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✓ C.548.M.196.(C.P.C.C.i.) 1927.V.28.		
2. Progressive codification of international law. Extracts from the records of the eighth session of the assembly. Appointment of the preparatory committee for the codification conference.		143-168.
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✓ A.14.(C.P.D.I.120(1).) 1928.V.2.		
4. Committee of experts for the progressive codification of international law. Letter dated June 28th, 1928, from the Chairman of the committee to the Secretary-General, reporting on the work of the fourth session of the committee, held in June 1928, and communicating to the Secretary-General a questionnaire and various reports.		173.
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[Communicated to the Council,
the Members of the League
and other Governments.]

C. 196. M. 70. 1927. V.
[C.P.D.I. 95 (2).]

Geneva, April 20th, 1927.

LEAGUE OF NATIONS

COMMITTEE OF EXPERTS FOR THE PROGRESSIVE
CODIFICATION OF INTERNATIONAL LAW

REPORT

TO THE COUNCIL OF THE LEAGUE OF NATIONS

ON THE

QUESTIONS WHICH APPEAR RIPE FOR
INTERNATIONAL REGULATION

(QUESTIONNAIRES Nos 1 to 7.)

Adopted by the Committee at its Third Session, held in March-April 1927

Publications of the League of Nations
V. LEGAL
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RESOLUTION ADOPTED
(ON THE REPORT OF THE FIRST COMMITTEE) BY THE ASSEMBLY
AT ITS MEETING HELD ON MONDAY, SEPTEMBER 22nd, 1924.

The Assembly,

Considering that the experience of five years has demonstrated the valuable services which the League of Nations can render towards rapidly meeting the legislative needs of international relations, and recalling particularly the important conventions already drawn up with respect to international conciliation, communications and transit, the simplification of Customs formalities, the recognition of arbitration clauses in commercial contracts, international labour legislation, the suppression of the traffic in women and children, the protection of minorities, as well as the recent resolutions concerning legal assistance for the poor;

Desirous of increasing the contribution of the League of Nations to the progressive codification of international law:

Requests the Council:

To convene a committee of experts, not merely possessing individually the required qualifications but also as a body representing the main forms of civilisation and the principal legal systems of the world. This committee, after eventually consulting the most authoritative organisations which have devoted themselves to the study of international law, and without trespassing in any way upon the official initiative which may have been taken by particular States, shall have the duty:

- (1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment;
 - (2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received; and
 - (3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.
-

COMPOSITION OF THE COMMITTEE OF EXPERTS APPOINTED
BY THE COUNCIL.

Chairman:

M. HAMMARSKJÖLD (Sweden), Governor of the Province of Upsala.

Vice-Chairman:

Professor DIENA (Italy), Professor of International Law at the University of Pavia; Member of the Conseil du Contentieux diplomatique at the Italian Ministry of Foreign Affairs.

Members:

Professor BRIERLY¹, (Great Britain) Professor of International Law at the University of Oxford

M. FROMAGEOT (France), Legal Adviser to the Ministry of Foreign Affairs of the French Republic.

His Excellency Dr. Gustavo GUERRERO (Salvador), Minister for Foreign Affairs of the Republic of Salvador; Representative of Salvador on the Council of the League of Nations.

Dr. B. C. J. LODER (Netherlands), former Member of the Supreme Court of the Netherlands; Judge and late President of the Permanent Court of International Justice.

Dr. BARBOSA DE MAGALHAES (Portugal), Professor of Law at the University of Lisbon; Barrister, former Minister of Foreign Affairs, Justice and Education.

His Excellency Dr. Adalbert MASTNY² (Czechoslovakia), Czechoslovak Minister in Rome; President of the Czechoslovak Group of the International Law Association.

His Excellency M. MATSUDA (Japan), Doctor of Law; Japanese Ambassador in Rome.

Sir Muhammad RAFIQUE (India), former Judge at the High Court of the United Provinces.

Dr. Szymon RUNDSTEIN (Poland), Barrister at the Court of Appeal at Warsaw; Legal Adviser to the Ministry of Foreign Affairs.

Professor Walther SCHÜCKING (Germany), Professor at the University of Kiel.

Dr. José León SUAREZ³ (Argentina), Dean of the Faculty of Political Science at the University of Buenos Ayres.

Professor Charles DE VISSCHER³ (Belgium), Professor in the Faculty of Law at the University of Ghent; Legal Adviser to the Belgian Ministry of Foreign Affairs.

Dr. WANG CHUNG-HUI³ (China), Deputy Judge of the Permanent Court of International Justice.

Mr. George W. WICKERSHAM (United States of America), formerly Attorney-General of the United States; Member of the International Law Committee of the American Bar Association; and President of the American Law Institute.

¹ Replaced at the third session of the Committee by Dr. Arnold D. McNAIR, University Lecturer at Cambridge; Reader in International Law in the University of London.

² MM. Mastny, Suarez, De Visscher and Wang Chung-Hui were unable to be present at the third session.

**REPORT TO THE COUNCIL OF THE LEAGUE OF NATIONS
ON THE QUESTIONS WHICH APPEAR RIPE
FOR INTERNATIONAL REGULATION.**

(QUESTIONNAIRES Nos. 1 to 7).

Adopted by the Committee at its Third Session, held in March-April 1927.

The Committee, by its terms of reference, was required:

- (1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment;
- (2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received; and
- (3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

In accordance with these terms of reference, the Committee has addressed to all Governments, through the Secretary-General, a first series of questionnaires on the following subjects:

Nationality; Territorial Waters; Diplomatic Privileges and Immunities; Responsibility of States for Damage done in their Territories to the Person or Property of Foreigners; Procedure for International Conferences and Procedure for the Conclusion and Drafting of Treaties; Piracy; Exploitation of the Products of the Sea.

All these questionnaires, copies of which are attached to the present report (Annex I), indicated, by drafts of conventions or in some other manner, the extent to which in the opinion of the Committee the above questions lent themselves to regulation by international agreement. The Committee was at special pains to confine its enquiry to problems which it thought could be solved by means of conventions without encountering any obstacles of a political nature.

The Committee is now in possession of a large number of replies sent by Governments to the questionnaires. The Committee has studied these replies in conformity with its terms of reference.

This examination has only confirmed the Committee's view that, generally speaking, the above questions, within the limits indicated by the respective questionnaires, are now, in the words of the terms of reference, "sufficiently ripe".

The procedure which could be followed with respect to preparing eventually for conferences for the solution of the questions will be the subject of a general report and of two special reports¹.

The Committee ventures to attach to the present report the replies received by it (Annex II) together with analyses of these replies prepared by members of the Committee (Annex III). Further, the Committee places at the disposal of the Council its minutes, which contain material which may prove useful both in preparing for conferences and during the conferences themselves.

Geneva, April 2nd, 1927.

(Signed) Hj. L. HAMMARSKJÖLD,
Chairman of the Committee of
Experts.

¹ See documents C. 197. M. 71. 1927. V.
C. 198. M. 72. 1927. V.
C. 199. M. 73. 1927. V.

Annex I.

**QUESTIONNAIRES ADOPTED
BY THE COMMITTEE AT ITS SECOND SESSION, HELD IN JANUARY 1926.**

QUESTIONNAIRE No. 1

NATIONALITY.

The Committee has the following terms of reference¹:

- (1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment;
- (2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received; and
- (3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Committee has decided to include in its list the following subject:

- (1) Whether there are problems arising out of the conflict of laws regarding nationality the solution of which by way of conventions could be envisaged without encountering political obstacles;
- (a) If so, what these problems are and what solution should be given to them.

On this subject the Committee has the honour to communicate to the Governments a report presented to it by a Sub-Committee, consisting of M. RUNDSTEIN as Rapporteur, M. SCHÜCKING and M. DE MAGALHAES. The report comprises a statement presented by M. Rundstein and approved by M. de Magalhaes (including a preliminary draft of a Convention), a supplementary note by M. Rundstein, observations by M. Schücking and a reply by M. Rundstein, and, finally, the text of the preliminary draft of a Convention as amended by M. Rundstein in consequence of the discussions which took place in the Committee of Experts.

The nature of the general question and of the particular questions involved therein appears from the report and from the conclusions attached to the report in the shape of the amended preliminary draft of a Convention². The Committee is of opinion that Articles 1 to 5 and 7 to 13 of this amended draft indicate the questions to be resolved for the purpose of dealing with the subject by international agreement. All these questions are subordinate to the larger question set out above. On the other hand, the Committee does not feel that the question raised in Article 6 of the amended draft is among those which can be regarded as at present capable of being treated by way of international regulation.

It is understood that, in submitting the present subject to the Governments, the Committee does not pronounce either for or against the solutions suggested for various particular problems. At the present stage of its work it is not for the Committee to put forward conclusions of this kind. Its sole, or at least its principal, task for the present consists in drawing attention to various questions of international law the regulation of which by international agreement would seem to be desirable and realisable.

In doing this, the Committee should doubtless not confine itself to generalities but should put forward the proposed questions with sufficient detail to facilitate the decision as to the desirability and possibility of their solution. The necessary details will be found in the final conclusions of M. Rundstein's report — *i.e.*, in the amended text of the preliminary draft of a Convention — excluding always Article 6 of this draft³.

In order to be able to continue its work without delay, the Committee will be glad to be put in possession of the replies of the Governments before October 15th, 1926.

The Sub-Committee's report is annexed.

Geneva, January 29th, 1926.

(Signed) HJ. L. HAMMARSKJÖLD,
Chairman of the Committee of Experts.

(Signed) VAN HAMEL,
Director of the Legal Section of the Secretariat.

¹ See Assembly Resolution of September 22nd, 1924.

² See page 27.

Annex to Questionnaire No. 1.

REPORT OF THE SUB-COMMITTEE.

M. RUNDSTEIN, Rapporteur.

M. DE MAGALHAES and M. SCHÜCKING.

- (1) *Whether there are problems arising out of the conflict of laws regarding nationality the solution of which by way of conventions could be envisaged without encountering political obstacles;*
- (2) *If so, what these problems are and what solution should be given to them.*

I. REPORT SUBMITTED BY M. RUNDSTEIN AND APPROVED
BY M. DE MAGALHAES

[Translation.]

At its first meeting, held at Geneva, the Committee of Experts for the Progressive Codification of International Law invited the Sub-Committee, of which I had the honour to be appointed Rapporteur, to enquire:

- (1) Whether there are problems arising out of the conflict of laws regarding nationality the solution of which by way of conventions could be envisaged without encountering political obstacles;
- (2) If so, what these problems are and what solution should be given to them.

In the list of subjects for enquiry — drawn up and adopted by the Committee of Experts — the possibility of regulating conflict of laws regarding nationality is set down as a problem the solution of which depends on that of another question: namely, whether there are not political obstacles which the solution of such conflicts must necessarily encounter. The reply to be given to this question presupposes the investigation referred to in paragraph (2) above.

There can be no doubt that nationality questions must be regarded as problems which are exclusively subject to the internal legislation of individual States. It is, indeed, the sphere in which the principles of sovereignty find their most definite application; in the present state of international law, questions of nationality are, *in principle*, included among matters expressly reserved for the exclusive jurisdiction of the individual States (see Advisory Opinion of the Permanent Court of International Justice, dated February 7th, 1923: *Collection of Advisory Opinions*, Series B, No. 4). There is no rule of international law, whether customary or written, which might be regarded as constituting any restriction of, or exception to, the jurisdiction referred to above.

This omission is not surprising in view of the nature of the problems connected with the regulation of nationality and the gravity of the general considerations and political interests affecting the whole problem. It cannot even be said that the simple and elementary principle that "each individual must have a definite nationality" is a generally recognised rule of international law, since the lack of any nationality (*Heimatlosat*) has become very frequent and constitutes a serious problem in international life, arising as it does out of conflicts of laws which are often complicated and sometimes inextricable.

But, while maintaining the thesis that questions of nationality belong, *in principle*, to the exclusive jurisdiction of individual States, it is admitted that this thesis is neither inflexible nor self-evident. Questions of nationality are often regulated by international conventions, which proves that the supposed exclusivity of jurisdiction may be abrogated at the will of individual States. We have here a limitation of the principle based on a free decision taken by the parties concerned. Such a limitation is met with in cases where the necessity of regulating nationality questions arises out of changes in the territorial status of countries (treaties of peace, treaties concerning territorial cessions not arising out of a war); it is met with also in cases where the effects of double nationality arising out of the main principles of *jus sanguinis* and of *jus soli* render a solution essential, since they engender situations which are likely to threaten the good relations between States. Since such conflicts are becoming more and more frequent as a consequence of emigration and re-emigration, the regulation of nationality questions must be undertaken in order to prevent diplomatic disputes and to remove doubts and uncertainties in the personal relations of the citizens of the various countries. There exist even plurilateral treaties which contain stipulations applicable to several States and thus establish a juridical basis for rules which may perhaps in the future come to be generally recognised as customary law (*cf.* Convention of Rio de Janeiro of August 13th, 1906, ratified by the United States on January 28th, 1913, "establishing the status of naturalised citizens who again take up their residence in the country of their origin"). But the fact that it is possible to solve problems of nationality by means of international agreements does not imply that such a solution can be regarded as *jus necessarium*, that is to say that the necessity of solving these problems arises out of imperative provisions of modern international law. Even if the exclusive jurisdiction of individual States which international law recognises in the matter is regarded as a relative conception, dependent upon the development of international relations, it may be asserted that, for the present, those relations have not developed to such an extent as to justify the view that restrictions on sovereignty exist in the matter and that its exercise

is controlled by international rules. Individual States *may* therefore regulate nationality problems by means of agreements; if they do so, their exclusive jurisdiction will be restricted in a manner, and to an extent dependent upon the provisions of the agreements. But in the present state of international law, it would be premature to say that problems of this nature *must necessarily* be regulated by means of conventions.

