy, to invite the Conference convoked for the purpose of considering the question of the amendment of the Statute of the Permanent Court, to take also into consideration the report and draft Protocol drawn up by the Committee of Jurists on the subject of the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice.

The resolution on the subject adopted by the Council reads as follows :

“ The Council approves the report of the representative of Italy. It decides to invite the Conference convened in virtue of its resolution of June 12th, 1929, to take also into consideration the report and draft Protocol drawn up by the Committee of Jurists on the subject of the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court of International Justice, if the recommendations

of the Jurists are approved by the Assembly. By this method, if the Conference is also in agreement with those recommendations, the Protocol necessary to give effect to them will be able to be drawn up and opened for signature as soon as possible."

On September 3rd the Assembly, on the proposal of its First Committee, decided to request the Conference to take up the question of the accession of the United States of America to the Protocol of Signature of the Statute of the Permanent Court before this question was discussed by the First Committee and the Assembly.

Official No.: A.9.1929.V.

[C.A.S.C. I.]

Geneva, June 26th, 1929.

ANNEX 2.

REPORT ADOPTED BY THE COMMITTEE OF JURISTS ON THE QUESTION OF THE REVISION OF THE STATUTE OF THE COURT¹.

On September 20th, 1928, the Assembly of the League of Nations adopted the following resolution :

" The Assembly :

" Considering the ever-increasing number of matters referred to the Permanent Court of International Justice ;

" Deeming it advisable that, before the renewal of the term 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 ;

" Draws the Council's attention to the advisability of proceeding, before the renewal of the term 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."

In pursuance of this resolution, the Council decided on December 13th and 14th, 1928, to set up a Committee consisting of Jonkheer VAN EYSINGA, M. FROMAGEOT, M. GAUS, Sir Cecil HURST, M. ITO, M. POLITIS, M. RAESTAD, M. RUNDSTEIN, M. SCIALOJA, M. URRUTIA and a jurist of the United States of America, to be appointed by the President of the Council and the Rapporteur, who selected Mr. Elihu ROOT. The Council further invited the President and the Vice-President of the Court, M. ANZILOTTI and M. HUBER, and the Chairman of the Supervisory Commission, M. OSUSKY, to participate in the work of the Committee. M. PILOTTI was added to the Committee on March 9th, 1929.

The Council Rapporteur had pointed out that, having regard to the terms of the Assembly's decision, the Committee should have wide terms of reference, namely, " to report what amendments appear desirable in the various provisions of the Court's Statute ". He further stated " that the Committee would, of course, be competent to examine such suggestions as may reach it, during its work, from authoritative sources " and " that it would fall to the Committee to ascertain the opinion of the Permanent Court of International Justice in respect of the working of the Court ".

As may be seen from the discussion in the Assembly, the latter did not contemplate recasting completely the Statute of the Court ; it had merely in view the possibility of supplementing or improving the Statute in the light of the experience already acquired.

It is in this spirit that the Committee, which met at Geneva on March 11th, 1929, under the chairmanship of M. SCIALOJA, has pursued its work, which was completed on March 19th under the chairmanship of Jonkheer VAN EYSINGA, the Vice-Chairman.

In the proposals which the Committee has the honour to submit to the Council, it has been in general actuated by the desire to give the States full assurance that the Permanent Court of International Justice established by the League of Nations is a real *judicial* body which is constantly at their disposal for the purpose of hearing and determining their disputes and which possesses alike the necessary juristic competence and experience of international affairs.

It would appear that effect can be given to some of the Committee's proposals by means of *vœux* or recommendations ; other proposals would appear to call for an amendment of the existing text of the Statute.

In the first place, the Committee examined the qualifications which members of the Court should possess in order to satisfy the expectations of Governments in regard to the Permanent Court of International Justice. These conditions will be found in Article 2 of the Statute. The Committee has thought that it would be desirable to mention, in addition to recognised competence in international law which is mentioned in Article 2 of the Statute, the requirement of practical experience in this sphere.

¹ Rapporteurs: M. FROMAGEOT and M. POLITIS.

Similarly, the national groups, when nominating their candidates in accordance with Article 5, should attach to each nomination a statement of the career of the person nominated, showing that he possesses the required qualifications.

Further, as the official languages of the Court are French and English, it appears essential that the judges should be at least able to read these languages and to speak one of them. Though this may be self-evident, the Committee has thought that it would be desirable to draw the special attention of the national groups to the point.

The Committee is of opinion that, despite their importance, none of these three questions necessitates a modification of the existing texts, and that it would be sufficient to proceed by way of a recommendation, as follows :

“ The Committee decides to advise the Assembly to adopt the following recommendation :

“ ‘ The Secretary-General, in issuing the invitations provided for in Article 5 of the Statute, will request the national groups to satisfy themselves that the candidates nominated by them possess recognised practical experience in international law and that they are at least able to read both the official languages of the Court and to speak one of them ; he will recommend the groups to attach to each nomination a statement of the career of the person nominated showing that he possesses the required qualifications.’ ”

On the other hand, it appeared necessary to deal with the following questions by means of amendments :

I. COMPOSITION OF THE COURT.

Experience has shown that deputy-judges have been called upon almost constantly to sit on the Court, the reason being that the majority of them are resident in Europe and were consequently more readily available than judges belonging to other continents ; this has tended to give the Europeans a privileged position. On the other hand, as the deputy-judges have in fact been placed on a footing of equality with the ordinary judges in regard to the work performed, without being subject to the same disabilities, the difference in treatment in this latter respect has not been without its disadvantages. Finally, a further difference between the two classes of judges—that relating to their emoluments—has actually disappeared, since the allowances granted to deputy-judges have placed them in a situation almost equal to that of the ordinary judges.

Practical experience thus points to assimilation of the two classes of judges and accordingly suggests the desirability of abolishing the deputy-judges and replacing them by an equal number of ordinary judges.

The Committee proposes, therefore, to increase the number of ordinary judges from eleven to fifteen and to omit all mention of deputy-judges in Article 3. The disappearance of the deputy-judges naturally involves consequential amendment of various articles in the Statute in which they are mentioned. These changes will be indicated below in connection with Articles 8, 15, 16, 17, 25, 31 and 32. To avoid the risk of an exaggeration which might cause misconception, it also appeared desirable to omit in the new text of Article 3 the reference to a possible increase of the members of the Court above the number of fifteen.

As a result, the new text of Article 3 would be as follows :

“ The Court shall consist of fifteen members.”

2. ELECTION OF JUDGES.

As already stated, the text of Article 8 will, as a result of the disappearance of the deputy-judges, read as follows :

“ The Assembly and the Council shall proceed independently of one another to elect the members of the Court.”

3. RESIGNATION OF A JUDGE.

The resignation of a judge is not provided for in the present existing text of the Statute. The question has, however, arisen in practice, and doubts have been felt as to the procedure to be adopted in such cases. The Committee considered that it would be desirable to supply the omission and to take the view that, once a resignation has been transmitted to the League of Nations, it must be regarded as final ; but that, nevertheless, the resignation should be transmitted to the League by the President of the Court in order that he may, if desirable, be able to satisfy himself that the decision of the judge concerned is irrevocable.

Consequently, the Committee proposes to add two paragraphs to Article 13, which would read as follows :

“ The members of the Court shall be elected for nine years.

“ They may be re-elected.

“ They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

“ In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations.

“ This notification makes the place vacant.”

4. FILLING OF OCCASIONAL VACANCIES.

Article 14 of the Statute merely provides that vacancies which may occur shall be filled by the same method as that laid down for the renewal of the entire Court. Experience has shown that there is a serious disadvantage in waiting for the annual meeting of the Assembly before filling a vacancy, as this may cause a delay of as much as fifteen months. During this period, the Court might be deprived of its essential characteristic—that of a body representative of the various juridical systems—while at the same time the uninterrupted and regular working of this high tribunal might be rendered more difficult.

To remedy this defect, the Committee has thought it desirable to establish a somewhat elastic system which, especially in cases deemed by the Council of the League of Nations to be urgent, would allow of the filling even of a single vacancy within the shortest possible space of time. Under this system, the Secretary-General of the League of Nations would address the prescribed request, within one month after the occurrence of any vacancy, to the national groups, in accordance with Article 5, and the Council would be in a position at its next session to decide whether the election was of a sufficiently urgent character to necessitate the convening of the Assembly in extraordinary session before its ordinary September session.

The system would be embodied in the following new draft of Article 14 :

“ Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of the League of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Council at its next session.”

5. NEW ARTICLE 15.

As Article 15 of the Statute disappears with the disappearance of the deputy-judges, the Committee proposes to make a new Article 15 out of the unaltered part of Article 14, reading as follows :

“ A member of the Court elected to replace a member whose period of appointment has not expired will hold the appointment for the remainder of his predecessor's term.”

6. FUNCTIONS AND OCCUPATIONS INCOMPATIBLE WITH MEMBERSHIP OF THE COURT.

In accordance with the guiding idea of the Committee's work, namely, that the Court, by its composition and its operation, should inspire in the States the highest possible degree of confidence, the Committee has thought that it would be necessary to amplify the rules of Article 16 as to what functions and occupations are incompatible with membership of the Court, and for this purpose to indicate clearly that the members of the Court must not only refrain from exercising any political or administrative function, but also may not engage in any other occupation of a professional nature. Naturally, it would be permissible for members of the Court to be included on the list of members of the Permanent Court of Arbitration and to exercise, if their duties on the Court allowed them the necessary leisure, the functions of arbitrators or conciliators, provided always that the instrument under which they were appointed did not provide for a reference to the Court following upon the arbitration or upon the failure of the conciliation proceedings.

With the disappearance of the deputy-judges, the second sentence of paragraph 1 of Article 16 naturally disappears as well.

Article 16 would thus read as follows :

“ The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

“ Any doubt on this point is settled by the decision of the Court.”

7. ARTICLE 17.

The second sentence of the first paragraph of Article 17 referring to deputy-judges becomes meaningless and is to be omitted.

At this point, the Committee feels it should observe that, while it is stated that no member of the Court can act as agent, counsel or advocate in any case of an international nature, it will not henceforth, in view of the new Article 16, be possible to infer *a contrario* that he is free to exercise the said functions in a case which is national in character. It has not seemed necessary to redraft the text of the second paragraph.

The same consideration applies to the end of the second paragraph, which states that no member of the Court may participate personally in any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity. Obviously, the same would hold good as to their participation in a commission of conciliation ; this appeared to be indicated clearly enough in the expression “ or in any other capacity ”.

Article 17 would therefore read as follows :

“ No member of the Court may act as agent, counsel or advocate in any case of an international nature.

“ No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

“ Any doubt on this point is settled by the decision of the Court.”