The political interests of the various States are too divergent to justify the assertion that an *opinio necessitatis* exists which will create and impose rules for settling all conflicts arising out of the diversity of laws. Still more must unification of legislation, the creation of a single world law in this field, be considered a chimerical undertaking. It is doubtful even whether any purpose would be served by recommending a few general principles to be applied by Governments, either in drawing up their internal laws or in concluding diplomatic conventions (*cf. Year-Book of the Institute of International Law, Volume V, Oxford Session, pages 56 and 57; Volume XIV, Cambridge Session, pages 66 to 76 and 194 to 200; Volume XV, Venice Session, pages 233 to 271*). Even supposing that those principles were adopted in drawing up internal laws or bilateral conventions, conflicts of laws would still inevitably be produced by the divergences which would arise in the interpretation of the uniform laws and by the restricted application of the bilateral conventions.

Taking into account the political nature of the problem and the interests of the individual States, our enquiry must be as to whether there are not problems connected with conflicts between different nationality laws which might be settled by international regulations applicable to all States. Recent developments in international relations and certain tendencies apparent in the method of settlement of certain conflicts of nationality show that, in practice, a few conceptions have been evolved which are recognised by almost all States and might serve as a basis for future legislation to be enacted in the form of a general convention. It is true that this *jus nasciturum* hardly affects the principal questions; it applies, rather, to secondary problems; for it is obvious that the principal problems involved in such conflicts are not ripe for immediate solution and that the work of codification must proceed slowly, by stages, beginning with the lesser and working up to the more important problems. Wherever there is any sign, however insignificant, of a general agreement on any principle, it is desirable that such agreement should be given a concrete form.

Indications of such agreement as is referred to are to be noted and given definite shape. But, apart from the customary law which is in process of evolution, certain tendencies are becoming apparent — insignificant perhaps, but symptomatic — in connection with questions capable of being solved without encountering political obstacles. In this case we are not dealing with customary law in process of formation, but rather with ideas the development of which should be encouraged as useful for the solution of difficult situations arising out of conflicts between the various national laws. In this connection the work of codification will be creative, while at the same time remaining practical and appropriate to the existing conditions of international life.

For this reason a distinction should be drawn between the two classes of question.

In the *first* class of question, the work of codification will consist in recording the common view which is gradually being formed as to certain secondary problems of conflict of nationality law.

In the *second* class of question, the work will consist in solving certain kinds of conflict for which a uniform solution is already being sought in practice.

It is obvious that, when a problem has a political as well as a legal aspect and the former must prevail over the latter, no action can be taken. It is therefore impossible to effect a uniform regulation of all problems arising out of conflicts of nationality; the work can only be achieved by a process of selection and elimination. No solution can be hoped for where there is the slightest suspicion that the problem is of a political nature.

I.

International law has in practice established for the solution of two categories of conflict of nationality law rules which are almost universally recognised and adopted. These rules may be considered suitable for embodiment in a plurilateral convention.

A. — In cases in which a conflict of nationality arises out of divergencies in laws based respectively on the principles of *jus soli* and of *jus sanguinis*, the law which must be applied, to the exclusion of the other, must depend upon the domicile or mere place of residence of the person whose nationality is in dispute between the two States. That is to say, if a territorial authority claims that its *jus soli* must prevail over the *jus sanguinis* of the other State, the latter cannot claim recognition of its jurisdiction within the territorial limits of the State which applies the criterion of birth. Such jurisdiction is excluded in matters of personal status and in matters of real property: for example, the case of the estates of deceased persons who, according to the laws of their country of origin (*ex jure sanguinis*), are subject to the laws of that country, and, according to the laws of the country of their birth (*ex jure soli*), are subject to the laws of the latter. Any other view would be tantamount to an indefensible infringement of the principle of the independence of States. Therefore it is generally recognised that, in cases of double nationality, the diplomatic protection of the State of which a person is a national in virtue of *jus soli* may not be exercised on behalf of that person on the territory of another State which claims him as its national in virtue of *jus sanguinis*; and, *vice versa*, the diplomatic protection of the country of origin (*ex jure sanguinis*) may not be exercised on the territory of the country of birth of any person whose nationality is there governed by the principle of *jus soli*. Such a recognition of independent divergent solutions for conflicts of laws comes into operation in every case in which there is some bond between the person concerned and the territory in question (such as domicile or residence, situation of a person's estate).

This principle, established by the practice of the chancelleries and of diplomacy, is recognised by implication in Article 7 of the Treaty concluded between Spain and the Argentine Republic on September 21st, 1865 (see CALVO, Volume II, page 36; ZEBALLOS, Volume II, pages 40-51 and page 192). It is further implicit in the conventions which provide for the regulation of conflicts arising out of double nationality, for when they recognise restrictions on the sovereignty of the States concerned in regard to nationality questions and, for example, make the principle of *jus soli* applicable only in the third generation, such conventions *ipso facto* assert the principle that the territorial law is alone applicable in all cases where an exemption is not specially provided for. This principle of respect for territorial authority is explicitly laid down in the Swiss Law of June 25th, 1903, on the naturalisation of foreigners and the renunciation of Swiss nationality. Article 6 of this law reads as follows:

"A person who, in addition to Swiss nationality, possesses that of a foreign State, is not entitled to claim as against that State, so long as he is resident therein, the rights and protection pertaining to the status of Swiss citizen."

It would undoubtedly be useful definitely to lay down this principle, which in practice has often been applied by England and America (see WEISS — *Treatise*, Volume I, pages 295 and 296). The draft of an international convention on diplomatic protection submitted by the American Institute of International Law to the Director of the Pan-American Union on March 3rd, 1925, embodies this principle of non-intervention in the following provision (Article 7):

"A diplomatic claim is not admissible when the individual in whose behalf it is presented is at the same time considered a national by the law of the country to which the claim is made, in virtue of circumstances other than those of mere residence in the territory (see Codification of American International Law, Washington, 1925, Pan-American Union, Draft No. 16, page 56)."

This provision applies to all the typical conflicts between *jus soli* and *jus sanguinis*, with the exception of cases where nationality is imposed by the mere fact of residence, which, however, cannot be regarded as conferring a title to nationality; domicile in connection with the principal establishment of a person might justify the presumption that such a person intended to become a national of the country which he had selected as his place of habitual residence; but such a presumption does not exist in cases of mere temporary residence.

B. — Although the provision referred to is based on the principle that each State has the incontestable right fully to apply its nationality law on its own territory, mention must be made of exceptions based on other principles, and particularly on that of *ex-territoriality*.

It would be necessary to provide that the territorial law of nationality shall not apply to children born in a territory where their fathers enjoy privileges and immunities arising out of *ex-territoriality*, or where they exercise public duties on behalf of a foreign Government (consuls belonging to the regular consular service, officials on a foreign mission, delegates, members of international commissions, etc.).

This principle is embodied in the draft of the Institute of International Law (Article 3, paragraph 3, *Year-Book*, XV). It should be definitely recognised that the children of diplomatic agents and consuls regularly accredited to a foreign Power shall always be regarded as born in the country of their father.

In this case the principle of *jus soli* is set aside both as regards the law of the territory in which the agent exercises his official duties and as regards the law of the country of which he is a national. The personal law of the agent himself is therefore always applicable both in relation to the foreign country and to the agent's own country, even if the latter recognises exclusively the principle of *jus soli* without any reservations in favour of *jus sanguinis*.

This "universality" of personal status is recognised by English law (see DICEY-KEITH — *A Digest of the Law of England with Reference to the Conflict of Laws*, 1922, page 171: case of a child born of a foreign diplomatic agent on British soil; page 181: case of a child born of a British diplomatic agent on foreign soil. See also the provision of the British Nationality and Status of Aliens Act, 1914-1922, Sect. I, 1.6.IV: "his father was at the time of that person's birth in the service of the Crown").

An explicit reservation abrogating the *jus soli* in the case of the descendants of diplomatic agents is made in the laws of the Argentine, Brazil, Bolivia, Chile and Guatemala. The new Belgian Law on Nationality of May 15th, 1922, assimilates to residence in Belgium residence in a foreign country so long as the father of a minor entitled to option exercises an official function there on behalf of the Belgian Government (Article 8, paragraph 4). Further, the Franco-Belgian Convention of 1891 lays down that the children of diplomatic agents or consuls belonging to the regular consular service shall keep the nationality of their parents unless they lay claim to the benefit of the law of the country in which they were born.

In practice, the French Chancellery recognises without any restriction the principle set forth above, and extends it to the children of all foreigners obliged to reside in France for official reasons even if the father does not enjoy diplomatic privileges and immunities (see VALÉRY — *Manuel de Droit international privé*, 1914, pages 77 and 78). Although no formal text exists (for various draft proposals, see PILLET-NIBOYET — *Manuel de Droit international privé*, 1924, pages 79 and 80), it is nevertheless admitted that *jus soli* must not be applied to the children of persons who enjoy exemption from the territorial law. Such exemption would seem applicable to the children of sovereigns and regular diplomatic agents (holding permanent appointments), extraordinary agents (accredited for special missions — for instance, as representatives of their Governments at

international conferences or congresses) and special agents (members of delimitation commissions, commissions of investigation or mixed commissions, agents attending international courts, etc.), including the judges of permanent international courts or of a court set up to settle any special dispute. The same principle should *a fortiori* be applied to the children of agents or officials belonging to international organisations or appointed by such organisations.

Even if the father does not enjoy diplomatic immunities and privileges, it would be fair to apply the principle of ex-territoriality to the children of consuls who are members of a regular consular service, of consular officials and, generally speaking, to the children of all foreign officials who do not possess diplomatic status, if they have taken up their temporary residence in a country enforcing *jus soli* in order to carry out an official mission recognised and permitted by the Government of that country. This rule regarding the children of foreign public officials is not based on recognised rules of international law; the subject would therefore require to be dealt with expressly.

The above principle could not in any case be applied if the parent entitled to privileges was a national of the country in which he exercised his official functions.

If, however, he belongs to the State which has invested him with diplomatic, consular or, in general, official duties, or if he belongs to a third State, his personal status must prevail over any different provisions of the territorial law.

II.

The problems of the *second* category are those for which national law and international practice furnish solutions capable of reducing or even eliminating conflicts. In this field the customary law has not yet reached the stage of final development and only main outlines are distinguishable; in some cases, however, it may be claimed that there is a recognition of general principles, although the uniformity of the rules applied is not a fact of which the law is explicitly conscious. International codification may here serve to develop ideas which are still only embryonic.

The changes lately introduced in laws as to the nationality of married women, increasing, as they do, the possibility of conflicts, necessitate measures to reduce to the minimum cases of double nationality or of lack of any nationality. Since the new principles naturally tend to become more general, the practical requirements of life necessitate finding some way of preventing conflict.

The enumeration of problems given below follows the usual order and deals with questions relating to:

- A. — Acquisition;
- B. — Change, loss and resumption of nationality.

A. — 1. In regard to acquisition of nationality, it is to be observed in the first place that there are situations in which national law, even though it fully recognises the principle of *jus sanguinis*, sets it aside exceptionally in order to apply *jus soli*, so as to avoid the unfortunate consequences arising out of the lack of nationality of foundlings or of children of unknown parents. If the principle of *jus sanguinis* were strictly applied, (1) foundlings, (2) the children of legally unknown parents (that is to say, whose filiation is not established), (3) children born of parents who are known but whose nationality is unknown or cannot be determined, would possess no nationality whatsoever. The law of some countries solves the problem by applying the principle of *jus soli* to foundlings only (paragraph 4, sub-paragraph 2, of the German Law on Nationality of July 22nd, 1913; paragraph 1, sub-paragraph 2, of the Norwegian Law of August 8th, 1924, and of the Swedish Law of May 23rd, 1924, concerning nationality). It would seem more rational to apply this rule to all cases of children born of parents who are unknown or whose nationality is unknown. The Treaties concluded, after the World War, between the Principal Allied and Associated Powers and Greece, Poland, Czechoslovakia and the Kingdom of the Serbs, Croats and Slovenes recognise the fact of having been born on the territory of the States mentioned as entitling any person so born to the nationality of those countries if they cannot claim another nationality by birth. A recommendation formerly adopted by the Institute of International Law (*Year-Book*, Volume V, page 57, paragraph 1) has thus been adopted in modern practice.

The adoption of the rule referred to does not, of course, imply that proof to the contrary justifying the application of *jus sanguinis*, would not be admitted. The application of *jus soli* must be regarded as a presumption *juris tantum*. But, until proof to the contrary has been brought, the nationality of children of this category is definitely established (see Convention concluded on June 7th, 1920, between Austria and Czechoslovakia concerning nationality and the protection of minorities, Article 5). The admission of proof to the contrary might, of course, give rise to conflicts if the law of the country where the child was born or found does not admit of the application of the principle of *jus sanguinis*. The rule regarding proof to the contrary could therefore only be applied in countries whose laws recognise the principle of *jus sanguinis*, either purely and simply or in conjunction with the principle of *jus soli*. Countries which adhere to the principle of *jus soli* without any modification or exception would not be inclined to admit proof eliminating the presumption.

I am of opinion that the principle referred to above, applicable to exceptional cases but eliminating the difficulties arising out of lack of nationality, might be recognised as offering a fair solution. In practice such cases would be so rare that such a solution would not be likely to encounter political obstacles. The general principle might be formulated as follows:

“A child born of parents who are unknown or whose nationality cannot be ascertained acquires the nationality of the State in which it was born or found when it cannot claim another nationality in right of birth, proof of such other nationality being admissible under the law in force at the place where it was found or born.”