8. PERMANENT FUNCTIONING OF THE COURT.

Under the system at present laid down, the Court holds one session annually, beginning on June 15th, and it is convened, in exceptional cases, in extraordinary session when circumstances so require.

In practice, the Court has often been obliged, on account of the increase in the cases referred to it, to hold several extraordinary sessions annually. In so doing, it has occasionally encountered serious practical difficulties. The repeated holding of extraordinary sessions has, in this way, tended, in fact, to bring the Court nearer to that permanent character which its title denotes, and which its promoters had contemplated in order to advance the progress of international justice.

The Committee accordingly considers that it is desirable to bring the written rules into harmony with the facts and to indicate, in a new draft of Article 23, a more regular working of the Court by providing, in imitation of national courts, for a real international judicial year. It therefore proposes to state that the Court shall, in principle, remain constantly in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

On the other hand, in order to enable members of the Court whose ordinary residence is in a country at a considerable distance from its seat to return occasionally to their homes during their term of office, it is suggested that they should be granted the right to six months' leave every three years in addition to the ordinary vacations.

Apart from exceptional cases, such as that of illness or other good reason for absence, the judges must be permanently at the disposal of the Court.

It is to be understood that this principle applies even during the judicial vacations, in the sense that it will be for the Court, when fixing the length of the vacation, to provide for the possibility of convening at The Hague, in an urgent case, such a number of judges as would be necessary to allow it to discharge its duties.

It would also be for the Court to provide in its Rules for the organisation of a vacations procedure for the cases in which a full meeting of the Court would not be necessary.

Article 23 would accordingly be redrafted as follows :

" The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court at the end of each year for the following year.

" Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years.

" Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court."

9. MANNER OF FORMING THE COURT.

As a result of the disappearance of the deputy-judges, the present paragraph 2 of Article 25 must be deleted.

The Committee proposes to replace it by a provision which would enable judges, when there is a heavy cause-list, to sit in turn in order to ensure the prompt despatch of business and would at the same time make it possible to remove the disadvantages that might arise from the co-operation in one and the same case of fifteen members of the Court.

Under this provision, the Court would have the power to provide in its Rules that, according to circumstances and in rotation, a judge or judges might be dispensed from sitting.

The intention of the Committee has of course been that the right just mentioned should in no case be so exercised as to give grounds for any suspicion that the Court has in a given case been specially composed for the purpose of affecting the decision of the case.

The deletion of paragraph 2 of Article 25 necessarily involves the redrafting of paragraph 3. There is no longer any point in providing that a certain number of judges must be available since, as previously stated, all the judges are in principle constantly at the disposal of the Court. It is therefore sufficient to retain the essential sentence in the third paragraph relating to the quorum.

The new Article 25 would be worded as follows :

" The full Court shall sit except when it is expressly provided otherwise.

" Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

" Provided always that a quorum of nine judges shall suffice to constitute the Court."

10. SPECIAL CHAMBER FOR LABOUR CASES.

The redrafting of Article 25 involves a change in paragraph 2 of Article 26, which states that the Court will sit with the number of judges provided for in Article 25. It should now be said that the full Court will sit.

In the next sentence of the same paragraph, the Committee is of opinion that, for the sake of clearness, it is necessary to read "In both cases," that is to say, the cases which are referred to, instead of "on all occasions", because, as is suggested later on, the summary procedure without the assistance of the technical assessors becomes possible in labour cases.

Paragraph 3 of Article 26 should be deleted in consequence of the modification proposed later in Article 31 in regard to national judges.

The Committee would suggest replacing this paragraph by inserting, as the last paragraph but one of Article 26, a stipulation allowing the parties, should they so desire, to resort to the summary procedure provided for in Article 29.

It is the Committee's intention that, whenever resort is had to this right, the Court constituted as a Chamber for summary procedure should consist of five judges only, as will be stated later in connection with Article 29, without the presence of technical assessors.

Article 26 would accordingly be drafted as follows :

" Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions :

" The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases, the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

" The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of " Assessors for Labour Cases ", composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers and, as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding articles of the other Treaties of Peace.

" Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

" In Labour cases, the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings."

II. SPECIAL CHAMBER FOR TRANSIT AND COMMUNICATIONS CASES.

The Committee considered whether it might not be well to delete Article 27, seeing that no application has yet been received and that in the opinion of certain persons it is unlikely that any will ever be received. Nevertheless, the Committee thought it preferable to retain the Article, modifying it, however, in the same way as Article 26 : *i.e.*, by substituting in paragraph 2 the words "the full Court will sit" for the present text "the Court will sit with the number of judges provided for under Article 25"; by omitting paragraph 3; and, finally, by inserting as the last paragraph of Article 27 the same new provision as is contained in the previous article with regard to summary procedure.

The new draft of Article 27 would therefore be as follows :

" Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace shall be heard and determined by the Court under the following conditions :

" The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

" The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of " Assessors for Transit and Communications Cases ", composed of two persons nominated by each Member of the League of Nations.

" Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request."

12. CHAMBER FOR SUMMARY PROCEDURE.

As indicated below in connection with Article 31, the Committee considered that, as the system of national judges exists, it should apply to the Chamber for Summary Procedure as well as to any other form of the Court. It will therefore be necessary to bring Article 29 into harmony with the new draft of Article 31 and for this purpose to make the Chamber for

Summary Procedure consist of five judges instead of three. Provision must also be made, as in the case of the other special Chambers (Articles 26 and 27), for the selection of two judges to replace a judge who finds it impossible to sit.

Article 29 would therefore read as follows :

“ With a view to the speedy dispatch of business, the Court shall form annually a Chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit.”

13. NATIONAL JUDGES.

The Committee considered that it was no part of its duty to deal with the institution of national judges, which is regarded by certain States as one of the essential principles of the organisation of the Court.

It also considered that, in view of the importance which certain States attach to this system, its application should not be limited, as is at present done in Article 31, to the single case in which the full Court sits, but that, on the contrary, it should be extended to the Court in all its forms.

With this object, the Committee proposes to insert as a fourth paragraph in Article 31 a provision making the system of national judges apply to the Special Chambers for Labour, for Communications and Transit and for Summary Procedure (Articles 26, 27 and 29).

Moreover, the disappearance of the deputy-judges necessitates redrafting paragraph 2 of Article 31. There must be a slight change in paragraph 2 and changes of minor importance in paragraphs 3 and 5 of Article 31.

The new Article 31 would read as follows :

“ Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

“ If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to select a judge as provided in the preceding paragraph.

“ The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

“ Should there be several parties in the same interest, they shall for the purpose of the preceding provisions be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

“ Judges selected as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of this Statute. They shall take part in the decision on terms of complete equality with their colleagues.”

14. SALARIES OF JUDGES.

The permanent character of the Court having been more firmly established, and the requirements as to the selection of judges and the rules regarding the other occupations which they may not follow concurrently having been more clearly stated, it has been thought expedient to abandon the mixed system at present in force, which consists in an annual indemnity and allowances for each day of service. Payment for the services and subsistence expenses of members of the Court at The Hague will now take the form of a fixed inclusive annual salary which, in fact, will correspond approximately to the maximum obtainable by the judges under the present system.

This will be a simplification of a system which at present is particularly complicated.

Accordingly, the Committee proposes to redraft Article 32 completely and to submit to the Assembly a draft resolution to be substituted for the resolution of December 18th, 1920, concerning the salaries of members of the Court.

It has not, however, been thought expedient to include in the annual salary the travelling expenses of members attending the Court or their travelling expenses while on duty.

In the Committee's view, it is for the Assembly to lay down special regulations on this point. The Committee considers, however, that the members of the Court and the Registrar should, apart from journeys made on duty, be reimbursed for only one journey every year from the seat of the Court to their homes and back again.

The final paragraph of the present Article 32 deals with retiring pensions for the personnel of the Court. It refers to a special regulation which was made by the Assembly in 1924. This regulation will require revision; the Supervisory Commission will lay the matter before the Assembly, but on account of certain proposed amendments to the Statute of the Court, of which a brief summary was given at the head of this section, the Committee is of opinion that the Assembly's attention should be specially drawn to the desirability of redrafting paragraph 5 of Article 1 of the 1924 regulation in the terms indicated in the attached draft resolution as to pensions.

The new text of Article 32 and the accompanying draft resolutions, referred to above, would be as follows :

- " *The members of the Court shall receive an annual salary.*
- " *The President shall receive a special annual allowance.*
- " *The Vice-President shall receive a special allowance for every day on which he acts as President.*
- " *The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.*
- " *These salaries, allowances and indemnities shall be fixed by the Assembly of the League of Nations on the proposal of the Council. They may not be decreased during the term of office.*
- " *The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court.*
- " *Regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.*
- " *The above salaries, indemnities and allowances shall be free of all taxation."*

Draft Resolution concerning Salaries.

" *In accordance with the provisions of Article 32 of the Statute, the Assembly of the League of Nations fixes the salaries, allowances and indemnities of the members and judges of the Permanent Court of International Justice as follows :*

" <i>President :</i>	Dutch florins
Annual salary	45,000
Special indemnity	15,000
" <i>Vice-President :</i>	
Annual salary	45,000
Allowance for each day on duty (100 × 100)	10,000 (maximum)
" <i>Members :</i>	
Annual salary	45,000
" <i>Judges referred to in Article 31 of the Statute :</i>	
Indemnity for each day on duty	100
Allowance for each day of attendance	50."

Draft Resolution amending Paragraph 5 of Article 1 of the Regulations regarding Pensions.

" *The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. Should, however, the person entitled to a pension, before attaining that age, reach the end of his term of office without being re-elected, his pension may, by a decision of the Court, be made payable to him, in whole or part, as from the date on which his functions cease."*

15. CONTRIBUTIONS OF STATES NOT MEMBERS OF THE LEAGUE OF NATIONS.

The Committee does not propose any amendment to Article 35, but thinks that an observation is called for on paragraph 3 of that Article.

In view of the third reservation attached by the United States of America to their accession to the Protocol of Signature, paragraph 3 of Article 35 should not apply to the special case of the United States if they accede to the Court Statute.

16. AMENDMENT TO NO. 4 OF ARTICLE 38.

The Committee has only a very slight and purely formal amendment to propose to No. 4 of Article 38. It consists in restoring in the French text a few words which appear in the English text. In the said No. 4 of Article 38, after the words " *la doctrine des publicistes les plus qualifiés* ", the words " *des différentes nations* " should be added.

Article 38, No. 4, would then read in the French text as follows :

" *Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit."*

17. PROCEDURE.

In the final paragraph of Article 39, where reference is made to the power of the Court to authorise, at the request of the parties, the use of a language other than French or English, the Committee thinks it should be more clearly stated that such authorisation may be granted without agreement between the parties, provided one of them so requests. Experience has shown that it might be desirable to make this clearer.

Article 39, paragraph 3, would then read as follows :

" *The Court may, at the request of any party, authorise a language other than French or English to be used."*

18. COMMUNICATION OF APPLICATIONS.

In paragraph 3 of Article 40, the Committee thinks it would be desirable to bring the text of the Statute into line with Article 73 of the present Rules of Court, which latter provision, as will be seen, the Committee proposes to embody in the new draft of the Statute. Article 40, paragraph 3, would then read as follows :

“ He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court.”

19. DIRECTION OF THE HEARING.

The English text of Article 45 does not quite correspond to the French text, which here is better.

In order to bring the two texts into concordance, the Committee proposes to replace the words “ in his absence ” by the words “ if he is unable to preside ”, and the words “ if both are absent ” by the words “ if neither is able to preside ”.

The English text of this Article would then read as follows :

“ The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President ; if neither is able to preside, the senior judge shall preside.”

20. ADVISORY OPINIONS.

The present Statute contains no explicit reference to advisory opinions. The Court has been compelled by circumstances to remedy this omission to a certain extent in Articles 71, 72, 73 and 74 of the Rules of Court.

The Committee considers that the essential parts of these provisions should be transferred to the Statute of the Court in order to give them a permanent character, which seems particularly desirable to-day in view of the special circumstances attending the possible accession of the United States to the Protocol of Signature of the Statute of the Court.

The Committee therefore proposes to add at the end of the present Statute a new chapter numbered IV and headed “ Advisory Opinions ”, the first three Articles of which, numbered 65, 66 and 67, would reproduce the substance of Articles 72, 73 and 74 of the present Rules of Court.

It also proposes that a final Article numbered 68 should be added to this chapter in order to take account of the fact that the Court may be called upon to give advisory opinions both in contentious and in non-contentious matters. The effect would be that, in the former case, the Court would apply the provisions relating to contentious procedure referred to in the previous chapters of the Statute, whereas those provisions would not always be applicable when the Court gave an opinion on a non-contentious matter. Thus, for example, Articles 57 and 58 should apply in all cases, but Article 31 would only apply when an advisory opinion was asked on a question relating to a dispute which had already arisen.

The new Articles 65, 66, 67 and 68 would be worded as follows :

“ CHAPTER IV. — ADVISORY OPINIONS.

“ Article 65.

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

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

“ Article 66.

1. *“ The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.*

“ The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

“ Should any State or Member referred to in the first paragraph have failed to receive the communication specified above, such State or Member may express a desire to submit a written statement, or to be heard ; and the Court will decide.

2. *“ States or Members having presented written or oral statements or both shall be admitted to comment on the statements made by other States or Members in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States or Members having submitted similar statements.*

“ Article 67.

“ The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States and Members of the League immediately concerned.

“ Article 68.

“ In the exercise of its advisory functions, the Court shall apply Articles 65, 66 and 67. It shall further be guided by the provisions of the preceding chapters of this Statute to the extent to which it recognises them to be applicable to the case.”

* * *

Such are the proposals which the Committee has the honour to submit for the Council's consideration.

The Committee has to observe that, in the course of its work, it has found somewhat inappropriate expressions used in the French and in the English texts of several articles of the Statute ; it has, however, felt it unnecessary to propose corrections, as it does not wish to encumber the present report with suggestions which are not clearly of practical value.

Finally, the Committee has considered what would be the appropriate procedure for bringing into force the amendments proposed in the present report.

On this subject, the Committee ventures to make the following suggestions :

If the Council approves the conclusions of the report, it will no doubt find it convenient to communicate them to the Members of the League of Nations and the States mentioned in the Annex to the Covenant and to transmit them to the Assembly ; it would be desirable that, if the amendments secure general approval, the Protocol accepting them which must be concluded between the parties which have ratified the 1920 Statute should be made in the course of next Assembly.

On this point, the Committee must call the attention of the Council to the necessity for taking appropriate measures to secure the entry into force of the amendments a sufficient time before the election of the members of the Court in September 1930, on account, more particularly, of the changes which are made in regard to the number of the members of the Court and the rules as to the occupations which are incompatible with membership.

Appendix

TEXTS PROPOSED BY THE COMMITTEE.

A. PROVISIONS OF THE STATUTE OF THE COURT.

New Article 3.

The Court shall consist of fifteen members.

New Article 8.

The Assembly and the Council shall proceed independently of one another to elect the members of the Court.

New Article 13.

The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations.

This notification makes the place vacant.

New Article 14.

Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of the League of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Council at its next session.

New Article 15.

A member of the Court elected to replace a member whose period of appointment has not expired, will hold the appointment for the remainder of his predecessor's term.

New Article 16.

*The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.
Any doubt on this point is settled by the decision of the Court.*

New Article 17.

No member of the Court may act as agent, counsel or advocate in any case of an international nature.

*No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.
Any doubt on this point is settled by the decision of the Court.*

New Article 23.

The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court at the end of each year for the following year.

Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years.

Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court.

New Article 25.

The full Court shall sit except when it is expressly provided otherwise.

Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

Provided always that a quorum of nine judges shall suffice to constitute the Court.

New Article 26.

Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases, the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labour Cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers, and, as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request,

In Labour cases, the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

New Article 27.

Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications Cases" composed of two persons nominated by each Member of the League of Nations.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request,

New Article 29.

With a view to the speedy despatch of business, the Court shall form annually a Chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit.

New Article 31.

Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to select a judge as provided in the preceding paragraph.

The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

Should there be several parties in the same interest they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of this Statute. They shall take part in the decision on terms of complete equality with their colleagues.

New Article 32.

The members of the Court shall receive an annual salary.

The President shall receive a special annual allowance.

The Vice-President shall receive a special allowance for every day on which he acts as President.

The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

These salaries, allowances and indemnities shall be fixed by the Assembly of the League of Nations on the proposal of the Council. They may not be decreased during the term of office.

The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court.

Regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.

The above salaries, indemnities and allowances shall be free of all taxation.

New Article 38, No. 4.

The amendment only affects the French text which is altered to read as follows :

4. Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit.

New Article 39.

The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of any party, authorise a language other than French or English to be used.

New Article 40.

Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court.

New Article 45.

The amendment only affects the English text which is altered to read as follows :

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge shall preside.

New Article 65.

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

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

New Article 66.

1. The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

Should any State or Member referred to in the first paragraph have failed to receive the communication specified above, such State or Member may express a desire to submit a written statement, or to be heard; and the Court will decide.

2. States or Members having presented written or oral statements or both shall be admitted to comment on the statements made by other States or Members in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States or Members having submitted similar statements.

New Article 67.

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States and Members of the League immediately concerned.

New Article 68.

In the exercise of its advisory functions, the Court shall apply Articles 65, 66 and 67. It shall further be guided by the provisions of the preceding chapters of this Statute to the extent to which it recognises them to be applicable to the case.

B. RECOMMENDATIONS AND DRAFT RESOLUTIONS.

1. The Committee decided to suggest that the Assembly should adopt the following recommendation:

The Secretary-General, in issuing the invitations provided for in Article 5 of the Statute, will request the national groups to satisfy themselves that the candidates nominated by them possess recognised practical experience in international law and that they are at least able to read both the official languages of the Court and to speak one of them; he will recommend the groups to attach to each nomination a statement of the career of the person nominated showing that he possesses the required qualifications.

2. In connection with the new text of Article 32 of the Statute, the Committee drew up the following draft resolutions:

Draft Resolution concerning Salaries.

In accordance with the provisions of Article 32 of the Statute, the Assembly of the League of Nations fixes the salaries, allowances and indemnities of the members and judges of the Permanent Court of International Justice as follows:

President:	Dutch florins
Annual salary	45,000
Special indemnity	15,000
Vice-President:	
Annual salary	45,000
Allowance for each day on duty (100 × 100)	10,000 (maximum)
Members:	
Annual salary	45,000
Judges referred to in Article 31 of the Statute:	
Indemnity for each day on duty	100
Allowance for each day of attendance	50

Draft Resolution amending Paragraph 5 of Article I of the Regulation regarding Pensions.

The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. Should, however, the person entitled to a pension, before attaining that age, reach the end of his term of office without being re-elected, his pension may, by a decision of the Court, be made payable to him, in whole or part, as from the date on which his functions cease.

¹ This subdivision (Chapter IV) is entirely new.

ANNEX 3.

**ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL OF
SIGNATURE OF THE STATUTE OF THE COURT.**

**RESOLUTION ADOPTED BY THE SENATE OF THE UNITED STATES OF AMERICA ON
JANUARY 27TH, 1926.**

Whereas the President, under date of February 24th, 1923, transmitted a message to the Senate, accompanied by a letter from the Secretary of State, dated February 17th, 1923, asking the favourable advice and consent of the Senate to the adherence on the part of the United States to the Protocol of December 16th, 1920, of Signature of the Statute for the Permanent Court of International Justice, set out in the said message of the President (without accepting or agreeing to the Optional Clause for Compulsory Jurisdiction contained therein), upon the conditions and understandings hereafter stated, to be made a part of the instrument of adherence :

Therefore be it

Resolved (two-thirds of the Senators present concurring), That the Senate advise and consent to the adherence on the part of the United States to the said Protocol of December 16th, 1920, and the adjoined Statute for the Permanent Court of International Justice (without accepting or agreeing to the Optional Clause for Compulsory Jurisdiction contained in said Statute), and that the signature of the United States be affixed to the said Protocol, subject to the following reservations and understandings, which are hereby made a part and condition of this resolution, namely :

1. That such adherence shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Treaty of Versailles.

2. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other States, Members respectively of the Council and Assembly of the League of Nations, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice or for the filling of vacancies.

3. That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States.

4. That the United States may at any time withdraw its adherence to the said Protocol and that the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

5. That the Court shall not render any advisory opinion except publicly after due notice to all States adhering to the Court and to all interested States and after public hearing or opportunity for hearing given to any State concerned ; nor shall it, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest.

The signature of the United States to the said Protocol shall not be affixed until the Powers signatory to such Protocol shall have indicated, through an exchange of notes, their acceptance of the foregoing reservations and understandings as a part and a condition of adherence by the United States to the said Protocol.

Resolved further, As a part of this act of ratification, that the United States approve the Protocol and Statute hereinabove mentioned, with the understanding that recourse to the Permanent Court of International Justice for the settlement of differences between the United States and any other State or States can be had only by agreement thereto through general or special treaties concluded between the parties in dispute ; and

Resolved further, That adherence to the said Protocol and Statute hereby approved shall not be so construed as to require the United States to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign State ; nor shall adherence to the said Protocol and Statute be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions.

Agreed to, January 16th (Calendar day, January 27th), 1926.

ANNEX 4.