I think that the above rule might be regarded as universal and as suitable therefore for codification, for on this point the views of the various legislations are unanimous. Thus customary law which is in process of formation might be replaced by a fixed and definite rule. However, it is a moot point whether the formula contained in the Treaties concluded between the Principal Allied and Associated Powers and Greece, Poland, Czechoslovakia and the Kingdom of the Serbs, Croats and Slovenes would not be preferable ("All persons born in . . . territory who are not born nationals of another State shall *ipso facto* become . . . nationals"). (See also Article 2, paragraph 2, and Article 5 of the Polish Law on Nationality of April 9th, 1920.) The formula covers all cases where the nationality of the parents is known but where, according to the law of the parents' country, the child, if it is born on foreign territory, does not *ipso facto* acquire their nationality (*cf.* Article 1, No. 2, paragraph 1, of the Italian Law on Nationality of June 13th, 1912).

2. In all the other cases of acquisition of nationality *modo originario*, it is doubtful whether uniform rules for the solution of conflicts could be established without encountering political obstacles making the introduction of international instead of national rules impossible. It is true that the legal practice of some countries and some international conventions have devised preventive measures to avoid difficulties arising out of double nationality. One might, for example, put forward the principle of allowing an option for the nationality which would arise from the application of *jus soli*, excluding its operation where it was contrary to the law of the nation of origin (see the system adopted in the Italian Nationality Law of June 13th, 1912, Article 7 — Renunciation of the nationality of origin). Or one might recognise a rule permitting repudiation of a nationality acquired by birth in a territory whose law gave persons born there the nationality of the place of birth. In the former event, a law other than that in force in the territory applying the *jus soli*, would be recognised and treated as binding; the law of the territory would thus give way before the principle of *jus sanguinis*, but the effect of the latter would be merely suspensive. In the second event, however, it is the territorial law which would be applied subject to recognition of a resolutive operation of *jus sanguinis* by way of repudiation of the nationality acquired by the fact of birth (*cf.* the Treaty of Amity and Commerce between Belgium and Bolivia of April 18th, 1912, Article 5, paragraph 3). Neither the principle of option nor that of repudiation can be recognised as based on generally accepted rules of international law (see, however, the international treaties quoted by ZEBALLOS, 55-58, and the Treaty between Spain and Portugal of April 21st, 1866). Further, though these principles are recognised by the law of certain countries, it is doubtful whether countries which base their law in these matters wholly on the principle of *jus sanguinis* would agree to exceptions, seeing the incertitude in which their nationals would be placed in regard to their allegiance *pendente conditione*.

On the other hand, countries which have the system of *jus soli* without any exceptions would not be inclined to recognise any limitation of their sovereignty, even such limitation as would be involved in the repudiation of a nationality already acquired. Although there exist agreements between States which have based their legislation on totally different or even contrary principles (Conventions between American Republics recognising exclusively the principle of *jus soli* and some European States which have adopted the opposite system of *jus sanguinis*; ZEBALLOS, Volume II, pages 55 *et seq.*), the system is far from being universal or generally accepted. Further, it is doubtful whether a satisfactory solution could be reached by adopting the principle that nationality acquired *jure sanguinis* is retained only by the second generation and is lost by the third, a right of option, however, being preserved (*cf.* the British Nationality and Status of Aliens Act, 1914 to 1922, Section I, 1, v. V). The principle mentioned, which is advocated by the Institute of International Law (*Year-Book*, Volume XV, page 271, Article 3 of Resolution) and embodied in a few conventions (Treaty between Germany and Guatemala of September 20th, 1857, Article 10, paragraph 4; Convention on Nationality concluded between Italy and Nicaragua on September 20th, 1917), is far from being generally recognised.

It would certainly be an advantage if the above rules could be generally recognised; it would help to eliminate the difficulties and complications arising out of double nationality, which represents an absolutely abnormal phase in international life and which, according to M. Orlando's apt observation, "creates contradictions the adjustment of which might baffle the most subtle legal brain". But although the difficulties and drawbacks involved in multiple nationality are obvious, it would be premature to say that in present circumstances it would be possible to conclude an international convention with a view to avoiding the unfortunate consequences of such conflicts. The adoption of the principle of option combined with the possibility of repudiation (Recommendations of M. FAUCHILLE, *Treatise*, Volume I, 1, page 845, Nos. 3 and 4) and the recognition of *jus sanguinis* limited to a certain number of generations (Recommendation of the Institute of International Law) would certainly encounter political obstacles. I do not mean to say that a rule based on these principles would be absolutely impossible, but experience of international practice shows that the object in view would be more easily achieved by means of bilateral conventions which often pronounce for the application of the right of option as an efficient measure to avoid the disadvantages of multiple nationality. It must, however, not be forgotten — as was observed by M. Fusinato and Mr. Westlake during the discussions of the Institute of International Law (*Year-Book*, Volume XV, page 237) — that any proposal put forward with the object of avoiding conflicts of law must end in the drawing-up of a uniform law on nationality. The tendencies governing international practice at the present time, however, would make such a solution impossible. Only a few isolated questions can be taken up with any hope of a solution commanding general approbation.

3. Granting the existence of double nationality which cannot be eliminated by establishing a precise and conclusive general rule, and the dangerous uncertainty involved in certain legal situations, might not a solution be found at least for the following cases? In the event of a dispute as to the nationality of a person of double nationality arising in a State of which he was not a

subject, which of the two nationalities should prevail over the other and be recognised as valid for the purpose of the issues in question? We have observed that, in virtue of the principle of the sovereignty and independence of States, the legal position of a person whose nationality is in dispute between two States is settled, as against the other claimant State, by the fact of his being domiciled or residing in one of the two States. The theory put forward by Bluntschli that preference must be given to the State in which the person concerned has his domicile (see International Law Codified, Article 374) — which was recognised in the Venezuelan arbitral awards of 1903 to 1905, as well as in the Canavaro case settled by the Permanent Court of Arbitration at The Hague in 1912 — is not satisfactory, especially where it is a question of conflicts between States which are directly interested in the determination of the nationality of a person whose allegiance is claimed by the two States on equally valid grounds (see also Swiss Consular Regulations of September 16th, 1919, Article 49). On the other hand, in cases in which a third State must decide upon the validity of one of two nationalities, the principle of alternative nationality might be adopted, making the decision dependent upon one only of the two factors determining nationality, namely, that of domicile in one of the two countries, or — in the case of a person who is domiciled in neither of the two countries of which he is a national — the last domicile. We must stress the fact that such a solution, admitting the principle of alternative nationality, could only be applied in relation to third States and cannot be maintained in relation to the two States which claim the allegiance of the person in question; for these States the problem of double nationality hardly exists and the national of a State, even if domiciled on its territory, may not base any claims on that nationality as against another State which claims his allegiance in virtue of its laws. In each of any two States of which a person is a national, his allegiance will always be determined by the laws locally in force. This principle applies in general to all matters relating to his personal status. As Fiore has justly remarked, "it would seem evident that conflicts of laws arising between two States out of the double nationality of one of their subjects must be settled in accordance with the laws of the country in which the person who gives rise to the conflict resides, or of the country in which the disputed property is situated". But outside these two States the principle of domicile would play the principal part.

I consider that the principle adopted in the Japanese Civil Code (Article 8) might, with certain modifications, be recognised as a rule offering a solution for cases of double nationality. Article 8, paragraph 2, of the Japanese Civil Code reads as follows:

"Any person who at the same time possesses a foreign nationality shall be subject to the laws of the Empire, and any person possessing a double foreign nationality shall be subject to the laws of the country of which he has most recently acquired the nationality."

The second part of this provision should be amended, for if the most recent acquisition of nationality is taken as the criterion, no solution is provided for conflicts arising out of the acquisition of nationality by origin. It would therefore be preferable to recognise as valid the nationality indicated by possession of domicile in one of the countries of which the person is a national, and if he is domiciled in neither of the two countries, the nationality corresponding to his last place of domicile.

B. — 1. Before broaching the problems connected with change, loss and resumption of nationality, it should be pointed out that the political obstacles which stand in the way of the solution of these problems would be very difficult to overcome. If we consider in the first place questions relating to naturalisation, it is obvious that each State must be free to enact whatever rules it may think fit concerning the conditions and consequences of the acquisition of its nationality by naturalisation. These rules will not always take into account the provisions of the law to which the person applying for the new nationality is subject and to which he remains subject even after naturalisation. Naturalisation is an act of sovereignty, and any limitation of the powers of a State in such a matter is not to be thought of. There are cases in which a person acquires a new nationality by means of naturalisation without being released from his original nationality by the State of which he was a national, and it also may happen that a person may renounce his nationality in order to acquire another (this is a condition which is often prescribed by the laws of a country of which it is desired to acquire the nationality), but that subsequently the application for naturalisation is definitely refused.

The first case constitutes a typical example of double nationality; the second case is an example of loss of all nationality.

To avoid such difficulties, the recommendations of the Institute of International Law might be adopted (Volume XV — Resolutions adopted at the meeting of September 29th, 1896, Articles 5 and 6); but it is very doubtful whether such solutions would be generally acceptable, seeing that the political interests of a State may require complete liberty of action in matters of naturalisation and may forbid the restriction of its authority implied by making its decisions, in certain circumstances, contingent upon those of another State. The latter State might refuse to release a given person from its allegiance, even if it did not recognise the principle of perpetual and inalienable allegiance. Moreover, the laws of certain countries do not consider that the voluntary acquisition of foreign nationality *ipso facto* involves the loss of the original nationality.

One might ask whether the principle that States should in future grant naturalisation, or even resumption of their nationality, to nationals of another State only if the latter have been explicitly released from all allegiance to that State could not be embodied in a general convention.

This could more easily be achieved by means of bilateral conventions which can take into account the special relations existing between two countries (for instance, the Austro-Serbian Convention of June 16th, 1883, stipulating that the subjects of one of the contracting parties may not acquire the status of citizen in the territory of the other party without previously obtaining permission from the authorities of their own country to renounce their original nationality; see

also the agreement between France and Monaco of October 7th, 1919, and the conventions concluded between Czechoslovakia and Austria, June 7th, 1920, Article 16, and Germany, October 31st, 1922, Article 13).

Nevertheless, there is reason to think that an international agreement might be reached on the point if the recommendations regarding naturalisation were drawn up so as to make their application optional, for instance:

- (1) Naturalisation may be granted only on condition that the applicant proves that his country of origin has released him from its allegiance;
- (2) But if the country of origin adheres to the principle of perpetual and inalienable allegiance, such proof may be dispensed with; and
- (3) Naturalisation may be granted if the applicant can prove that the refusal of the required authorisation was not based on just and reasonable grounds; the fact that the applicant has not fulfilled the requirements of his country in the matter of compulsory military service must always be regarded as a valid ground for refusal;
- (4) Acquisition of nationality by naturalisation shall not entitle the State which has granted naturalisation to extend diplomatic protection to the naturalised person as against the State of which he was formerly a national if naturalisation was obtained by reason of the fact that the grounds on which authority to apply for naturalisation was refused were not just or reasonable, or if the country of origin adheres to the principle of perpetual and inalienable allegiance.

It would, on the other hand, be desirable to lay down the rule that release from allegiance owing to naturalisation in a foreign country involves the loss of the original nationality only on the express condition that naturalisation is actually obtained. The application for denationalisation should take effect at the moment at which the new nationality is effectively acquired. The recommendation of the Institute of International Law (Article 6) would not cover all cases which might arise, for it only provides for the case of a person who has fulfilled all the requirements for obtaining naturalisation in another country. If these conditions have been fulfilled, loss of the original nationality may result. But cases might occur in which the conditions for the acquisition of a new nationality have been fulfilled and the request for naturalisation is nevertheless subsequently refused on account of circumstances arising after the applicant has been released from his original allegiance. If, according to the legislation of the original country, it is the actual naturalisation which produces the loss of the original nationality, the danger of loss of all nationality does not really exist. But if the laws of a country provide for the loss of the original nationality in case of naturalisation in a foreign country which insists upon the condition of formal release from the original nationality, such release, once it has been granted, may be the cause of loss of all nationality if the application for naturalisation is subsequently refused in spite of the fact that the required conditions have been fulfilled or the necessary permission from the original State obtained. For this reason it would be desirable that the principle should be laid down that release from allegiance should only take effect when the process of naturalisation has been definitely concluded. Certificates authorising application for another nationality need not necessarily involve loss of the original nationality. I may quote a very reasonable measure embodied in Polish legislation, which provides for the loss of Polish nationality in the event of naturalisation in a foreign country, but lays down restrictions in regard to persons liable to compulsory military service. In the case of such persons a certificate of release is required, but this release only becomes effective if a new nationality has actually been acquired, and becomes null and void two years after it has been granted; after the expiration of this time-limit, which, if necessary, may be prolonged, the release becomes inoperative, and Polish nationality is retained (see Decree of March 21st, 1925, promulgating administrative regulations for the execution of the Law of May 23rd, 1924, on compulsory military service, *Legal Gazette*, 1925, No. 37, pos. 252, paragraphs 534 and 535). This principle should be applied in all cases where the laws of a State require that, before naturalisation in a foreign country, formal authorisation must be obtained, even if the applicants are not liable to compulsory military service. The above rule ("naturalisation shall depend upon the production of proof that the country of the applicant has released him from its allegiance") is therefore to be taken as implying that the release from nationality only comes into operation at the moment when naturalisation has been granted and has actually taken effect.

2. In modern law there is one particular case of change of nationality which might be called a *necessary change*, although it could not properly be called involuntary, namely, change of nationality by marriage.

No conflict could arise here if marriage always and everywhere involved loss of the former nationality and the acquisition of a new nationality. But, seeing that the law on these matters is based on different systems in different countries and that there is at the present time a very marked tendency to grant married women the right to choose their own nationality, irrespective of the fact of marriage, it is obvious that conflicts must arise which were formerly unknown. The current of modern opinion has had an influence on nationality laws, and the principle that a married woman should have the right to keep or to acquire as she thinks fit (even for children who are in her charge) the nationality she prefers, irrespective of the nationality of her husband, is fully recognised as a unilateral or bilateral rule. That is to say, it is unilaterally laid down that a woman who is a national of the country does not, when marrying a foreigner, lose her original nationality unless she so desires, but the case of the marriage of a foreign woman with a national of the country is not settled in the same sense; or else the general bilateral rule is laid down that marriage does not involve the denationalisation of the woman, without making any distinction between the case of a woman who is a national marrying a foreigner and that of a foreign woman marrying a national of the country.

Apart from legislations which do not contain any provisions regarding change of nationality through marriage, or which make a change of nationality contingent upon certain special conditions (for instance: domicile, reciprocity), we must distinguish between the two main systems I have described above. As an interesting example, we may quote the provision adopted in Soviet legislation which—in cases of marriage between persons belonging to different nationalities, one of the parties being Russian—makes no distinction between the sexes and lays down the general principle that marriage does not affect nationality but allows a change of nationality to be effected upon a special request submitted by the bride or bridegroom (Article 103 of the Code regarding Civil Status, the Laws of Marriage, Family and Guardianship). The Soviet Law of Nationality of 1924 (Article 5) provides in such a case for simplified naturalisation.

The most recent laws show a marked tendency to abandon the old principle that marriage *ipso facto* involves loss of nationality for the woman (Law of the United States of September 23rd, 1922; Belgian Law of May 15th, 1922, Article 18, requiring a formal declaration; Roumanian Law of February 23rd, 1924, Article 38, providing for the possibility of retaining the original nationality by a provision inserted in the marriage contract or, failing such, in virtue of a special declaration made in proper form before or at the time of marriage). In these circumstances it is not surprising that there is a considerable increase in conflicts of this nature. These would, however, be solved if the uniform principle were established that a woman retains her nationality upon marriage (or in the case of the naturalisation of the husband) unless she explicitly declares that she desires to acquire the nationality of her husband. A provisional draft international convention on the nationality of married women, taking into account modern tendencies in such matters, has been drawn up by the International Woman's Suffrage Alliance (see also the discussions of the *International Law Association* and the able report by Mr. Ernest J. SCHUSTER on "The Effect of Marriage on Nationality": Report of the 32nd Conference, 1924, pages 9-25).

We cannot here analyse in detail all the provisions of this draft, which endeavours to solve the many difficulties arising out of differences of nationality between husband and wife caused either by marriage or by naturalisation. But, although the establishment of a world law on this subject, or the adoption as a basis for internal laws of the general principles embodied in the draft, is very desirable, it cannot be affirmed that the moment for such measures has come. The obstacles in the way of such a solution would seem to be very great, for it is not likely that the States of the Continent of Europe would be inclined to accept, without any limitation, the principle that the marriage of a foreign woman with a national does not involve the loss of her original nationality. Even countries which recognise the right of a woman who is a national and who marries a foreigner to refuse to acquire the foreign nationality of her husband (unilateral system) might seriously object to the reciprocal application of this principle.

I am of opinion, therefore, that the introduction of the general principles laid down in the above-mentioned draft convention concerning the nationality of married women would now be premature, and can only be contemplated as a later stage in the work of codification. In the work of progressive codification the greatest caution is required, in order not to compromise the possibilities of a general international regulation to which internal laws would be subordinated. For this reason an attempt must be made to prevent or to remove the most acute and harmful conflicts while taking into account the political obstacles which might make even the most modest work of codification impossible. In view of the impossibility—which I suppose to be only temporary—of settling all conflicts regarding the nationality of married women, I am of opinion that, in present circumstances, only *three problems* can form the subject of international regulation

A.

The laws of many countries provide that the marriage with a foreigner of a woman who is a national always involves the loss of the original nationality of the woman, even if the laws of the country to which the husband is subject do not consider that marriage gives the wife *ipso facto* the right to acquire the nationality of her husband. To meet such cases the following rule is necessary: "a woman who marries a foreigner of any given nationality loses her original nationality only if she acquires by marriage the nationality of her husband in virtue of the laws of his country". The adoption of this principle, which is recognised even by the legislation of countries which do not have the rule of denationalisation of a woman through marriage with a foreigner (such as Belgium, Bulgaria, China, Costa Rica, France, Italy, Japan, Mexico, Poland, Portugal, Roumania, San Salvador, Switzerland, the Free City of Danzig), would be an effective means of eliminating the risk of loss of all nationality owing to the differences in the various legislative systems. Such a solution might form a compromise between these systems and smooth the way for a future agreement and a more complete regulation of these questions, while it would meet the views of those who claim that married women should possess independence in matters of nationality. I would therefore propose the following rule:

"A married woman shall lose her nationality only if at the time of her marriage, or during the marriage, she is considered by the law of the country of which her husband is a national as having acquired the latter's nationality."

This rule would meet the case of naturalisation of the husband after marriage, when such naturalisation did not involve a change of nationality for the wife, and, in accordance with the law to which the wife was subject before marriage, she is considered to have lost her original nationality although she has not acquired that of her husband. In such cases, the naturalisation of the husband, if it does not affect the wife, will leave the original nationality of the wife unaffected and the hardships inherent in lack of all nationality will be prevented. The rule should be applied in all cases where naturalisation according to the law applicable does not affect the nationality

of the wife and where the laws to which the husband and wife were subject before the naturalisation lay down that the naturalisation of the husband *ipso facto* involves the naturalisation of the wife (see the Chinese Law on Nationality of December 30th, 1914, Articles 10 and 15). Since the proposed rule would eliminate disputes arising out of lack of nationality, the question might be considered whether it should not be formulated as a general principle covering also cases of the acquisition of nationality through marriage. In cases of conflict between legislations of the bilateral and those of the unilateral type, or with laws of the traditional type (considering marriage as *ipso facto* involving a change in the nationality of the woman), there does not appear to be any means of preventing conflicts arising out of double nationality. The laws of the United States (Cable Act of 1922) do not admit that the marriage of an American woman with a foreigner can involve the loss of her original nationality unless she formally renounces it ("unless she makes a formal renunciation of her citizenship"). An American woman who acquires the nationality of her husband in virtue of the laws of his country does not thereby lose her original nationality. She therefore acquires a double nationality. In order to prevent such conflicts, the proposal has been made to introduce a positive clause modelled upon the provisions of legislations which make loss of nationality dependent on the existence of corresponding provisions in the law to which the foreign husband is subject. Although the negative clause has already been introduced into several legislations, the positive form does not yet exist. Such a clause is discussed in the monograph written by Dr. Gustav SCHWARTZ on the problems of nationality during and after the World War (*Das Recht der Staatsangehörigkeit in Deutschland und im Ausland seit 1914*, Berlin, 1925, p. 190). He describes it as a "reinsurance" clause (page 202, "Rückversicherungsklausel"). A woman is only to acquire the nationality of her husband if the law to which she was subject before marriage recognises the loss of her original nationality through the fact of marriage. Once it has been decided that the principle of individual nationality shall prevail over the principle that the family constitutes a unit, and this principle has been clearly formulated in negative clauses, it is obvious that a corresponding extension of the existing clause becomes a necessity. Therefore, by a process of generalisation, the following rule might be formulated:

"In the case of a woman marrying a foreigner, acquisition by her of her husband's nationality and loss of her original nationality shall be conditional respectively upon her being treated by the law of the State to which she belongs as having lost her original nationality and upon her being treated by the law of the State of her husband as having acquired his nationality, whether at the moment of marriage or during the marriage."

(As regards the effect of this rule on possible conflicts of laws, see the observations made below regarding the legitimation of illegitimate children.)

Incidentally, it should be observed that any rule which provides for a difference of nationality between husband and wife must necessarily affect questions of private international law, since it abrogates the unity of the matrimonial status. This problem requires careful examination, seeing that the complications which differences in the respective status of the husband and the wife may create require a clear and definite solution. It is not for us to decide here which of the systems proposed for the solution of the conflicts of private law is the most appropriate. (Cf. the system adopted in Argentine and Brazilian legislation making a distinction between the political and civil effects of nationality; see ZEBALLOS, Volume IV, pages 759, 733, 1051 and 1056; the system of ZITELMAAN, *Internationales Privatrecht*, Volume II, page 507, providing that the effects of marriage depend for husband and wife upon their individual personal status and, in particular, that the husband cannot exercise any rights in respect of his wife other than those he would possess under the law of his wife's country, pages 749 and 750; the system adopted in the French draft on the reform of Article 3 of the Civil Code concerning the effects of marriage on the personal relations between a husband and wife who are of different nationality (*Revue LaPradelle*, 1924, Volume XIX, page 312). The draft submitted by the International Woman's Suffrage Alliance makes the applicable status dependent upon the decision of the husband and wife, and does not therefore provide any positive solution for cases where husband and wife have not explicitly settled the question. I venture to draw attention to this extremely thorny problem, which is of capital importance.

B.

A uniform solution is also required for cases of resumption of nationality by women whose marriage has been dissolved, since it is possible that a resumption of nationality provided for by the law of the woman's original country might not be recognised as involving the loss of her acquired nationality under the law to which she is subject by reason of her marriage. Problems connected with the resumption of nationality by minors or persons who, having obtained naturalisation in a foreign country, subsequently renounce it and resume their original nationality upon again taking up their residence in their country of origin are, on account of political obstacles, not suitable for international regulation; but the situation is different where widows and divorced women are concerned. In this connection, the introduction of a rule that resumption of the original nationality on the dissolution of marriage always *ipso facto* involves the loss of the nationality acquired by marriage would be useful and practicable, and would not encounter political opposition. It is true that the conception of "dissolution of marriage" depends on the provisions of the law on this subject to which the husband and wife are subject. A unilateral regulation of this problem (loss of the nationality acquired by marriage with a national in case of resumption of the original nationality) is embodied in the Roumanian Law regarding nationality of February 23rd, 1924 (Article 40), and is also included in the French bill on nationality passed by the Senate in 1922.

C.

Furthermore, the question should be considered whether the proposal contained in the draft of the International Woman's Suffrage Alliance (Clause II, f — Protection of women without nationality) could not be adopted in cases in which a woman loses all nationality through marriage in consequence of the latter involving the loss of her original nationality without *ipso facto* entitling her to the nationality of her husband. It would be highly desirable that the position of married women to whom the diplomatic and consular protection of the country of which their husbands are nationals is denied should be improved.

The following rule might therefore be suggested:

"A woman who does not, through marriage, *ipso facto* acquire the nationality of her husband and who, under the law of her country of origin, is considered to have lost her original nationality through marriage, shall nevertheless have the right to a passport and to the diplomatic and consular protection of the State of which her husband is a national."

This rule has already been adopted in consular practice by the Argentine Republic (ZEBALLOS, Volume IV, pages 1055 and 1056).

3. A rule common to many legislations is that the legitimation of a child by a foreigner may, under certain conditions, involve the loss of the minor's nationality. The conflicts to which we have drawn attention when discussing changes of nationality through marriage arise, therefore, in connection with the legitimation of children by foreigners. In such cases a child may be regarded by the law of his country of origin as having lost his nationality, while the law to which the person legitimating or recognising the child is subject may provide that the change in civil status does not affect the nationality of the illegitimate child; consequently, such a child may possess no nationality at all.

In order to remedy this state of affairs, there might be adopted in international law a principle which is already recognised in Belgian law (Law of May 15th, 1922, Article 3), by the Free City of Danzig (Law of May 30th, 1922, paragraph 13) and by legal practice in Switzerland (see SAUSER-HALL, *La Nationalité en droit suisse* 1921, pages 39 and 40), namely, that the legitimated child only loses its nationality in virtue of the change in its civil status if the national law of the father confers upon the child the father's own nationality (it is obvious that if the father possesses no nationality the original nationality of the child is not affected).

The following rule might therefore be suggested:

"An illegitimate child shall lose its nationality by reason of legitimation only if at the time of the change in its civil status it is considered by the law of the State of which its father is a national as having acquired the latter's nationality."

It has to be considered whether a parallel rule for the case of acquisition of nationality would be accepted. Such rule would apply to the cases in which a national legislation regards legitimation as a title to the acquisition of the father's nationality. A foreign illegitimate child would only acquire the nationality of its father if the law of the State to which the child belonged before legitimation regards legitimation by a foreigner as a special ground of loss of nationality. Such a rule appears reasonable for the purpose of avoiding the effects of double nationality. Including, then, this second principle, the above rule on loss of nationality might be given a general form, viz.:

"In the case of an illegitimate child of a foreign father, acquisition of the father's nationality and loss of the child's original nationality are conditional respectively on the child's being treated by the law of the State to which it belongs as having lost its original nationality and on the child's being treated by the law of its father's State as having acquired his nationality at the moment of the change in the child's civil status."

This rule might be applied *mutatis mutandis* in cases of recognition of illegitimate children.

It should be pointed out that the above provision is not intended to determine by way of a uniform regulation the effects of legitimation (or recognition) on nationality. It is not intended to create a positive rule, that is to say the contracting States would not be bound to admit that the legitimation of a foreign child by a national involves the acquisition of the State's nationality or, *vice versa*, that legitimation may involve loss of the nationality where a national is legitimated by a foreigner. In view of the divergencies between the laws of various countries on this subject, it is not likely that there is sufficient unanimity of view to permit of the adoption of a uniform rule. The provision suggested merely represents a rule intended to prevent conflicts without affecting the exclusive competence of the legislations concerned. Each State would be free to decide whether it would or would not recognise an effect of legitimation on nationality; but, assuming the recognition of such effect, the scope of the application of any positive rule would depend on the corresponding provisions of the law of the other State if the latter also recognises the effect of the change in the civil status of the legitimated child.