**LETTER FROM THE GOVERNMENT OF THE UNITED STATES OF AMERICA
TO THE SECRETARY-GENERAL OF THE LEAGUE.**

Washington, February 19th, 1929.

I have the honour to refer to the communication of this Department dated March 2nd, 1926, informing you of the resolution of the Senate of the United States setting forth the conditions and understandings on which this Government might become a signatory to the

Protocol of Signature of the Statute of the Permanent Court of International Justice, and to inform you that I am to-day transmitting to each of the signatories of the Protocol a communication which, after referring to my previous communication on the subject, reads as follows :

" Five Governments unconditionally accepted the Senate reservations and understandings ; three indicated that they would accept but have not formally notified my Government of their acceptance ; fifteen simply acknowledged the receipt of my Government's note of February 12th, 1926 ; while twenty-four have communicated to my Government replies as hereinafter indicated.

" At a Conference held in Geneva in September 1926 by a large number of the States signatories to the Protocol of Signature of the Statute of the Permanent Court of International Justice, a Final Act was adopted in which were set forth certain conclusions and recommendations regarding the proposal of the United States, together with a preliminary draft of a Protocol regarding the adherence of the United States, which the Conference recommended that all the signatories of the Protocol of Signature of December 16th, 1920, should adopt in replying to the proposal of the United States. Twenty-four of the Governments adopted the recommendations of the Conference of 1926 and communicated to the Government of the United States in the manner suggested by the Conference. By these replies and the proposed Protocol attached thereto, the first four reservations adopted by the Senate of the United States were accepted. The fifth reservation was not accepted in full, but so much of the first part thereof as required the Court to render advisory opinions in public session was accepted, and the attention of my Government was called to the amended Rules of the Court requiring notice and an opportunity to be heard.

" The second part of the fifth reservation therefore raised the only question on which there is any substantial difference of opinion. That part of the reservation reads as follows :

" . . . Nor shall it (the Court) without the consent of the United States entertain any request for any advisory opinion touching any dispute or question in which the United States has or claims an interest."

" It was observed in the Final Act of the Conference that, as regards disputes to which the United States is a party, the Court had already pronounced upon the matter of disputes between a Member of the League of Nations and a State not a Member, and reference was made to Advisory Opinion No. 5 in the Eastern Karelia case in which the Court held that it would not pass on such a dispute without the consent of the non-Member of the League. The view was expressed that this would meet the desire of the United States.

" As regards disputes to which the United States is not a party but in which it claims an interest, the view was expressed in the Final Act that this part of the fifth reservation rests upon the presumption that the adoption of a request for an advisory opinion by the Council or the Assembly requires a unanimous vote. It was stated that, since this has not been decided to be the case, it cannot be said with certainty whether in some or all cases a decision by a majority may not be sufficient but that, in any case where a State represented on the Council or in the Assembly would have a right to prevent by opposition in either of these bodies the adoption of a proposal to request an advisory opinion from the Court, the United States should enjoy an equal right. Article 4 of the draft Protocol states that " should the United States offer objection to an advisory opinion being given by the Court, at the request of the Council or the Assembly, concerning a dispute to which the United States is not a party or concerning a question other than a dispute between States, the Court will attribute to such objection the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations either in the Assembly or in the Council ", and that " the manner in which the consent provided for in the second part of the fifth reservation is to be given " should be the subject of an understanding to be reached by the Government of the United States with the Council of the League of Nations.

" The Government of the United States desires to avoid in so far as may be possible any proposal which would interfere with or embarrass the work of the Council of the League of Nations, doubtless often perplexing and difficult, and it would be glad if it could dispose of the subject by a simple acceptance of the suggestions embodied in the Final Act and draft Protocol adopted at Geneva on September 23rd, 1926. There are, however, some elements of uncertainty in the bases of these suggestions which seem to require further discussion. The powers of the Council and its modes of procedure depend upon the Covenant of the League of Nations, which may be amended at any time. The ruling of the Court in the Eastern Karelia case and the Rules of the Court are also subject to change at any time. For these reasons, without further enquiry into the practicability of the suggestions, it appears that the Protocol submitted by the twenty-four Governments in relation to the fifth reservation of the United States Senate would not furnish adequate protection to the United States. It is gratifying to learn from the proceedings of the Conference at Geneva that the considerations inducing the adoption of that part of Reservation 5 giving rise to differences of opinion are appreciated by the Powers participating in that Conference. Possibly the interest of the United States thus attempted to be safeguarded may be fully protected in some other way or by some other formula. The Government of the United States feels that such an informal exchange of views as is contemplated by the twenty-four Governments should, as herein suggested, lead to

agreement upon some provision which in unobjectionable form would protect the rights and interests of the United States as an adherent to the Court Statute, and this expectation is strongly supported by the fact that there seems to be but little difference regarding the substance of these rights and interests."

(Signed) Frank B. KELLOGG.

ANNEX 5.

REPORT ADOPTED BY THE COMMITTEE OF JURISTS ON THE QUESTION OF THE ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL OF SIGNATURE OF THE STATUTE OF THE COURT.¹

On February 19th, 1929, the Secretary of State of the United States of America addressed to each of the Governments which had signed the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16th, 1920, and also to the Secretary-General of the League of Nations a note suggesting that an exchange of views might lead to an agreement with regard to the acceptance of the stipulation set forth in the resolution adopted by the Senate of the United States on January 27th, 1926, as the conditions upon which the United States would adhere to the said Protocol. This note was considered by the Council of the League of Nations at its meeting on March 9th, 1929, and cordial satisfaction was expressed at the prospect which the note held out that a solution might be found for the difficulties which had prevented the adherence of the United States in 1926. On the same date, a resolution was adopted by the Council, requesting the Committee of Jurists, which had been appointed by the Council at its meeting on December 14th, 1928, to consider the revision of the Statute of the Permanent Court of International Justice, to deal with this question as well as those with which it was already charged and to make any suggestions which it felt able to offer with a view to facilitating the accession of the United States on conditions satisfactory to all the interests concerned.

It has been of the greatest assistance to the Committee in the accomplishment of this additional task that among its members was to be found the Honourable Elihu Root, formerly Secretary of State of the United States, and one of the members of the Committee which in 1920 framed the original draft of the Statute of the Court. His presence on the Committee has enabled it to re-examine with good results the work accomplished by the Special Conference which was convoked by the Council in 1926 after the receipt of the letter of March 2nd of that year from the then Secretary of State of the United States informing the Secretary-General of the League that the United States was disposed to adhere to the Protocol of December 16th, 1920, on certain conditions enumerated in that letter. The United States did not see its way to participate, as it was invited to do, in the Special Conference of 1926, and, unfortunately, the proposals which emanated from that Conference were found not to be acceptable to the United States. Nevertheless, as is shown by the note of February 19th, 1929, from Mr. Kellogg, the margin of difference between the requirements of the United States and the recommendations made by the Special Conference to the Powers which had signed the Protocol of December 16th, 1920, is not great. For this reason, the Committee adopted as the basis of its discussions the Preliminary Draft of a Protocol annexed to the Final Act of that Conference and has introduced into the text the changes which it believes to be necessary to overcome the objections encountered by the draft of 1926 and to render it acceptable to all parties. This revised text is now submitted to the Council of the League.

The discussions in the Committee have shown that the conditions with which the Government of the United States thought it necessary to accompany the expression of its willingness to adhere to the Protocol establishing the Court owed their origin to apprehension that the Council or the Assembly of the League might request from the Court advisory opinions without reference to interests of the United States which might in certain cases be involved. Those discussions have also shown that the hesitation felt by the delegates to the Conference of 1926 as to recommending the acceptance of those conditions was due to apprehension that the rights claimed in the reservations formulated by the United States might be exercised in a way which would interfere with the work of the Council or the Assembly and embarrass their procedure. The task of the Committee has been to discover some method of ensuring that neither on the one side nor on the other should these apprehensions prove to be well founded.

No difficulty has at any time been felt with regard to the acceptance of the conditions laid down by the United States except in so far as they relate to advisory opinions, and the task of the Committee would have been simplified if its members had felt able to recommend that the system of asking the Court for an advisory opinion upon any particular question should be abandoned altogether. The Committee, however, is of opinion that it cannot recommend any such drastic solution. The system of asking the Court for an advisory opinion has proved to be of substantial utility in securing a solution of questions which could not conveniently be submitted to the Court in any other form. It has also on occasions enabled parties to a dispute to ask for the submission of their difference to the Court in the form of a request for an advisory opinion when they were for various reasons unwilling to submit it in the form of international litigation.

¹ Rapporteur : Sir Cecil Hurst.

The Committee has also felt obliged to reject another method by which satisfaction might without difficulty be given to the conditions laid down by the United States. It is that of recommending the adoption of a rule that in all cases a decision on the part of the Council or of the Assembly to ask for an advisory opinion from the Court must be unanimous. As is pointed out in the Final Act of the Special Conference of 1926, it was not then possible to say with certainty whether a decision by a majority was not sufficient. It is equally impossible to-day. All that is possible is to guarantee to the United States a position of equality in this matter with the States which are represented in the Council or the Assembly of the League.

Furthermore, mature reflection convinced the Committee that it was useless to attempt to allay the apprehensions on either side, which have been referred to above, by the elaboration of any system of paper guarantees or abstract formulæ. The more hopeful system is to deal with the problem in a concrete form, to provide some method by which questions as they arise may be examined and views exchanged, and a conclusion thereby reached after each side has made itself acquainted with the difficulties and responsibilities which beset the other. It is this method which the Committee recommends should be adopted, and to provide for which it now submits a text of a Protocol to be concluded between the States which signed the Protocol of 1920 and the United States of America (see Appendix, page 72).

The note of February 19th, 1929, from the Secretary of State of the United States makes it clear that the Government of the United States has no desire to interfere with or to embarrass the work of the Council or the Assembly of the League, and that that Government realises the difficulties and responsibilities of the tasks with which the League is from time to time confronted. It shows that there is no intention on the part of the United States Government of hampering upon unreal or unsubstantial grounds, the machinery by which advisory opinions are from time to time requested. The Committee is thereby enabled to recommend that the States which signed the Protocol of 1920 should accept the reservations formulated by the United States upon the terms and conditions set out in the articles of the draft Protocol. This is the effect of Article I of the draft now submitted.

The next three Articles reproduce without substantial change the corresponding articles of the draft of 1926.

The fifth Article provides machinery by which the United States will be made aware of any proposal before the Council or the Assembly for obtaining an advisory opinion and will have an opportunity of indicating whether the interest of the United States are affected, so that the Council or the Assembly, as the case may be, may decide its course of action with full knowledge of the position. One may hope with confidence that the exchange of views so provided for will be sufficient to ensure that an understanding will be reached and no conflict of views will remain.