There are therefore three classes of cases which might be taken into consideration:

(1) The legislation of State A provides that legitimation does not affect the nationality of the child, whereas the legislation of State B recognises the consequences of such a change and acknowledges acquisition of the new and the loss of the original nationality. In cases of conflict between these two legislations, our rule, if applied, would produce the following results: a child of nationality B legitimated by a person possessing nationality A will not acquire nationality A (according to the law of A) and will not be considered by the law of country B as having lost its nationality of origin (in accordance with the proposed rule); a child of nationality A legitimated by a person possessing nationality B will not lose its nationality A (according to the law of A) and will not be

considered by the law of B to have acquired a new nationality (according to the rule proposed). It would therefore only be the law of State B which would be affected by the international rule and whose internal rules would be set aside. The provisions of the law of A would remain unaffected.

(2) If State A and State B possess rules as to the effects of legitimation, and if they both provide that legitimation has a positive as well as a negative effect (acquisition and loss of nationality), no conflict will arise; but conflicts are inevitable if the effects of change of nationality vary according to special conditions differing in each country (for instance, State A recognises the effects of legitimation whatever the age of the legitimated child, whereas State B makes the effects of legitimation depend upon whether the child is a minor or not emancipated) (*cf.* also the prohibition of legitimation of children born in adultery). The proposed rule would eliminate the difficulties and dangers of double nationality or lack of nationality.

(3) The legislation of State A recognises the positive effects of legitimation (acquisition of nationality) while eliminating its negative effects (legitimation of a child of nationality B by a national of State A involves the acquisition of nationality A but the legitimation of a child which is a national of State A by a foreigner belonging to State B does not involve the loss of the original nationality of the child belonging to State A). The laws of State B, however, recognise simultaneously the positive and negative effects, that is to say, child A legitimated by a national of State B would be considered as having acquired nationality B, but the laws of State A regard it as not having lost its original nationality. The application of the proposed rule would eliminate the possibility of conflict: since the child would not lose its nationality A, it could not acquire nationality B.

In the foregoing observations I have drawn attention to certain matters which, in present circumstances, would appear to be ripe for codification by means of plurilateral conventions. If this means of reducing conflicts of laws in matters of nationality is adopted, attempts at codification might produce satisfactory results. But, since it is essential to proceed cautiously, a beginning must be made with the less-complicated problems which are not likely to arouse the opposition of the States concerned. The results achieved in such a limited field will perhaps appear a little meagre and insignificant, for they will not touch upon the substance of the conflicts in question and will mainly offer solutions for minor difficulties. All beginnings, however, are difficult and it may be hoped that, by thus obviating conflicts of a secondary order, it will ultimately become possible to undertake work on a wider basis with a view to the settlement, without too much friction, of the main problems. Such a codification by stages would be preferable to vaster and more-ambitious schemes for the solution of all possible conflicts. The result of attempting too much might be to put in question the very possibility of codification.

The questions which we have indicated as suitable for international regulation would form only a small part of any treaty which might be concluded in the future with a view to obviating conflicts of laws on nationality. Among others, there are some questions of form relative to proof of nationality which are of great practical importance in international relations and urgently require solution in order to improve the position—often a very precarious one—of persons required to furnish certificates constituting official and absolute proof of nationality. The system of registration, which is provided for by the laws of several countries (Belgium and Italy; and *cf.* the idea of a *casier civil* proposed in France), might be generalised by an international agreement; although it would not remove all difficulties, it would to some extent mitigate them. There could be no doubt of the practical importance of such a reform, which would have to be introduced into the internal law of each State. The Grotius Society has very rightly recommended and drafted rules regarding compulsory registration, maintaining that by this means the uncertainties at present obtaining in international relations would necessarily disappear (*see Transactions of the Grotius Society, Volume IV, Report of the Committee on Nationality and Registration, page 52: "Registration only fixes nationality with regard to the State which introduces it. Were all States to adopt it, there would be a foundation for an international solution of all difficulties which exist at the present moment, for, with regard to no one would there any longer exist any uncertainty and universal recognition of each other's registers would amount to international agreement and practical uniformity"*). This system has been adopted by English law (British Nationality and Status of Aliens Act, 1914-1922, Section I, *l.b.* V).

A draft convention between the Austro-Hungarian Succession States signed at Rome on April 6th, 1922, provides for the establishment of nationality by means of a certificate issued by the competent authorities, at the same time acknowledging the importance of the general principle that the rules governing acquisition or loss of nationality must depend on the law of each State. Article 2 of the draft reads as follows:

"As between the High Contracting Parties, nationality shall be proved by a certificate issued by the authority competent under the law of the State concerned and countersigned by the authority to which the said authority is responsible. This certificate shall state on what legal basis the claim to the nationality which the certificate is intended to prove rests. Each of the High Contracting Parties shall, however, be entitled, whenever it considers it necessary, to require that the contents of the certificate shall be confirmed by the central authority of the State."

If, finally, satisfactory results are to be obtained by international regulation, it would be necessary to introduce in any convention concluded for this purpose a general clause providing for judicial settlement or compulsory arbitration of disputes between the contracting parties on the questions of nationality which the convention is to settle. The compulsory arbitration clause is becoming more and more frequently adopted in conventions dealing with conflicts of nationality.

It is included in the conventions concluded between Austria and Czechoslovakia on June 7th, 1920 (Articles 21 to 30); between Germany and Czechoslovakia on October 31st, 1922 (Articles 14 and 22); between Germany and Denmark on August 10th, 1922 (Article 13); the same procedure is provided for in a draft convention on nationality questions signed at Rome on April 6th, 1922 (Article 4).

Although formerly the generally accepted view was that disputes regarding nationality were explicitly excluded from arbitration (see Arbitration Convention between the Argentine and Italy of September 18th, 1907), this restriction will have to be abolished once questions of nationality are made a matter of international regulation.

In my opinion, the problems referred to above and these two additional proposals would be the only ones suitable for immediate codification. Once this first stage has been reached, regulation on a wider basis might be attempted, for there can be no doubt that practical experience of the effects of international regulation in these matters will furnish valuable hints for the subsequent stages of the work which, as we hope, may be undertaken on a larger scale in the near future.

Two very eminent jurists, WEISS (Treatise I, page 329) and OPPENHEIM (*International Law*, I, page 487), have hoped that the solution of the conflicts with which we are dealing might be obtained by establishing a uniform law embodied in an international convention, or by formulating an international obligation for the States to revise their internal laws on a common basis, which would serve as a model for the drafting of such laws. This would represent an ideal, the maximum which any international jurist would have the right to contemplate.

I am of opinion, however, that, in order to reach this goal—which would mean the solution of all conflicts—it will be necessary to proceed by stages, for a universal regulation touching upon the substance of the matter would not seem to be compatible with the legal situation at the present day; it would surely be unfortunate if, by attempting tasks which for the moment are beyond us, we were to fail to achieve results which, although modest, would be of great value and, last but not least, practicable.

PRELIMINARY DRAFT OF A CONVENTION FOR THE SETTLEMENT OF CERTAIN CONFLICTS
OF LAWS REGARDING NATIONALITY.

Article 1.

The High Contracting Parties, while recognising the general principle that acquisition and loss of nationality are governed by the internal legislation of each country, undertake not to afford diplomatic protection to and not to intervene on behalf of their nationals if the latter are simultaneously considered to be its nationals, on grounds other than mere residence in the country, by the law of the State on which the claim would be made.

Article 2.

A woman who does not acquire through marriage the nationality of her husband and who, at the same time, is regarded by the law of her country of origin as having lost her nationality through marriage, shall nevertheless be entitled to a passport and to the diplomatic protection of the State of which her husband is a national.

Article 3.

The children of persons who enjoy diplomatic privileges and immunities, of consuls who are members of the regular consular service and, in general, of all persons who exercise official duties in relation to a foreign Government, shall be considered to have been born in the country of which their father is a national. Nevertheless, they shall have the option of claiming the benefit of the law of the country in which they were born, subject to the conditions laid down by the law of their country of origin.

Article 4.

A child born of parents who are unknown or whose nationality cannot be ascertained acquires the nationality of the State in which it was born or found, when it cannot claim another nationality in right of birth, proof of such other nationality being admissible under the law in force at the place where it was found or born.

Article 5.

The provisions of Article 4 shall apply where the nationality of the parents is known, but the law of the State of which they are nationals does not grant to a child born outside its territory the nationality of its parents.

Article 6.

Notwithstanding the provisions of Article 1, all persons possessing double nationality shall be regarded by the States the nationality of which they possess as their nationals. In relation to third States the nationality of such persons shall be determined by the law in force in their place of domicile, if they are domiciled in one of the two countries of which they are nationals.

If such persons are not domiciled in either of these two countries, their nationality shall be determined in accordance with the law in force in that one of the two States in which they were last domiciled.

Article 7.

The Contracting Parties undertake to grant naturalisation only on condition that the applicant is released from his allegiance to his country of origin.

Naturalisation may nevertheless be granted if the State of origin of the applicant adheres to the principle of perpetual and inalienable allegiance, or if the applicant proves that he has been refused expatriation without just and reasonable cause.

Naturalisation acquired under the conditions laid down in paragraph 2 does not entitle the State which has granted such naturalisation to afford diplomatic protection to or to intervene on behalf of the person naturalised as against the State of which the naturalised person was formerly a national.

Article 8.

A release from allegiance (permit of expatriation) shall produce loss of the original nationality only at the moment when naturalisation is actually obtained in one of the Contracting States. Such release shall become null and void if the naturalisation is not actually granted.

Article 9.

A woman married to a foreigner who by the dissolution of her marriage (death of husband, annulment of the marriage, divorce) recovers her original nationality shall by the fact of such resumption of nationality lose the nationality she acquired by marriage.

Article 10.

In the case of a woman marrying a foreigner, acquisition by her of her husband's nationality and loss of her original nationality shall be conditional respectively upon her being treated by the law of the State to which she belongs as having lost her original nationality and upon her being treated by the law of the State of her husband as having acquired his nationality, whether at the moment of marriage or during the marriage.

Article 11.

In the case of an illegitimate child of a foreign father, acquisition of the father's nationality and loss of the child's original nationality are conditional respectively on the child's being treated by the law of the State to which it belongs as having lost its original nationality and on the child's being treated by the law of its father's State as having acquired his nationality at the moment of the change in the child's civil status.

Article 12.

As between the Contracting Parties, nationality shall be proved by a certificate issued by the competent authority and confirmed by the authority of the State. The certificate shall show the legal grounds on which the claim to the nationality attested by the certificate is based. The Contracting Parties undertake to communicate to each other a list of the authorities competent to issue and to confirm certificates of nationality.

Article 13.

Failing a direct agreement between the Contracting States, any disputes which arise between them regarding the application or interpretation of the present Convention shall be brought before the Permanent Court of International Justice unless, in virtue of a special convention or a general arbitration clause, the dispute is settled either by a procedure of conciliation or arbitration or by some other means.

The Contracting Parties agree that each Party shall be entitled to refuse to have the questions referred to in the present Convention submitted to a procedure of conciliation or arbitration before the competent national jurisdiction has given its final decision, except always in cases of denial of justice.

Article 14.

The provisions of the present Convention shall not in any way affect those of treaties, conventions or agreements in force regarding questions of nationality which have been concluded by the Contracting States before the date at which the present Convention comes into force.

Article 15.

The present Convention shall apply only to the nationals of a Contracting State.

Article 16.

The Contracting States do not undertake in virtue of the present Convention to apply any laws other than those of one of the Contracting States.

Article 17.

Clauses providing for ratification and accession.

Clauses as to the duration, renewal and denunciation of the Convention.

Warsaw, October 8th, 1925.

(Signed) S. RUNDSTEIN.

II. SUPPLEMENTARY NOTE BY M. RUNDSTEIN

[*Translation.*]

Some further observations, complementary to those I have already had the honour to submit on behalf of Sub-Committee A, are called for, in view of the fact that the International Law Association has prepared a detailed draft regarding the uniform regulation of questions of nationality, which was adopted by the Thirty-third Conference held at Stockholm in 1924 (Report of the Thirty-third Conference, Report of the Committee on Nationality and Naturalisation, pp. 22-72).

In analysing the Association's suggestions, it should be observed in the first place that the solution proposed by the Association cannot be considered a rational one. The recommendation of two modes of procedure for the purpose of avoiding conflicts, *i.e.*, either that of embodying the relevant clauses in national legislation or of concluding a special convention regarding questions of conflicts properly so called, would not bring us nearer to our goal. The proposal of a "model Statute" would involve far-reaching reforms of domestic legislation; it would be tantamount to a fundamental revision of laws which in many countries are regarded as rules of a constitutional nature. The more so since the "model Statute" is based on the universal recognition of *jus soli* as a general principle modified by optional provisions designed to facilitate the application of *jus sanguinis*. Such a solution, consisting in the establishment of a single test of nationality, would have little chance of general acceptance. What we are endeavouring to do is not to create uniform "qualifications" for the whole world; that would be a goal beyond our reach under present circumstances. The task of codification is a more modest and, I venture to assert, a more fruitful one, since the solution of conflicts that at first sight seem insignificant but that weigh heavily on the normal functions of international life is more important than the recommendation of uniform rules which under modern conditions it would be almost impossible to apply. It is doubtful, moreover, whether such rules would really be uniform; the fact that a rule is identical in several legislations does not imply that its practical application and the interpretation given to it by the courts and by juridical acts in administrative law would always be the same in the different countries. Further, it is difficult to conceive the normal operation of a uniform legislation unless a universal jurisdiction were created at the same time—that is to say, an international court with compulsory jurisdiction. This would be an essential condition, since without a common jurisprudence the uniform law in force in each country which had accepted the "model Statute" would be subject to the well-known influence of legal and administrative practice. Uniformity would therefore in point of fact be very problematical.

Nor can it be said that the recommendations contained in the "model Statute" would not require a fundamental revision of domestic legislations. On the contrary, it would be impossible to accept these recommendations without setting up new principles which could not be introduced into legal systems recognising the principle of *jus sanguinis*. Clause 1 of the "model Statute" ("nationality acquired on birth") favours the ingenious system embodied in the legislation of Great Britain; it adopts the admirable solution introduced into this legislation as a compromise between the two opposed principles of *jus soli* and *jus sanguinis*. But it differs from it in its conception of subsequent option which in English law requires a formal declaration regarding re-acquisition of the original nationality, whereas Clause 1 regards option as a repudiation of the nationality acquired in virtue of *jus soli*.

Could the system embodied in the English Law of July 4th, 1922, modifying the limitations recognised by the "Principal Act" of August 7th, 1914, regarding the extension of *jus sanguinis* and introducing the new principle of formal and compulsory declarations by the father and by the child, possibly be recognised as a universal solution?

I consider that the question of conflicts arising out of two opposite systems is not suitable for uniform regulation. It belongs rather to the province of bilateral conventions which take special and sometimes contradictory interests (emigration, military service, etc.) into account; such questions should be settled by means of a compromise where the contracting parties abandon the principles generally applied in their domestic legislation in order to obtain concrete and definite results by means of mutual concessions. The acceptance of Clause 1 would involve the introduction of reforms modifying the very structure of the laws on nationality in order to substitute, for instance, for the system of pure *jus sanguinis* the special provisions of English law (inscription in the register and subsequent option) modified by Clause 1, which is in favour of the adoption of *jus soli*. Doubtless such a new system embodying a general idea might be regarded as an effective means of preventing numerous and regrettable conflicts. But even if we accept the maxim that "general ideas are generous ideas", we must nevertheless bear in mind the obstacles in the way of the realisation of principles which, in theory, are rational.

Further, it would be difficult to maintain that the system proposed in Clause 2 of the "model Statute" regarding the legal effect of *legitimation* would be acceptable. A general statement that legitimation would produce its effect only if the illegitimate child possessed no other definite nationality would not be in conformity with the system accepted by most modern legislation. We may perhaps see here the influence of English law, which does not recognise legitimation *per subsequens matrimonium* and which in this particular differs from Scotch and North American law (see KUHN, *Principles of Anglo-American Law*, 1924, p. 183; DICEY-KEITH, pp. 522 and 849). I do not see the necessity of introducing a fundamental rule providing for the exclusion of one of the means by which nationality may be acquired. The codification of legal rules regarding nationality cannot, even by way of recommendation, provide a uniform basis to which individual legislations would have to conform; its principal task should be to endeavour to find solutions for conflicts. If any given country recognises the effect of legitimation on nationality, and the laws of another

country contain no provisions regarding this matter, or even give a negative solution to the question, the remedy must not be sought in the reform of the divergent laws — for I do not see the necessity of substituting for a system which is regarded by State A as rational a different system adopted by State B, which is not based on the legal traditions and interpretations generally recognised by State A. We do not say that the effects of legitimation must conform to a preconceived system; rather, while recognising the *existence* of divergence, we endeavour to solve the questions of acquisition or loss of nationality in such a way that the differences between individual legislations shall not involve the consequences of double nationality or statelessness. The acceptance of rules which are subject to the relevant laws in force in the various countries does not in any way affect these laws themselves. These rules may restrict their general effect and make the acquisition or loss of nationality dependent upon the previous solution of another question regarding the effect of a definite rule — that is to say, nationality may be acquired in virtue of legitimation *provided* such acquisition involves loss of the original nationality. In such a case, domestic law is subordinated to a rule embodied in a foreign law, but the principle of acquisition itself remains intact. For this reason, the solutions suggested in the report of our Sub-Committee in regard to legitimation would be preferable to a uniform regulation which would require a general remodelling of the laws in force and would constitute an attempt at introducing a principle restricting the possibilities generally recognised by the majority of legislations and even recommended in new draft laws (*cf.* the draft of the French law on nationality voted by the Senate, which puts an end to the controversy regarding the effect of legitimation on the nationality of illegitimate children).

Clause 2 ignores the question of the recognition of illegitimate children, which does not exist in English law, and which, as regards its effect on nationality, is of great importance in Belgian, French, Polish and Swiss legislation.

With reference to the question of the effect of marriage on nationality (Clause 3), it should be noted that, generally speaking, the preceding observations apply equally to the rules concerning this matter contained in the draft. These rules, providing for the possibility of declining the nationality acquired by marriage, are unacceptable. I refer to the considerations put forward in our Sub-Committee's report, and I am happy to see our point of view confirmed by an opinion given by President Hammarskjöld, who, in his report to the Conference of the International Law Association at Stockholm, laid stress on the fact that, "under present conditions, a reform which would deprive marriage of its automatic effect on the nationality of the wife would have very little chance of being universally accepted" (Report, p. 41). Clause 3 could only be regarded as intended to settle possible conflicts between different legislations; in this respect, it is in conformity with our Sub-Committee's proposal. But inasmuch as it lays down a fundamental rule to the effect that a married woman is entitled to keep her original nationality subject to a registered declaration, this clause necessarily involves a modification of principles which would meet with considerable difficulties. It would therefore be preferable to regard the suggestion under consideration as applicable exclusively to the settlement of conflicts. In this case the alternative provided for in Clause 3*b in fine* (*cf.* final draft, Report, p. 50) would be superfluous (. . . "or unless she makes a formal declaration to be recorded on the register of marriage to the effect that she wishes to retain her former nationality"). For *if* the national law makes a special reservation as to the effect of such a declaration, or if the option is contemplated of declining nationality, in which case the original nationality would remain intact ("a formal denunciation" in American law), the application of a rule on the suspension of the effects embodied in the law to which the husband is subject would prevent possible conflicts. But I do not see the necessity for laying down that all legislations must adopt the principle of separate nationality in virtue of a formal declaration by the wife. Moreover, it must be borne in mind that many legislations recognise the principle of formal renunciation of the original nationality or even adopt the strict principle that marriage has no effect whatever on nationality. Accordingly, neither a declaration by the wife nor renunciation by her are of importance for the settlement of the problem.

Clause 4 (conditions as to naturalisation) I consider superfluous; in so far as it introduces the rule of collective naturalisation in virtue of family ties, it runs counter to the principles recognised by many legislations, which allow of exceptions to this rule or provide for the possibility of reservations (conditions imposed by the act of naturalisation itself, option of subsequent repudiation, *cf.*, for instance, the English Law 1914-1922, Part II, Section 5). Moreover, the right granted to a child born in foreign territory to re-acquire by subsequent option its original nationality is erroneously regarded as "naturalisation" — the child is not obliged to observe the conditions regarding domicile or residence. This so-called naturalisation is nothing but an option, the conditions of which are governed by Clause 1.

Finally, Clause 5 (conditions as to loss of nationality) would be incompatible with legislations which provide for the acquisition of nationality by means other than naturalisation, marriage or legitimisation (limited exclusively to children without nationality), such as recognition, adoption, re-acquisition of her original nationality by a divorced woman, etc. In accordance with the above-mentioned rule, persons acquiring a new nationality in virtue of reasons other than those therein enumerated would not be considered as having lost their former nationality.

The draft submitted by the Association, which proposes to regulate the questions referred to in Clauses 1 to 5 by means of a "model Statute", recommends, in addition, the separate regulation of certain questions by means of international conventions. The recommendations deal with: (1) the problem of double nationality and statelessness; (2) the change of nationality of married women, and (3) expatriation.

I. The recommendations of the Association agree with the draft submitted by our Sub-Committee in so far as the regulations on double nationality are concerned. But I prefer the wording adopted in our preliminary draft and modelled on the proposal of the American Institute

for International Law. The Association's recommendations do not deal with the consequences involved in the imposition of nationality by the simple fact of residence; no attention is paid to declaration of intention as a decisive factor in acquisition of nationality (*cf.* Article 9 of the Draft Code of Private International Law by M. Bustamante y Sirven; also Article 2 of the Portuguese Decree of December 2nd, 1910, on naturalisation: "Any Portuguese citizen who for any reason is regarded as a national of another country may not, so long as he resides in that country, claim the status of a Portuguese citizen"). The criterion which it is suggested should be applied in the case of a person possessing double nationality residing in a third State is also inadequate. The documents produced by such a person (passport, certificate of origin, etc.) are not conclusive. They might be regarded as a presumption in support of the proof required by the third State, but I think it would be preferable to retain domicile as a criterion and as a basis for the application of the relevant law (Article 10 of the Bustamante draft).

As regards persons without nationality, the Association's recommendation would seem contradictory; on the one hand, such persons are regarded as possessing their former nationality, but at the same time they are not recognised the right to lay claim to the privileges accorded by treaties concluded between the country in which they are residing and the country of which they were formerly nationals. It would seem, therefore, that this provision would be of very limited value; it would affect conflicts arising under private international law and might be referred to in cases in which a State of which a stateless person was formerly a national refused to re-admit its former citizen who had been expelled by the foreign country in which he was domiciled.

2. The rule proposed in regard to the right to a change of nationality of women judicially separated from their husbands is not suitable for a convention on nationality applying to questions of public international law. This question is a problem belonging rather to the province of the legal capacity of married women; taking into account the rigidity of territorial laws, it is doubtful whether a rule of such far-reaching effect could be universally accepted. The Ferrari case settled by the French Cour de Cassation in 1922 (DALLOZ, 1922, I. 329, *Revue Lapradelle*, 1922-23, p. 444, and Note by PILLET, p. 461) shows that it would not be easy to subordinate the exclusive competence of territorial laws to the requirements of uniform regulation. French jurisprudence is of opinion that the acquisition of French nationality must be governed by territorial legislation, even when applied to foreigners (Articles 12, 14, 15 of the Bustamante draft). In the case of the re-admittance to her original nationality of a foreign woman who was originally a French national, the French Courts ignore the provisions of foreign law on the legal incapacity of the woman and marital authorisation (see PILLET-NIBOYET, p. 188). It is therefore not likely that a law which takes into consideration only the case of the death of the husband or divorce would be ready to admit that judicial separation, which does not dissolve the marriage tie, had an analogous effect. The divergency between the various legislations in regard to the effect of judicial separation is a sufficient reason for abandoning any attempt at a uniform settlement of conflicts of this nature.

3. Generally speaking, the recommendations concerning conflicts arising out of expatriation should be approved; they are in conformity with the resolution adopted by the Institute of International Law in 1896 (Articles 5 and 6), but it should be noted that questions concerning the forfeiture of a naturalisation already acquired, even when they exclusively concern cases of fraudulent naturalisation, are not yet ripe for settlement of any kind. This question, which has become acute owing to the events of the world war (except in the United States of America, where forfeiture of naturalisation was settled by the Law of June 29th, 1906, and in Great Britain, Section 7 of the Law of August 7th, 1914), has given rise to innumerable difficulties and has increased the number of persons possessing no nationality. In order to mitigate the unfortunate consequences of such a state of affairs, a rule was proposed to the effect that persons losing their nationality through forfeiture automatically resume their former nationality ("naturalisation obtained by fraud should be capable of cancellation, and upon this happening the individual concerned should revert to his former national status"). But could a State be compelled to re-admit a former national who had acquired a new nationality by means of naturalisation and whose naturalisation had been forfeited without taking into account the time which had elapsed between naturalisation and denationalisation, and introduce the principle of compulsory re-assumption of the original nationality without previously considering the questions of fact and of law involved? That would certainly be going too far, and I consider that an impartial consideration of the question would suggest the rejection of such a solution.

Warsaw, December 2nd, 1925.

(Signed) S. RUNDSTEIN.

III. M. SCHÜCKING'S OBSERVATIONS REGARDING M. RUNDSTEIN'S REPORT ON NATIONALITY.

[*Translation.*]

The undersigned is in agreement with the proposals contained in M. Rundstein's report, both with the negative part of the report and of the supplementary note—since certain questions have not yet reached a stage at which they can be settled—and with the positive proposals for the solution of certain other questions. I also entirely approve the informal proposals put forward in the preliminary draft in regard to those problems which can be solved by a Convention. I would merely venture to offer a few personal remarks on the following points:

1. Article 2 of the preliminary draft might be given too wide an interpretation as regards the rights of a woman who has not acquired foreign nationality on marrying a foreigner but is regarded by her country of origin as having lost her former nationality. It might be thought that the intention of this article was to give to a woman thus situated unlimited passport-rights, whereas obviously the sole intention is to place her on the same footing as her husband as regards the issuing of a passport by the State of which her husband is a national. In order to avoid confusion, therefore, it would be desirable to insert in Article 2 a short phrase such as "on the same footing as her husband".

2. Under Article 7 of the proposed Convention, naturalisation may be granted to the national of another State when such national has been refused expatriation by his State of origin "without just and reasonable cause". I entirely approve this principle, but the clause should not be interpreted in the light of the French text in which it is stated that refusal of permission to emigrate on the ground that military service has still to be performed must always be regarded as "valid ground for refusal". I think there may be circumstances which give an individual a natural right to divest himself of his nationality of origin even when he has not fulfilled his military obligations. I would quote the following facts in support of my opinion.