The provisions of this Article have been worded with due regard to the exigencies of business in the Council of the League. The desirability of obtaining an advisory opinion may only become apparent as the session of the Council is drawing to a close and when it may not be possible to complete the exchange of views before the members of that body separate. In that case, it will be for the Council to give such directions as the circumstances may require, in order to ensure that the intentions of the Article are carried out. The request addressed to the Court may, for instance, be held up temporarily, or it may be despatched with a request that the Court will nevertheless suspend action on the request until the exchange of views with the United States has been completed. The provisions of the Article have purposely been framed so as to afford a measure of elasticity in its application. Similarly, if the Court has commenced the preliminary proceedings consequent upon the receipt of the request for an advisory opinion and has given notice of the request to the United States in the same way as to the other Governments, the proceedings may, if necessary, be interrupted in order that the necessary exchange of views may take place. What is said in this paragraph with regard to the necessary exchange of views may take place. What is said in this paragraph with regard to requests for advisory opinions made by the Council would also apply to requests by the Assembly in the event of the Assembly making any such request.

The provisions of this Article should in practice afford protection to all parties in all cases, but if they do not, it must be recognised that the solution embodied in the present proposal will not have achieved the success that was hoped, and that the United States would be fully justified in withdrawing from the arrangement. It is for this eventuality that provision is made in the last paragraph of the Article. It may be hoped that, should any such withdrawal by the United States materialise, it would in fact be followed or accompanied by the conclusion of some new and more satisfactory arrangement.

In order to ensure so far as possible that the parties to the Protocol of 1920 shall be identical with the parties to the new Protocol, Article 6 provides that any State which in future signs the Protocol of 1920 shall be deemed to accept the new Protocol.

The remaining provisions of the draft Protocol do not call for detailed comment, because they are in substance similar to the corresponding provisions of the draft Protocol of 1926.

It is necessary to consider what steps will be required to bring the Protocol, of which the text is now submitted, into force in the event of the recommendations of the Committee being accepted.

If the terms of the Protocol are approved by the Council it will be advisable that the Secretary-General should be directed, when answering Mr. Kellogg's note of February 19th, 1929, to communicate the draft to the Government of the United States. Since the Protocol,

if approved, covers the entire ground of Mr. Kellogg's note, its transmission with a statement of the Council's approval would seem to constitute an adequate reply to that note. It should at the same time be communicated to all the States which signed the Protocol of December 16th, 1920, together with a copy of the resolution of the Senate of the United States, dated January 27th, 1926, containing the reservations of the United States.

It should also be communicated to the Assembly, in which the proposal for the appointment of this Committee originated, in order that, if its terms are acceptable to that body, a resolution approving it may be passed by the Assembly in the course of its ensuing session. Any action taken by the Assembly should be communicated to the signatory States which are called upon to determine whether or not to sign the new Protocol now proposed.

If the replies from the various Governments indicate a desire for a further exchange of views with regard to the nature of the proposed arrangement with the United States or to the terms of the draft Protocol, it will be for the Council to decide whether such exchange of views should proceed through the diplomatic channel or whether it is necessary to convoke a further special conference for the purpose, at which States not Members of the League might be represented. In any event, such exchange of views should, if possible, be completed before the conclusion of the Assembly, in order that the approval by the Assembly may be obtained in 1929. A copy of the Protocol in the terms approved will then be prepared for signature and every effort should be made to secure that delegates to the meeting of the Assembly or of the special conference, if there should be one, should be authorised to sign the instrument and should actually sign it before they leave Geneva. The signature of representatives of States not Members of the League should be obtained at the same time.

As provided in Article 7 of the draft, the Protocol will come into force as soon as it has been ratified by the States which have ratified the Protocol of December 16th, 1920, and by the United States, and, as soon as it has come into force, it will be possible for the United States to take the necessary steps to become a party to the Protocol of December 16th, 1920, and to any further protocol which may have been concluded for introducing amendments into the Statute of the Court.

When that happy result has been achieved, it will be possible to feel that further progress has been made in establishing the reign of law among the nations of the world and in diminishing the risk that there may be a resort to force for the solution of their conflicts.

Appendix.

DRAFT PROTOCOL.

The States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16th, 1920, and the United States of America, through the undersigned duly authorised representatives, have mutually agreed upon the following provisions regarding the adherence of the United States of America to the said Protocol, subject to the five reservations formulated by the United States in the resolution adopted by the Senate on January 27th, 1926.

Article 1.

The States signatories of the said Protocol accept the special conditions attached by the United States in the five reservations mentioned above to its adherence to the said Protocol upon the terms and conditions set out in the following Articles.

Article 2.

The United States shall be admitted to participate, through representatives designated for the purpose and upon an equality with the signatory States Members of the League of Nations represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court on International Justice, provided for in the Statute of the Court. The vote of the United States shall be counted in determining the absolute majority of votes required by the Statute.

Article 3.

No amendment of the Statute of the Court may be made without the consent of all the Contracting States.

Article 4.

The Court shall render advisory opinions in public session after notice and opportunity for hearing substantially as provided in the now existing Articles 73 and 74 of the Rules of Court.

Article 5.

With a view to ensuring that the Court shall not, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest, the Secretary-General of the League of Nations shall, through any channel designated for that purpose by the United States, inform the United States of any proposal before the Council or the Assembly of the League for obtaining an advisory opinion from the Court, and thereupon, if desired, an exchange of views as to whether an interest of the United States is affected shall proceed with all convenient speed between the Council or Assembly of the League and the United States.

Whenever a request for an advisory opinion comes to the Court, the Registrar shall notify the United States thereof, among other States mentioned in the now existing Article 73 of the Rules of Court, stating a reasonable time-limit fixed by the President within which a written statement by the United States concerning the request will be received. If for any reason no sufficient opportunity for an exchange of views upon such request should have been afforded and the United States advises the Court that the question upon which the opinion of the Court is asked is one that affects the interests of the United States, proceedings shall be stayed for a period sufficient to enable such an exchange of views between the Council or the Assembly and the United States to take place.

With regard to requesting an advisory opinion of the Court in any case covered by the preceding paragraphs, there shall be attributed to an objection of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations in the Council or in the Assembly.

If, after the exchange of views provided for in paragraph 1 and 2 of this Article, it shall appear that no agreement can be reached and the United States is not prepared to forgo its objection, the exercise of the powers of withdrawal provided for in Article 8 hereof will follow naturally without any imputation of unfriendliness or unwillingness to co-operate generally for peace and good will.

Article 6.

Subject to the provisions of Article 8 below, the provisions of the present Protocol shall have the same force and effect as the provisions of the Statute of the Court and any future signature of the Protocol of December 16th, 1920, shall be deemed to be an acceptance of the provisions of the present Protocol.

Article 7.

The present Protocol shall be ratified. Each State shall forward the instrument of ratification to the Secretary-General of the League of Nations, who shall inform all the other signatory States. The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall come into force as soon as all States which have ratified the Protocol of December 16th, 1920, and also the United States, have deposited their ratifications.

Article 8.

The United States may at any time notify the Secretary-General of the League of Nations that it withdraws its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately communicate this notification to all the other States signatories of the Protocol.

In such case, the present Protocol shall cease to be in force as from the receipt by the Secretary-General of the notification by the United States.

On their part, each of the other Contracting States may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately give communication of this notification to each of the States signatories of the present Protocol. The present Protocol shall be considered as ceasing to be in force if and when, within one year from the date of receipt of the said notification, not less than two-thirds of the Contracting States other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance.

DONE at....., the..... day of....., 19....., in a single copy, of which the French and English texts shall both be authoritative.

ANNEX 6.

ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL
OF SIGNATURE OF THE STATUTE OF THE PERMANENT COURT OF
INTERNATIONAL JUSTICE.

LETTER DATED SEPTEMBER 5TH, 1929, FROM THE PRESIDENT OF THE CONFERENCE TO THE
PRESIDENT OF THE ASSEMBLY AND TO THE CHAIRMAN OF THE FIRST COMMITTEE.

[*Translation.*]

The Conference which has been invited to deal, among other questions, with the question of the accession of the United States of America to the Statute of the Permanent Court of International Justice, has accepted unanimously and without alteration the draft Protocol on this matter drawn up by the Committee of Jurists which met last March (see Annex 5, Appendix).

I have the honour to inform you that the Conference has decided to refer the said Protocol to the First Committee of the Assembly in order that the latter may be in a position to take the concurrent action of itself finally adopting this Instrument.

(Signed) VAN EYSINGA,
President of the Conference.

Official No: A. 22. 1929. V.
[C.A.S.C.2.]

ANNEX 7.

LETTER FROM THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE
TO THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS CONCERNING
THE QUESTION OF THE REVISION OF THE STATUTE OF THE
PERMANENT COURT OF INTERNATIONAL JUSTICE.

[*Translation.*]

At its fifty-fifth session, held in June last, the Council of the League of Nations adopted a resolution convening for September 10th, 1929, a Conference of States parties to the Statute of the Permanent Court of International Justice. This Conference, which is to consider the revision of the Statute of the Court, will examine the report drawn up for that purpose by the Committee of Jurists which the Council instructed to study the Statute of the Court.

As I have pointed out in a number of communications to you, Article 423 of the Treaty of Versailles gives the Permanent Court of International Justice general powers to deal with all questions or difficulties arising out of the working of the International Labour Organisation, and for that reason the revision of the Statute of the Court is clearly a matter of interest to the Labour Organisation. Moreover, the report submitted on this question by the Committee of Jurists leads me to make an observation to which I feel bound to draw particular attention.

The Committee of Jurists rightly considers that it would be desirable to include in the Statute certain terms providing for the exercise of the advisory powers granted to the Court by Article 14 of the Covenant. It therefore proposes that Articles 72 to 74 of the Rules of the Court, which deal with the procedure for advisory opinions, should be embodied in the Statute. Unfortunately, the Committee of Jurists suggests making a change in the wording of these provisions, no explanation of which is contained in its report. Articles 73 and 74 of the Rules adopted by the Court provide for the participation in the advisory procedure of the international organisations concerned, but the draft Articles 66 and 67 of the Statute proposed by the Committee of Jurists contain no reference at all to any consultation of these organisations.

This omission seems somewhat unfortunate. The Court has already been asked on four occasions to give advisory opinions on questions relating to the working of the International Labour Organisation. On each occasion it has requested or accepted observations both from representatives of the International Labour Organisation itself and from representatives of international trade union organisations. This procedure has always worked quite satisfactorily and it might prove inexpedient to change it.

The Standing Orders Committee of the Governing Body of the International Labour Office has considered the change which the Committee of Jurists proposes to introduce in the provisions relating to the advisory procedure of the Court, and has asked me to approach the competent organs of the League of Nations with a request that the text of Articles 73 and 74 of the Rules of the Court should be reproduced in the Statute unchanged, or that, at all events, the reference to the consultation of international organisations should not be omitted.