The fact that refusal to perform military service has never ceased to be classed among those offences for which extradition is not allowable is no doubt due to the feeling that, in regard to this matter, there does not exist the legal necessity for civilised States to act together which, during the 19th century, produced the continuous extension of the principle of extradition. To-day, when certain States are obliged to abolish universal military service, civilised States have less than ever a common interest in securing that the subject of a neighbouring State shall always fulfil his military obligations. The existence of such a common interest could only be recognised at the moment when, as I hope will ultimately be the case, all the various national armies have been replaced by detachments of a single federal army dependent on the League of Nations; unhappily we have not yet reached this point. Moreover, it should not be forgotten that the whole conception of compulsory military service is passing through a crisis. Now that we are beginning to regard war as no longer constituting a legitimate procedure under international law, but as a crime, we must naturally regard compulsory military service in a quite different light from formerly. We observe in various countries a movement of refusal to take part in war, and several States which still adhere to the principle of compulsory universal military service have already taken this movement into account in their legislation. If, therefore, legislators—as is the case in a few States—dispense from service in wartime persons who have conscientious objections, does this not furnish proof that the universal duty to serve in the military forces is already considerably losing ground? It would seem quite unnecessary to force military service on nationals who might later on be freed from it in wartime. But in my opinion the following consideration is decisive. It cannot be denied that recent alterations in the map of Europe have included millions of persons in States which are new to them; and they can hardly be said to have been included in these new States at their own desire. Therefore the international pacification which all reasonable men desire, and for which we jurists must legally prepare the way, would be greatly advanced if the right of self-determination were first of all recognised in the form of the right of individuals freely to determine their own status, *i.e.*, persons who are ill at ease in the State to which they have been allotted, would be granted the fullest facilities for becoming nationals of another State of their own language and nationality. This principle would involve the granting of denaturalisation on extremely liberal lines and such denaturalisation could not be refused merely for failure to fulfil military obligations. Even if the contrary be the case, I do not consider that any other State would have a good reason for refusing naturalisation to an individual. *Cf.*, in this connection VON BAR, Vol. I, *Theorie und Praxis des internationalen Privatrechts*, pp. 197 *et seq.* *Ibid.*, for bibliography and practice.

3. The settlement of the problem of nationality by the national law alone has hitherto, in the case of a woman marrying a foreigner, been considerably hampered by the fact that this problem, in accordance with the principles of private international law, has a direct effect on the private law aspects of the institution of marriage. It has often been argued that in the domain of private law the unity of the institution of marriage must be maintained. *Cf.*, for instance, ASSER, *Das Internationale Privatrecht, Einleitfaden*, page 61; VON BAR, *op. cit.*, Volume I, pp. 439, 480, 505, *et seq.* *Cf.* also, as regards the unity of the institution in private law, PILLET, *Traité pratique du Droit international privé*, Paris 1923, Volume I, page 558.

Under these circumstances, it might perhaps be desirable to insert in Article 9 and the following Articles a formal phrase to the effect that the rules laid down under the International Convention should not in any way affect the private law relations between husband and wife.

(Signed) Walther SCHÜCKING.

IV. M. RUNDSTEIN'S REMARKS ON M. SCHÜCKING'S OBSERVATIONS.

[*Translation.*]

1. M. Schücking considers that Article 2 of the preliminary draft should be so drawn up as to eliminate all doubt concerning the right of the married woman to obtain a passport and the diplomatic protection of the State of which her husband is a national. He thinks it important to state that the nature of this right depends on the legal status of the husband himself. The question is thus one of rendering the rights of wife and husband equal. Therefore the words "on the same footing as her husband" should be added at the end of the article.

I agree that it would be desirable to insert this expression, as the rights of the wife derive from those of the husband.

2. As regards paragraph 2 of Article 7 of the preliminary draft, M. Schücking raises objections to the arguments put forward in the report (page 14). He takes the view that a request for naturalisation should not be refused on the ground that the person making the request has not fulfilled his military obligations. There are circumstances in which, in the conflict between the right of expatriation and obligations arising under military service, emigration should be allowed despite the requirements of allegiance. If there is no obligation to extradite persons who fail to fulfil the obligations of the military laws, there is equally no need to lay down that the legal consequences of such failure should be recognised internationally. The fact should also be taken into account that certain States have been obliged to abolish compulsory military service. Our generation hopes to attain general disarmament and regards war, not as a legitimate procedure, but as a crime. It therefore views compulsory military service in an altogether different light. Finally, the right of individuals to decide their own status should be recognised in view of the political changes brought about by the World War. Persons who are ill at ease in a State of which they have become nationals as a result of the cession of territory should be given an opportunity to emigrate; the right of emigration and consequently of changing their nationality should be definitely reserved.

With regard to these objections, it should be pointed out that Article 7, paragraph 2, of our preliminary draft does not mention the non-fulfilment of military duties as a just ground for the refusal of naturalisation. It is true that we referred to this matter in the arguments put forward but that was only to demonstrate the serious nature of the conflicts which might arise through the relationship of military service to the problem of nationality. Article 7, paragraph 2, as drafted, leaves each State sufficiently free to decide as to the reasons for refusal to allow expatriation; but, in the case of such refusal, naturalisation, while still remaining valid, does not include the right to diplomatic protection. This is the only way to obtain agreement between States, which are very susceptible as regards their competence in matters generally dealt with exclusively under their domestic legislation. It would certainly be desirable to lay down a general rule recognising absolute freedom in the matter of expatriation irrespective of domestic provisions concerning military service. But the States concerned would regard such a decision as trespassing on their sovereign rights. The settlement of such questions depends on political circumstances, and the contrary argument that a clause inserted in a convention regarding conflicts of nationality laws could change political conditions cannot be maintained. I do not affirm that these conditions are all they might be or that they do not call for reform—even radical reform. General disarmament is an ideal which merits all our enthusiasm, but it cannot be attained through the reform of nationality law. Such reform may be the direct consequence of disarmament, when disarmament has been attained, or perhaps of the establishment of guarantees against the danger of war.

3. M. Schücking observes that it would be desirable to add to Article 9 and the following articles an express provision to the effect that the rules laid down in these articles do not in any way affect the settlement of questions of private law. As the problem of nationality is of fundamental importance from the point of view of the application of the proper law in personal relations between husband and wife, and in regard to their matrimonial status, it should be noted that the solutions proposed in the preliminary draft do not affect the settlement of conflicts of private international law.

It must be clearly understood that it was never our intention to touch on questions of private international law. To mention this fact expressly in the text of a convention may, perhaps, be superfluous. The suggested clause might, however, be worded as follows, and we would apply the same formula to recognition and legitimation of illegitimate children:

"The provisions of Articles 9, 10 and 11 of the present Convention do not refer to the solution of conflicts of civil law, which shall continue to be subject to the internal law in force in the Contracting States or to international conventions on the subject."

Warsaw, January 3rd, 1926.

(Signed) S. RUNDSTEIN.

V. PRELIMINARY DRAFT OF A CONVENTION

AMENDED BY M. RUNDSTEIN AS THE RESULT OF THE DISCUSSION IN THE COMMITTEE OF EXPERTS.

[*Translation.*]

Article 1.

The High Contracting Parties undertake not to afford diplomatic protection to and not to intervene on behalf of their nationals if the latter are simultaneously considered as its nationals from the moment of their birth by the law of the State on which the claim would be made.

Article 2.

The children of persons who enjoy diplomatic privileges and immunities, of consuls who are members of the regular consular service, and, in general, of all persons who exercise official duties in relation to a foreign Government shall be considered to have been born in the country of which their father is a national. Nevertheless, they shall have the option of claiming the benefit of the law of the country in which they were born, subject to the conditions laid down by the law of their country of origin.

Article 3.

A child born of parents who are unknown or whose nationality cannot be ascertained acquires the nationality of the State in which it was born or found when it cannot claim another nationality in right of birth, proof of such other nationality being admissible under the law in force at the place where it was found or born.

Article 4.

A child born outside the State of which its parents are nationals has the nationality of the State where it was born if the State of origin does not give the parent's nationality to such child.

Article 5.

A person possessing two nationalities may be regarded as its national by each of the States whose nationality he has. In relation to third States, his nationality is to be determined by the law in force at his place of domicile if he is domiciled in one of his two countries.

If he is not domiciled in either of his two countries, his nationality is determined in accordance with the law in force in that one of these two States in which he was last domiciled.

Article 6.

Naturalisation may not be conferred upon a foreigner without his having shown the will to be naturalised or at least without his being allowed to refuse naturalisation.

Naturalisation acquired without the applicant being released from his allegiance by the State of origin does not give to the State according such naturalisation the right to give diplomatic protection to, and to intervene on behalf of, the person naturalised as against the State whose subject he originally was.

Article 7.

A release from allegiance (permit of expatriation) shall produce loss of the original nationality only at the moment when naturalisation is actually obtained in one of the Contracting States. Such release shall become null and void if the naturalisation is not actually granted within a period to be determined.

Article 8.

A woman who has married a foreigner and who recovers her nationality of origin after the dissolution of her marriage loses through such recovery of the original nationality the nationality which she acquired by marriage.

Article 9.

A married woman loses her original nationality in virtue of marriage only if at the moment of marriage she is regarded by the law of the State to which her husband belongs as having acquired the latter's nationality.

Where a change in the husband's nationality occurs during the marriage the wife loses her husband's nationality only if the law of the State whose subject her husband has become regards her as having acquired the latter's nationality.

Article 10.

A woman who does not acquire through marriage the nationality of her husband and who, at the same time, is regarded by the law of her country of origin as having lost her nationality through marriage, shall nevertheless be entitled to a passport from the State of which her husband is a national on the same footing as her husband.

Article 11.

An illegitimate child does not lose its nationality of origin in consequence of the change in its civil status (legitimation, recognition) unless at that moment it is considered by the law of the State to which the father or the mother, as the case may be, belongs as having acquired the nationality of the parent in question.

Article 12.

An adopted child who does not by the fact of adoption acquire the nationality of the person adopting it retains its original nationality.

Article 13.

As between the Contracting Parties, nationality shall be proved by a certificate issued by the competent authority and confirmed by the central authority of the State. The certificate

shall show the legal grounds on which the claim to the nationality attested by the certificate is based. The Contracting Parties undertake to communicate to each other a list of the authorities competent to issue and to confirm certificates of nationality.

(Signed) S. RUNDSTEIN.

QUESTIONNAIRE No. 2.

TERRITORIAL WATERS.

The Committee has the following terms of reference¹:

(1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment ;

(2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received; and

(3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Committee has decided to include in its list the following question :

“Whether there are problems connected with the law of the territorial sea, considered in its various aspects, which might find their solution by way of conventions, and, if so, what these problems are and what solutions should be given to them, and, in particular, what should be the rights of jurisdiction of a State over foreign commercial ships within its territorial waters or in its ports ? ”

On this subject the Committee has the honour to communicate to the Governments a report presented to it by a Sub-Committee consisting of M. SCHÜCKING as Rapporteur, M. DE MAGALHAES and Mr. WICKERSHAM. This report comprises a memorandum by M. Schücking, to which is appended a draft of a Convention; observations by M. de Magalhaes; observations by Mr. Wickersham, and, finally, the text of the draft Convention amended by M. Schücking in consequence of the discussion in the Committee of Experts, together with notes on this amended draft.

The nature of the general question and of the particular questions involved therein appears from the report. The latter contains a statement of principles to be applied and of the solutions of particular questions which follow from these principles. The Committee regards this statement as indicating the questions to be resolved in order to deal with the matter by way of an international agreement. All these questions are subordinate to the larger question set out above.

It is understood that, in submitting the subject to the Governments, the Committee does not pronounce either for or against the general principles set out in the report or the solutions proposed on the basis of these principles for various particular problems. At the present stage of its work it is not for the Committee to put forward conclusions of this character. Its sole, or at least its principal, task at present is to direct attention to certain subjects of international law the regulation of which by international agreement may be considered to be desirable and realisable.

In doing this, the Committee should doubtless not confine itself to generalities but ought to put forward the proposed questions with sufficient detail to facilitate a decision as to the desirability and possibility of their solution. The necessary details are to be found in M. Schücking's final conclusions, *i.e.*, in the draft convention as amended by him in consequence of the discussion in the Committee². Thus, to take only some examples, M. Schücking in various articles of the amended draft convention raises the questions :

(a) Whether several zones of diverse legal character should be recognised as territorial waters or this designation be reserved for the zone within which the powers of the coastal State are most complete.

(b) Whether the powers of that State should be described as sovereign rights.

(c) What should be the width of the territorial sea and possibly of other zones.

In order to be able to continue its work without delay, the Committee will be glad to be put in possession of the replies of the Governments before October 15th, 1926.

The Sub-Committee's report is annexed.

Geneva, January 29th, 1926.

(Signed) Hj. L. HAMMARSKJÖLD,
Chairman of the Committee of Experts.

(Signed) VAN HAMEL,
Director of the Legal Section of the Secretariat.

¹ See the Assembly resolution adopted September 22nd, 1924.

² See page 72.

Annex to Questionnaire No. 2.

REPORT OF THE SUB-COMMITTEE.

M. SCHÜCKING, Rapporteur.

M. DE MAGALHAES;

Mr. WICKERSHAM.

Problems connected with the law of the territorial sea, considered in its various aspects, which might find their solution by way of conventions.

Enquiry, in particular, into the rights of jurisdiction of a State over foreign commercial ships within its territorial waters or in its ports.

I. MEMORANDUM BY M. SCHÜCKING

At its first meeting, held at Geneva, the Committee of Experts for the Progressive Codification of International Law requested the Sub-Committee of which the undersigned has had the honour to be appointed Rapporteur to consider whether there were any problems connected with the law of the territorial sea, considered in its various aspects, which might find their solution by way of conventions, and, if so, what these problems are, and what solutions should be given to them. The Sub-Committee was asked, in particular, to enquire into the rights of jurisdiction of a State over foreign commercial ships within its territorial waters or in its ports.

The question of territorial waters involves a number of difficult problems of international law. The unsatisfactory manner in which these questions have hitherto been solved has given rise to repeated efforts by various Governments to solve them, either wholly or in part, by international convention.

For example, Lord Derby declared, in a circular note dated 1874: "It appears to be manifest that some limits to maritime jurisdiction must be fixed by general consent among the different nations, and that no nation can have the right to assume by a decree of its own Government a jurisdiction more extended than that sanctioned by such general assent. . ."