I should therefore be very grateful if you would be good enough to bring the above considerations to the knowledge of the Governments which have been invited to take part in the Conference of States parties to the Statute of the Court. I have also the honour to inform you that I should be glad to attend or be represented at that Conference with a view to submitting to it any observations by the International Labour Office on the questions which the Conference has been asked to consider.

(Signed) Albert THOMAS.

ANNEX 8.

REPORT OF THE DRAFTING COMMITTEE ON THE QUESTION OF THE REVISION OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

I. PROPOSED NEW CHAPTER IV. ADVISORY OPINIONS : NEW ARTICLES 65 TO 68.

The Conference has still to consider two questions, namely :

(a) The question raised by the International Labour Office.

After discussion with the representative of this Office, M. Fromageot, who was asked to examine this question, proposed the following amended text for the new Articles 66 and 67 :

New Article 66.

“ 1. The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

“ The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court *or international organisation* considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

“ Should any State or Member referred to in the first paragraph have failed to receive the communication specified above, such State or Member may express a desire to submit a written statement, or to be heard ; and the Court will decide.

“ 2. States Members *and organisations* having presented written or oral statements or both shall be admitted to comment on the statements made by other States, Members *or organisations*, in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States, Members *and organisations* having submitted similar statements.”

New Article 67.

“ The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States, *of Members of the League and of international organisations* immediately concerned.”

The effect is to reproduce the provisions of the existing Rules of Court (Articles 73 and 74). The French text of the former article is brought into conformity with the English text, which is that followed by the jurisprudence of the Court. This had already been done in the text annexed to the Jurists' report.

(b) Sir Cecil Hurst's proposal to give the new Article 68 the following form :

New Article 68.

“ In the exercise of its advisory functions, the Court shall apply Articles 65, 66 and 67. It shall further be guided by the provisions of the Statute prescribed to be followed in contentious cases to the extent to which it recognises them to be applicable.”

II. PROPOSAL OF THE DELEGATE OF BRAZIL.

The President has received the following letter from the delegate of Brazil, dated September 10th, 1929 :

“ My Government, which is taking part in the Conference of States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice of December 16th, 1920, would be glad that this opportunity should be taken to regularise, in a clear and precise manner, the situation of Brazil in regard to the Permanent Court of International Justice.

“ I have already informed the Secretary-General of the League of Nations of my Government's desire to contribute to the expenses of the Court in a proportion to be agreed. On the other hand, however, important elections are due to take place next year and it seems equitable that Brazil should be able to participate in them on a footing of equality with the other signatory States, whether Members of the League or non-members.

“ The existing text of the Statute seems, however, not to contemplate such participation. I would be grateful if you would be so good as to ask the Conference whether it would not be appropriate to elucidate the Statute in such manner as to remedy this situation.

(Signed) M. DE PIMENTEL BRANDAO,
Delegate of Brazil.”

In order to expedite the work of the Conference, the President ventured to submit the above letter to the Drafting Committee, in order that the latter might examine in what form it might be possible for the Conference to give satisfaction to the very natural desires of Brazil.

The Committee considers that this object could be attained by making the following amendments in the Statute of the Court.

Article 4 would be amended so as to read as follows :

“ The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

“ *The conditions under which a State which is a party to the Protocol of Signature of the Statute of the Court of December 16th, 1920, but is not a Member of the League of Nations may participate in electing the members of the Court shall, in the absence of any special agreement on the subject, be laid down by the Assembly on the proposal of the Council.*

“ In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.”

Article 35 would be amended so as to read as follows :

“ The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

“ The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

“ When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court. *This provision shall not apply if such State is bearing a share of the expenses of the Court.*

This change in Article 35 is in conformity with the observation made by the Committee of Jurists in Section 15 of its report (document A.9.1929.V, page 9).

III. DRAFT PROTOCOL RELATING TO THE AMENDMENTS TO BE MADE IN THE STATUTE.

The Drafting Committee proposes the following text for this instrument :

“ 1. The undersigned, duly authorised, agree on behalf of the Governments which they represent to make in the Statute of the Permanent Court of International Justice the amendments which are set out in the Annex to the present Protocol and which form the subject of the resolution of the Assembly of the League of Nations of September . . . 1929.

“ 2. The present Protocol, of which the French and English texts are both authentic, shall be presented for signature to all the signatories of the Protocol of December 16th, 1920, to which the Statute of the Permanent Court of International Justice is annexed, and to the United States of America.

“ 3. The present Protocol shall be ratified. The instruments of ratification shall be deposited, if possible, before September 1st, 1930, with the Secretary-General of the League of Nations, who shall inform the members of the League of Nations and the States mentioned in the Annex to the Covenant.

“ 4. The present Protocol shall enter into force on September 1st, 1930, provided that the Council of the League of Nations has satisfied itself that those Members of the League of Nations and States mentioned in the Annex to the Covenant which have ratified the Protocol of December 16th, 1920, and whose ratification of the present Protocol has not been received by that date, have no objection to the coming into force of the amendments to the Statute of the Court which are annexed to the present Protocol.

“ 5. After the entry into force of the present Protocol, the new provisions shall form part of the Statute adopted in 1920 and the provisions of the original articles which have been made the subject of amendment shall be abrogated. It is understood that, until January 1st, 1931, the Court shall continue to perform its functions in accordance with the Statute of 1920.

“ 6. After the entry into force of the present Protocol, any acceptance of the Statute of the Court shall constitute an acceptance of the Statute as amended.

“ 7. For the purposes of the present Protocol, the United States of America shall be in the same position as a State which has ratified the Protocol of December 16th, 1920.

“ Done at Geneva, the..... day of September nineteen hundred and twenty-nine, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations. The Secretary-General shall deliver authenticated copies to the Members of the League of Nations and to the States mentioned in the Annex to the Covenant.”

Annex to the Draft Protocol of September 1929.

AMENDMENTS TO THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

Articles 3, 4, 8, 13, 14, 15, 16, 17, 23, 25, 26, 27, 29, 31, 32 and 35 are replaced by the following provisions :

New Article 3.

New Article 4.

etc.

The French text of Article 38, No. 4, is replaced by the following provision :

(There is no change in the English text.)

Articles 39 and 40 are replaced by the following provisions :

New Article 39.

New Article 40.

The English text of Article 45 is replaced by the following provision :

(There is no change in the French text.)

The following new chapter is added to the Statute of the Court :

Chapter IV — Advisory Opinions.

New Article 65.

etc.

(End of Annex.)

* * *

As regards the special position of the United States, it may perhaps prevent misunderstanding if it is pointed out that three instruments relating to the Court will be presented for acceptance to that State, namely :

- The Protocol destined to satisfy the reservations attached by the United States Senate to the accession of the United States of America to the Statute of the Court ;
- The Protocol of Signature of 1920, and
- The new Protocol relating to the amendment of the Statute.

There could, of course, be no question of the United States being a party to the unamended Statute while the other States concerned were parties to the Statute in its amended form ; but the draft Protocol relating to the amendment of the Statute is believed to safeguard entirely the situation of the United States with regard to the amendments ; and, while it is, of course, not within the province of the Drafting Committee or the Conference to anticipate what procedure the United States may follow, it may be hoped that the United States will in due course sign and ratify all three above-mentioned instruments. It would, in fact, be possible for the United States at the moment when it signs the Protocol dealing with its reservations to sign also the Protocol of Signature of 1920 and that relating to the amendments subject to the eventual entry into force of the first-mentioned agreement.

IV. NATURE OF THE RESOLUTION TO BE ADOPTED BY THE ASSEMBLY.

The draft Protocol could hardly be drawn up without considering what action the Assembly would be called upon to take.

Accordingly, while recognising that it is for the First Committee of the Assembly, and not for the Conference, to formulate a resolution for adoption by the Assembly, the Drafting Committee found it convenient to prepare the text of a resolution in conformity with the

provisions of the draft Protocol which would indicate what, in the opinion of the Conference, is the relation between its action and that of the Assembly. It is in this sense that the following draft resolution might perhaps be transmitted by the Conference to the Assembly :

“ 1. The Assembly adopts the amendments to the Statute of the Permanent Court of International Justice and the draft Protocol which the Conference convened by the Council of the League of Nations has drawn up after consideration of the report of the Committee of Jurists, which met in March 1929 at Geneva and which included among its members a jurist of the United States of America. The Assembly expresses the hope that the draft Protocol drawn up by the Conference may receive as many signatures as possible before the close of the present session of the Assembly and that all the Governments concerned will use their utmost efforts to secure the entry into force of the amendments to the Statute of the Court before the opening of the next session of the Assembly, in the course of which the Assembly and the Council will be called upon to proceed to a new election of the members of the Court.

“ 2. The Assembly takes note of the following recommendation adopted by the Conference :

“ The Conference recommends that, in accordance with the spirit of Articles 2 and 39 of the Statute of the Court, the candidates nominated by the national groups should possess recognised practical experience in international law and that they should be at least able to read both the official languages of the Court and to speak one of them ; it also considers it desirable that to the nominations there should be attached a statement of the careers of the candidates justifying their candidature.”

ANNEX 9.

WORK OF THE CREDENTIALS COMMITTEE.

NOTE BY THE SECRETARIAT.

No report to the Conference was made by the Credentials Committee, which, in accordance with the special mandate given it (see the observations made by the President when proposing the appointment of the Committee, pages 7-8 and 23) devoted its attention to verifying the powers of the various delegations to sign the agreements to be drawn up by the Conference. On the suggestion of the Committee, the President of the Conference called the attention of the delegations not possessing the necessary full powers to the desirability of obtaining such full powers before the close of the session of the Assembly.

The Protocols adopted by the Conference regarding the accession of the United States of America to the Statute of the Permanent Court and regarding the revision of that Statute received respectively fifty and forty-eight signatures before the close of the Assembly's session.

ANNEX 10.

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

LETTER DATED SEPTEMBER 12TH, 1929, FROM THE PRESIDENT OF THE CONFERENCE TO THE PRESIDENT OF THE ASSEMBLY AND TO THE CHAIRMAN OF THE FIRST COMMITTEE.

I have the honour to inform you that the Conference convened in accordance with the Council's resolution of June 12th, 1929, has examined the report of the Jurists regarding the revision of the Statute of the Permanent Court of International Justice. It has also taken into consideration a suggestion made by the delegate of Brazil in the letter of which a copy is enclosed that it should be made possible for any State which has accepted the Statute of the Court but is not a Member of the League to participate in the election of the members of the Court.

As a result of this examination, the Conference has adopted, with the modifications indicated below, the proposals of the Jurists for amending the Court's Statute, as set out on page 11 of document A.9.1929.V.

The new text of *Articles 3 and 8* has been adopted as proposed by the Committee of Jurists.

New text of *Article 13*. The last line is to read : “ This *last* notification makes the place vacant ”.

The new text of *Articles 14 and 15* has been adopted as proposed by the Committee of Jurists.

New text of *Article 16*. Adopted as proposed by the Jurists, on the understanding that the words “ occupation of a professional nature ” are to be interpreted in the widest sense, *i.e.*, cover, for example, such an activity as being director of a company.

New text of *Article 17*. Adopted as proposed by the Jurists, with the omission in the first paragraph of the words "of an international nature".

New text of *Article 23*. Adopted as proposed by the Jurists with the following changes :
The words "at the end of each year for the following year" at the end of the first paragraph are omitted.

In the second paragraph, the words "not including the time spent in travelling" are added at the end of a paragraph.

The new text of *Articles 25, 26, 27, 29, 31, 32*, the change in the French text of *Article 38*, the new text of *Articles 39 and 40* and the change in the English text of *Article 45* are adopted as proposed by the Jurists.

The new Chapter IV of the Statute—Advisory Opinions—new Articles 65 to 68, has been adopted in the following form :

New Article 65.

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

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

New Article 66.

" 1. The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

" The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court or international organisation considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

" Should any Member or State referred to in the first paragraph have failed to receive the communication specified above, such Member or State may express a desire to submit a written statement, or to be heard ; and the Court will decide.

" 2. Members, States and organisations having presented written or oral statements, or both, shall be admitted to comment on the statements made by other Members, States or organisations, in the form, to the extent and within the time-limits which the Court or, should it not be sitting, the President shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States and organisations having submitted similar statements."

New Article 67.

" The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of Members of the League, of States and of international organisations immediately concerned."

New Article 68.

" In the exercise of its advisory functions, the Court shall further be guided by the provisions of the Statute which apply in contentious cases, to the extent to which it recognises them to be applicable."

The Conference associated itself with the following observations formulated in the course of its discussion with reference to the new Article 68 :

" In contentious cases, where a decision has to be given, the procedure naturally involves hearing both parties ; the two parties set out their arguments and observations, and the judges are thus provided with all the material necessary for reaching a conclusion. It must be the same in the case of advisory opinions.

" When an advisory opinion is asked, it is really indispensable, if the opinion is to carry any weight, if it is to be truly useful, that, in the same manner as in a contentious case, all the material necessary for reaching a conclusion should be placed before the person consulted ; he requires to know the arguments of both parties.

" This is the reason for providing that the procedure with regard to advisory opinions shall be the same as in contentious cases."

As the result of the suggestion of the Brazilian delegate, the Conference has adopted amendments to Articles 4 and 35 of the Statute of the Court, as the result of which these articles will assume the following form :

New text of Article 4.

“ The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions :

“ In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

“ The conditions under which a State which has accepted the Statute of the Court, but is not a Member of the League of Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the Assembly on the proposal of the Council.”

New text of Article 35.

“ The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

“ The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council ; but in no case shall such provisions place the parties in a position of inequality before the Court.

“ When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.”

In addition to the amendments proposed by the Jurists, the Conference considered their proposal for the adoption of a recommendation regarding the nomination of candidates by the national groups. On this subject it adopted the following resolution :

“ The Conference recommends that, in accordance with the spirit of Articles 2 and 39 of the Statute of the Court, the candidates nominated by the national groups should possess recognised practical experience in international law and that they should be at least able to read both the official languages of the Court and to speak one of them ; it also considers it desirable that to the nominations there should be attached a statement of the careers of the candidates justifying their candidature.

“ The Conference decides to transmit this recommendation to the Assembly of the League of Nations in order that eventually it may be brought by the Secretary-General to the knowledge of the national groups.”

For the purpose of bringing the amendments into force, the Conference has adopted the enclosed draft Protocol, which will be completed by an Annex setting out the text of the amendments in the manner shown in the skeleton Annex attached to the draft.

The Conference associates itself with the following observations made by its Drafting Committee upon the Draft Protocol :

“ As regards the special position of the United States, it may perhaps prevent misunderstanding if it is pointed out that three instruments relating to the Court will be presented for acceptance to that Power, namely :

“ The Protocol destined to satisfy the reservations attached by the United States Senate to the accession of the United States of America to the Statute of the Court ; and

“ The Protocol of Signature of 1920 ;

“ The new Protocol relating to the amendment of the Statute.

“ There could, of course, be no question of the United States being a party to the unamended Statute while the other States concerned were parties to the Statute in its amended form ; but the draft Protocol relating to the amendment of the Statute is believed to safeguard entirely the situation of the United States with regard to the amendments (see paragraph 7 of the Protocol) ; and, while it is, of course, not within the province of the Drafting Committee or the Conference to anticipate what procedure the United States may follow, it may be hoped that the United States will in due course sign and ratify all three above-mentioned instruments. It would, in fact, be possible for the United States at the moment when it signs the Protocol dealing with its reservations to sign also the Protocol of Signature of 1920 and that relating to the amendments subject to the eventual entry into force of the first-mentioned agreement.”

While recognising that it is not formally within its province to make any proposals as to the action to be taken by the Assembly, the Conference has necessarily been obliged to ask itself what form the Assembly's action will take. It has found it convenient to give a precise shape to its ideas on this subject by drawing up a draft resolution in conformity with the terms of the draft Protocol which it has adopted. It has requested me to transmit this text also to you in the hope that it may serve to facilitate the consideration of the question by the Assembly.

The Conference anticipates that the Assembly, if it is in agreement with the results of the work of the Conference, will, by a suitable resolution, adopt for its part the amendments to the Statute of the Court and the draft Protocol relating thereto.

In this event, there will be no obstacle to the opening of the Protocol for signature so soon as it can be prepared in the proper form.

The same will be the case with regard to the Protocol relating to the accession of the United States of America to the Statute of the Court, if that Protocol is adopted by the Assembly.

The Conference has closed its session, subject to its being possible for it to be convened again by its President if need arises. It is understood that, if the draft Protocols are adopted by the Assembly in the form given to them by the Conference, the Secretary-General will proceed without delay to present them to the delegates for their signature.

I am addressing an identical letter to the President of the Assembly.

(Signed) W. J. M. VAN EYSINGA,
President of the Conference.

Appendix I.

LETTER OF SEPTEMBER 10TH, 1929, FROM M. M. DE PIMENTEL BRANDAO, DELEGATE OF BRAZIL, TO THE PRESIDENT OF THE CONFERENCE.

My Government, which is taking part in the Conference of States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice of December 16th, 1920, would be glad that this opportunity should be taken to regularise, in a clear and precise manner, the situation of Brazil in regard to the Permanent Court of International Justice.

I have already informed the Secretary-General of the League of Nations of my Government's desire to contribute to the expenses of the Court in a proportion to be agreed. On the other hand, however, important elections are due to take place next year, and it seems equitable that Brazil should be able to participate in them on a footing of equality with the other signatory States, whether Members of the League or non-members.

The existing text of the Statute seems, however, not to contemplate such participation. I would be grateful if you would be so good as to ask the Conference whether it would not be appropriate to elucidate the Statute in such manner as to remedy this situation.

(Signed) M. de PIMENTEL BRANDAO,
Delegate of Brazil.

Appendix II.

DRAFT PROTOCOL RELATING TO THE AMENDMENTS TO BE MADE IN THE STATUTE OF THE PERMANENT COURT.

1. The undersigned, duly authorised, agree on behalf of the Governments which they represent to make in the Statute of the Permanent Court of International Justice the amendments which are set out in the Annex to the present Protocol and which form the subject of the resolution of the Assembly of the League of Nations of September..... 1929.

2. The present Protocol, of which the French and English texts are both authentic, shall be presented for signature to all the signatories of the Protocol of December 16th, 1920, to which the Statute of the Permanent Court of International Justice is annexed, and to the United States of America.

3. The present Protocol shall be ratified. The instruments of ratification shall be deposited, if possible, before September 1st, 1930, with the Secretary-General of the League of Nations, who shall inform the Members of the League of Nations and the States mentioned in the Annex to the Covenant.

4. The present Protocol shall enter into force on September 1st, 1930, provided that the Council of the League of Nations has satisfied itself that those Members of the League of Nations and States mentioned in the Annex to the Covenant which have ratified the Protocol of December 16th, 1920, and whose ratification of the present Protocol has not been received by that date, have no objection to the coming into force of the amendments to the Statute of the Court which are annexed to the present Protocol.

5. After the entry into force of the present Protocol, the new provisions shall form part of the Statute adopted in 1920 and the provisions of the original articles which have been made the subject of amendment shall be abrogated. It is understood that, until January 1st, 1931, the Court shall continue to perform its functions in accordance with the Statute of 1920.

6. After the entry into force of the present Protocol, any acceptance of the Statute of the Court shall constitute an acceptance of the Statute as amended.

7. For the purposes of the present Protocol, the United States of America shall be in the same position as a State which has ratified the Protocol of December 16th, 1920.

DONE at Geneva, the..... day of September, nineteen hundred and twenty-nine, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations. The Secretary-General shall deliver authenticated copies to the Members of the League of Nations and to the States mentioned in the Annex to the Covenant.

Annex to the Protocol of September 1929.

AMENDMENTS TO THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

Articles 3, 4, 8, 13, 14, 15, 16, 17, 23, 25, 26, 27, 29, 31, 32 and 35 are replaced by the following provisions :

New text of Article 3.

.

New text of Article 4.

.

etc.

The French text of Article 38, No. 4, is replaced by the following provision :

.

(There is no change in the English text.)

Articles 39 and 40 are replaced by the following provisions :

New text of Article 39.

.

New text of Article 40.

.

The English text of Article 45 is replaced by the following provisions :

.

(There is no change in the French text.)

The following new chapter is added to the Statute of the Court :

Chapter IV — Advisory Opinions.

New Article 65.

.

etc.

Appendix III.

DRAFT RESOLUTION.

1. The Assembly adopts the amendments to the Statute of the Permanent Court of International Justice and the draft Protocol which the Conference convened by the Council of the League of Nations has drawn up after consideration of the report of the Committee of Jurists, which met in March 1929 at Geneva and which included among its members a jurist of the United States of America. The Assembly expresses the hope that the draft Protocol drawn up by the Conference may receive as many signatures as possible before the close of the present session of the Assembly, and that all the Governments concerned will use their utmost efforts to secure the entry into force of the amendments to the Statute of the Court before the opening of the next session of the Assembly, in the course of which the Assembly and the Council will be called upon to proceed to a new election of the members of the Court.

2. The Assembly takes note of the following recommendation adopted by the Conference :

“ The Conference recommends that, in accordance with the spirit of Articles 2 and 39 of the Statute of the Court, the candidates nominated by the national groups should possess recognised practical experience in international law and that they should be at least able to read both the official languages of the Court and to speak one of them ; it also considers it desirable that to the nominations there should be attached a statement of the careers of the candidates justifying their candidature.”

ANNEX 11.

ACCESSION OF THE UNITED STATES OF AMERICA TO THE PROTOCOL OF SIGNATURE
OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

DRAFT PROTOCOL.

The States signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice, dated December 16th, 1920, and the United States of America, through the undersigned duly authorised representatives, have mutually agreed upon the following provisions regarding the adherence of the United States of America to the said Protocol subject to the five reservations formulated by the United States in the resolution adopted by the Senate on January 27th, 1926.

Article 1.

The States signatories of the said Protocol accept the special conditions attached by the United States in the five reservations mentioned above to its adherence to the said Protocol upon the terms and conditions set out in the following Articles.

Article 2.

The United States shall be admitted to participate, through representatives designated for the purpose and upon an equality with the signatory States Members of the League of Nations represented in the Council or in the Assembly, in any and all proceedings of either the Council or the Assembly for the election of judges or deputy-judges of the Permanent Court of International Justice, provided for in the Statute of the Court. The vote of the United States shall be counted in determining the absolute majority of votes required by the Statute.

Article 3.

No amendment of the Statute of the Court may be made without the consent of all the Contracting States.

Article 4.

The Court shall render advisory opinions in public session after notice and opportunity for hearing substantially as provided in the now existing Articles 73 and 74 of the Rules of Court.

Article 5.

With a view to ensuring that the Court shall not, without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest, the Secretary-General of the League of Nations shall, through any channel designated for that purpose by the United States, inform the United States of any proposal before the Council or the Assembly of the League for obtaining an advisory opinion from the Court, and thereupon, if desired, an exchange of views as to whether an interest of the United States is affected shall proceed with all convenient speed between the Council or Assembly of the League and the United States.

Whenever a request for an advisory opinion comes to the Court, the Registrar shall notify the United States thereof, among other States mentioned in the now existing Article 73 of the Rules of Court, stating a reasonable time-limit fixed by the President within which a written statement by the United States concerning the request will be received. If for any reason no sufficient opportunity for an exchange of views upon such request should have been afforded and the United States advises the Court that the question upon which the opinion of the Court is asked is one that affects the interests of the United States, proceedings shall be stayed for a period sufficient to enable such an exchange of views between the Council or the Assembly and the United States to take place.

With regard to requesting an advisory opinion of the Court in any case covered by the preceding paragraphs, there shall be attributed to an objection of the United States the same force and effect as attaches to a vote against asking for the opinion given by a Member of the League of Nations in the Council or in the Assembly.

If, after the exchange of views provided for in paragraphs 1 and 2 of this Article, it shall appear that no agreement can be reached and the United States is not prepared to forgo its objection, the exercise of the powers of withdrawal provided for in Article 8 hereof will follow naturally without any imputation of unfriendliness or unwillingness to co-operate generally for peace and goodwill.

Article 6.

Subject to the provisions of Article 8 below, the provisions of the present Protocol shall have the same force and effect as the provisions of the Statute of the Court and any future signature of the Protocol of December 16th, 1920, shall be deemed to be an acceptance of the provisions of the present Protocol.

Article 7.

The present Protocol shall be ratified. Each State shall forward the instrument of ratification to the Secretary-General of the League of Nations, who shall inform all the other signatory States. The instruments of ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall come into force as soon as all States which have ratified the Protocol of December 16th, 1920, and also the United States, have deposited their ratifications.

Article 8.

The United States may at any time notify the Secretary-General of the League of Nations that it withdraws its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately communicate this notification to all the other States signatories of the Protocol.

In such case, the present Protocol shall cease to be in force as from the receipt by the Secretary-General of the notification by the United States.

On their part, each of the other Contracting States may at any time notify the Secretary-General of the League of Nations that it desires to withdraw its acceptance of the special conditions attached by the United States to its adherence to the Protocol of December 16th, 1920. The Secretary-General shall immediately give communication of this notification to each of the States signatories of the present Protocol. The present Protocol shall be considered as ceasing to be in force if and when, within one year from the date of receipt of the said notification, not less than two-thirds of the Contracting States other than the United States shall have notified the Secretary-General of the League of Nations that they desire to withdraw the above-mentioned acceptance.

DONE at Geneva, the fourteenth day of September, nineteen hundred and twenty-nine, in a single copy, of which the French and English texts shall both be authoritative.

*Official No. : A. 50 (Annex). 1929. V.
[C.A.S.C. 12 — Annex.]*

ANNEX 12.

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

DRAFT PROTOCOL.

1. The undersigned, duly authorised, agree, on behalf of the Governments which they represent, to make in the Statute of the Permanent Court of International Justice the amendments which are set out in the Annex to the present Protocol and which form the subject of the resolution of the Assembly of the League of Nations of September 1929.

2. The present Protocol, of which the French and English texts are both authentic, shall be presented for signature to all the signatories of the Protocol of December 16th, 1920, to which the Statute of the Permanent Court of International Justice is annexed, and to the United States of America.

3. The present Protocol shall be ratified. The instruments of ratification shall be deposited, if possible, before September 1st, 1930, with the Secretary-General of the League of Nations, who shall inform the Members of the League of Nations and the States mentioned in the Annex to the Covenant.

4. The present Protocol shall enter into force on September 1st, 1930, provided that the Council of the League of Nations has satisfied itself that those Members of the League of Nations and States mentioned in the Annex to the Covenant which have ratified the Protocol of December 16th, 1920, and whose ratification of the present Protocol has not been received by that date, have no objection to the coming into force of the amendments to the Statute of the Court which are annexed to the present Protocol.

5. After the entry into force of the present Protocol, the new provisions shall form part of the Statute adopted in 1920 and the provisions of the original articles which have been made the subject of amendment shall be abrogated. It is understood that, until January 1st, 1931, the Court shall continue to perform its functions in accordance with the Statute of 1920.

6. After the entry into force of the present Protocol, any acceptance of the Statute of the Court shall constitute an acceptance of the Statute as amended.

7. For the purposes of the present Protocol, the United States of America shall be in the same position as a State which has ratified the Protocol of December 16th, 1920.

DONE at Geneva,, nineteen hundred and twenty-nine, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations. The Secretary-General shall deliver authenticated copies to the Members of the League of Nations and to the States mentioned in the Annex to the Covenant.

Annex to the Protocol of September ..., 1929.

AMENDMENTS TO THE
STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

Articles 3, 4, 8, 13, 14, 15, 16, 17, 23, 25, 26, 27, 29, 31, 32 and 35 are replaced by the following provisions :

New text of Article 3.

The Court shall consist of fifteen members.

New text of Article 4.

The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of the Hague of 1907 for the pacific settlement of international disputes.

The conditions under which a State which has accepted the Statute of the Court but is not a member of the League of Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the Assembly on the proposal of the Council.

New text of Article 8.

The Assembly and the Council shall proceed independently of one another to elect the members of the Court.

New text of Article 13.

The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

In the case of the resignation of a member of the Court, the resignation will be addressed to the President of the Court for transmission to the Secretary-General of the League of Nations.

This last notification makes the place vacant.

New text of Article 14.

Vacancies which may occur shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General of the League of Nations shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Council at its next session.

New text of Article 15.

A member of the Court elected to replace a member whose period of appointment has not expired, will hold the appointment for the remainder of his predecessor's term.

New text of Article 16.

The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature.

Any doubt on this point is settled by the decision of the Court.

New text of Article 17.

No member of the Court may act as agent, counsel or advocate in any case. No member may participate in the decision of any case in which he has previously taken an active part as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity. Any doubt on this point is settled by the decision of the Court.

New text of Article 23.

The Court shall remain permanently in session except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

Members of the Court whose homes are situated at more than five days' normal journey from The Hague shall be entitled, apart from the judicial vacations, to six months' leave every three years, not including the time spent in travelling.

Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court.

New text of Article 25.

The full Court shall sit except when it is expressly provided otherwise.

Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

Provided always that a quorum of nine judges shall suffice to constitute the Court.

New text of Article 26.

Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions.

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. In both cases, the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to ensuring a just representation of the competing interests.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labour Cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers, and, as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

In Labour cases, the International Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

New text of Article 27.

Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special Chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this Chamber. In the absence of any such demand, the full Court will sit. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications Cases" composed of two persons nominated by each Member of the League of Nations.

Recourse may always be had to the summary procedure provided for in Article 29, in the cases referred to in the first paragraph of the present Article, if the parties so request.

New text of Article 29.

With a view to the speedy despatch of business, the Court shall form annually a Chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit.

New text of Article 31.

Judges of the nationality of each of the contesting parties shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these parties may proceed to select a judge as provided in the preceding paragraph.

The present provision shall apply to the case of Articles 26, 27 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the Chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially appointed by the parties.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of this Statute. They shall take part in the decision on terms of complete equality with their colleagues.

New text of Article 32.

The members of the Court shall receive an annual salary.

The President shall receive a special annual allowance.

The Vice-President shall receive a special allowance for every day on which he acts as President.

The judges appointed under Article 31, other than members of the Court, shall receive an indemnity for each day on which they sit.

These salaries, allowances and indemnities shall be fixed by the Assembly of the League of Nations on the proposal of the Council. They may not be decreased during the term of office.

The salary of the Registrar shall be fixed by the Assembly on the proposal of the Court.

Regulations made by the Assembly shall fix the conditions under which retiring pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.

The above salaries, indemnities and allowances shall be free of all taxation.

New text of Article 35.

The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

The French text of Article 38, No. 4, is replaced by the following provision :

4. *Sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit.*

[There is no change in the English text.]

Articles 39 and 40 are replaced by the following provisions :

New text of Article 39.

The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of any party, authorise a language other than French or English to be used.

New text of Article 40.

Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court.

The English text of Article 45 is replaced by the following provision :

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

[There is no change in the French text.]

The following new chapter is added to the Statute of the Court :

CHAPTER IV. — ADVISORY OPINIONS.

New Article 65.

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

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

New Article 66.

1. The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court or international organisation considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

Should any Member or State referred to in the first paragraph have failed to receive the communication specified above, such Member or State may express a desire to submit a written statement, or to be heard; and the Court will decide.

2. Members, States, and organisations having presented written or oral statements or both shall be admitted to comment on the statements made by other Members, States, or organisations in the form, to the extent and within the time-limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States, and organisations having submitted similar statements.

New Article 67.

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of Members of the League, of States and of international organisations immediately concerned.

New Article 68.

In the exercise of its advisory functions, the Court shall further be guided by the provisions of the Statute which apply in contentious cases to the extent to which it recognises them to be applicable.