In 1911, after the seizure of an English trawler, the "Onward Ho", by a Russian coastal patrol boat in the waters of the Arctic Ocean, the Imperial Russian Government expressed its willingness to agree to the holding of a conference to discuss the extent of territorial waters.

At the time of the Aaland Islands Conference, in 1921, the French and Italian delegates pointed out—and the statement was not contradicted — that, if the general question of territorial waters had to be dealt with, representatives of all States possessing maritime interests should be invited.

In 1923, the Government of Soviet Russia, in a note dated May 23rd, addressed to Great Britain, urged that the question of territorial waters should be examined as a whole by a conference of the Powers concerned, with a view to the conclusion of an international agreement.

In November 1924, a Conference met at Helsingfors to deal with the problem as it affected the Baltic.

Proposals have from time to time been put forward by learned societies for settling these problems by treaty.

The Institut de Droit international has dealt with these questions on various occasions. (See the *Annuaire de l'Institut*, Vols. XII, XIII, XXV, XXVI and XXVIII.)

The International Law Association also interests itself in these questions. (See the Reports of the International Law Association, Vols. 1892, 1895, 1908, 1912, 1922 and 1923.)

A draft convention was provisionally adopted by the Third Committee of the Assembly of Jurists which met at Santiago de Chile in 1912 to codify American international law.

Cf. Article 4 of the Declaration on the fundamental laws of the American Continent, drawn up by the American Institute of International Law in 1917.

An extensive codification project has been prepared by the American Institute of International Law (Draft Convention of October 12th, 1924). (See the *Revista de Derecho internacional* for November 30th, 1924.)

The question of merchant vessels in internal waters, *i.e.*, in ports, has given rise to action on the part of a learned society.

The Institut de Droit international, in its Hague Regulations of August 23rd, 1898, devoted several articles to the position of merchant vessels in foreign ports from the point of view of their observance of the local laws and regulations:

These instances are sufficient to show how greatly the need for positive rules in this domain has been felt. The absence of results shows at the same time that there are inherent difficulties in these questions. Nevertheless, it may be hoped that, if it is proposed at any time to regulate this matter by convention, valuable guidance will be found in the treaty settlement of analogous problems.

Paragraph (e) of Article 23 of the Covenant of the League of Nations imposes the obligation to "make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League". The League of Nations has shown great activity in the execution of the duty entrusted to it. At its invitation and under its auspices the first General Conference on Communications and Transit met at Barcelona on March 10th, 1921. This Conference drew up not only a series of rules for the organisation of general conferences and of the Advisory Committee for Communications and Transit, but also the text of two important Conventions which have since obtained the necessary ratifications and come into force — the first on traffic in transit and the second on the regime of navigable waterways of international concern.

A second General Conference met at Geneva on November 15th, 1923. It drew up, *inter alia*, an important Convention on the International Regime of Maritime Ports. (See with regard to these Conventions the excellent work of M. Charles DE VISSCHER, "Le Droit international des communications", Ghent and Paris, 1924.)

By reason of the complicated character of the question of territorial waters, an agreement as to the establishment of definite rules could only be obtained by drafting a very comprehensive project containing solutions of more questions of detail than will be dealt with in most of the other codification projects to be drawn up by the Committee of Experts for the Progressive Codification of International Law.

On the other hand, we ought to restrict ourselves to problems the undoubted value of whose solution would consist in the establishment of definite rules of law corresponding to the interests of international solidarity.

(See MAX HUBER, "Beiträge zur Kenntnis der soziologischen Grundlagen des Völkerrechts und der Staatengesellschaft", *Jahrbuch des öff. Rechts*, Vol. IV, pp. 102 et seq.)

Then, again, we should strictly confine ourselves to dealing with such questions concerning territorial waters as arise in time of peace and are within the domain of international public law. Questions of private law relating specially to the law of territorial waters, and questions connected with the law of war and of neutrality, are excluded. In this we are acting upon the resolutions of the Committee of Experts for the Progressive Codification of International Law.

I. THE NOTION OF TERRITORIAL WATERS.

We must begin by answering the question: "What is meant by the expression territorial waters?"

The clearest and most accurate definition is put forward by those learned societies which define territorial waters as an area of water of a distinct geographical character.

The resolutions of the Institut de Droit international of 1894 contain provisions with regard to the right of sovereignty of a State over a zone of the sea which washes its coasts. Certain bays and straits are assimilated to this zone.

The decisions of the International Law Association of 1895 adopt the same standpoint.

According to the most recent project prepared by the American Institute of International Law in 1924, the following are assimilated to territorial waters: straits and maritime channels which are not subject to special dispositions, certain bays, and the sea surrounding certain islands.

These definitions contain the idea of a coastal sea, *i.e.*, waters which follow the sinuosities of an open coast. They also cover expanses of water enclosed by bays the entrance to which from the sea does not exceed a certain width. Wider bays are often treated in the same way as a result of historical rights accorded to the coastal State by the community of nations. This definition of territorial waters also applies to straits and natural maritime channels if they are not subject to a special regime in consequence of a collective convention.

Finally, the doctrine of territorial waters influences the legal status of artificial maritime channels if these are not subject to special rules, as the majority of them are.

II. THE LEGAL STATUS OF TERRITORIAL WATERS.

The most diverse theories have been put forward as to the legal status of territorial waters. They may, however, be divided into two general categories:

See FAUCHILLE: *Traité de Droit international public*, Vol. I, Part 2, Paris, 1925, p. 131: "...les uns font rentrer la mer territoriale dans le territoire même de l'Etat; les autres dénieient qu'elle constitue un véritable territoire maritime".

See also BJÖRKSTEN: *Das Wassergebiet Finnlands in Völkerrechtlicher Hinsicht*, Helsinki, 1925, p. 102: "Wenn man die Frage beantworten will, ob das Küstenmeer zum Staatsgebiete gehört oder nicht, hat man erst eine andere Frage zu beantworten: Erscheint uns die von dem Küstenstaat innerhalb des Küstenmeeres ausgeübte Gewalt als das Primäre, als die Regel, und die Meeresfreiheit als das Sekundäre, als die Ausnahme? Beantwortet man die Frage bejahend, so folgt daraus, dass man in dem Küstenmeer einen integrierenden Teil des Staatsgebietes erblickt, will man aber die Frage in einem ganz entgegengesetzten Sinn beantwortet wissen, so hat man sich für die Meeresfreiheitstheorie ausgesprochen. Schliesslich lässt sich denken, dass die Staatsgewalt und die Meeresfreiheit gleich stark auftreten, sodass keine von diesen das Uebergewicht zu haben scheint; in diesem Fall kann unsere Frage nach keiner von den beiden oben angegebenen Richtungen beantwortet werden, sondern das Küstenmeer muss dann entweder für einen Teil des Staatsgebietes und zugleich einen Teil des offenen Meeres oder für eine Uebergangsstufe gehalten werden, oder man kann Störck beipflichten, wenn er lehrt, die Küstengewässer seien nicht Inland, nicht Ausland, auch nicht Uebergangsstufe zwischen Inland und Ausland, sondern lediglich Küstengewässer mit allen den Attributen, die die ältere und jüngere Praxis ihnen zuweisen."

One of these theories is based upon the idea of the dominion of the coastal State over the territorial sea—a dominion which must be restricted by certain rights of common user in favour of other States. The other theory propounds the freedom of the sea and only recognises certain restricted rights in favour of the coastal State in the domain of the so-called territorial sea.

This theory leads to strange contradictions. It is unable to oppose the constant and unilateral extension of the rights of the coastal State in respect of the territorial sea, for States have never hesitated to increase the exercise of rights arbitrarily by unilateral act if their real or imaginary needs have so required. We would venture to point out that none of the claims to a coastal State's jurisdiction were put forward or enforced until the 19th century. (See RARSTAD: "La mer territoriale", Paris, 1913, p. 182.) Nor can these claims be based upon special isolated rights of servitude. If we base them on the right of established possession (as FAUCHILLE does in the work already quoted, p. 147), we come very near to recognising a general right of dominion.

Further, the doctrine of the right of dominion of the coastal State is quite in accordance with the traditions of international law. The most famous doctrine on the theory of the territorial sea is the thesis of BYNKERSHOECK: *Terrae dominium finitur ubi finitur armorum vis*. The idea of *terrae dominium* must be synonymous with the idea of ownership, which, in international law, can only mean dominion over territory.

It might at first sight be imagined that it is of no importance which of the two theories is adopted. They agree in declaring that the coastal State possesses certain rights in the territorial sea and that other States have a certain right of common user in it. If the matter is examined more closely, however, it will be seen that the solution of this question of principle is not a matter of indifference in practice. If we accept the coastal State's right of dominion, we must admit that it would undoubtedly be legally entitled to extend its dominion in new directions, provided, of course, that such action did not conflict with the right of common user of other States or with the provisions of conventions already concluded. Two examples taken from recent international practice illustrate the effect of this principle:

"C'est ainsi que la France et la Grande-Bretagne ont pu respectivement, dans les limites de leurs eaux côtières, sans soulever des observations d'aucune autre Puissance, se livrer aux travaux de percement d'un tunnel sous la Manche. De même, la Grande-Bretagne, sans que son droit ait été davantage contesté, exploite sous la mer, à plusieurs kilomètres de sa côte, des mines d'étain ou de cuivre en Cornouailles, et des mines de charbon dans le Comté de Cumberland, ainsi qu'entre Folkestone et Douvres." (FAUCHILLE, *op. cit.*, p. 205.)

It might be denied that these rights exercised by coastal States are based upon a right of dominion, and it might perhaps be concluded that coastal States have from time immemorial exercised an exclusive right of user in the territorial sea. The exclusive utilisation of the riches of the sea would then be merely a case of the extension of a special historical right. The following fact in law leaves no doubt as to the nature of the rights exercised by the coastal State in respect of the territorial sea. It is only in recent times, however, that States have claimed rights of dominion in the air above the territorial sea.

"Les Etats, tant dans leur droit conventionnel que dans leur droit interne, sont unanimes à considérer, au point de vue aérien, la mer côtière comme une fraction de leur territoire. La convention aérienne du 13 octobre 1919 est, à cet égard, particulièrement explicite: après avoir reconnu que 'chaque Puissance a la souveraineté complète et exclusive sur l'espace atmosphérique au-dessus de son territoire', son article premier déclare, en effet, que, 'au sens de la convention, le territoire d'un Etat sera entendu comme comprenant le territoire national métropolitain et colonial, ensemble, les eaux territoriales adjacentes au dit territoire'. C'est également la règle que consacrent les conventions particulières conclues par les Etats: France et Suisse, 9 décembre 1919, article 2; Danemark et Grande-Bretagne, 23 décembre 1920, article premier; Allemagne et Pays-Bas, 24 juillet 1922, article premier; Grande-Bretagne et Pays-Bas, 11 juillet 1923, article premier, etc. On la trouve encore formulée expressément par les lois intérieures des différents pays. Citons à ce sujet le décret espagnol du 25 novembre 1919, article 11; le décret-loi italien du 25 novembre 1919, article premier; l'acte anglais de 1920, chapitre 80, préambule; le décret russe du 17 janvier 1921, article 20. . ." (FAUCHILLE, *op. cit.*, pp. 1151 et seq.)

These facts can only be upheld by a legal conception according to which the territorial sea is itself under the dominion of the coastal State, subject to the restrictions of common user and of international conventions. They justify us in concluding that the only valid theory is that of the right of dominion of the coastal State over the territorial sea within fixed limits. The facts referred to also give practical ground for the belief that it is absolutely necessary to recognise by international convention the coastal State's rights of dominion over the territorial sea. This would not be an innovation but merely the final outcome of an evolution which finds expression in a series of international conventions.

"... le droit international, dans son état actuel, admet que la mer territoriale, sans être susceptible de propriété au sens privé du mot, l'est dans le sens international de souveraineté. Pour lui, l'Etat riverain est souverain de la mer côtière, comme de la terre ferme; sa souveraineté sur elle est comme le prolongement de sa souveraineté sur son territoire: elle est une portion de son domaine et non pas simplement une partie du vaste océan envisagé dans sa majestueuse unité. La frontière de chaque Etat maritime se trouve dès lors fixée à la limite même de la mer territoriale. Le droit conventionnel et le droit interne des Etats sont, à cet égard, très explicites. La XIII^e Convention de la Paix de La Haye du 18 octobre 1907 concernant les droits et les devoirs des Puissances neutres en cas de guerre maritime, qu'ont signée 43 Etats, dont 25 l'ont ratifiée ou y ont adhéré, considère que le caractère neutre doit être appliqué aux eaux territoriales d'un Etat étranger aux hostilités, aussi bien qu'à son territoire terrestre. Parmi les lois intérieures des Etats, on peut citer la loi italienne du 16 juin 1912 sur le transit et le séjour des navires marchands le long des côtes, qui qualifie de 'mer de l'Etat' la zone de mer comprise entre dix milles marins du rivage (article premier); les règlements roumain du 5 décembre 1912 (article premier) et français du 26 mai 1913 (article 2), sur l'admission en temps de guerre des navires étrangers, qui désignent respectivement d' 'eaux roumaines' et d' 'eaux territoriales françaises' les eaux qui longent les côtes de la Roumanie et de la France; l'ordonnance des Pays-Bas du 30 octobre 1909, sur le droit d'entrée des navires de guerre étrangers, qui décide que les eaux territoriales du Royaume sont 'dans les limites' de celui-ci (article 10)". (FAUCHILLE, *op. cit.*, pp. 157 et seq.)

The territorial sea will always retain its special character as part of the area of a State's dominion. This special character is founded not merely on the right of common user possessed by other States but also on the fact that the cession, for example, of this area of dominion to another State, without the simultaneous cession of the coastal territory, cannot be regarded as legally possible. The intimate connection between the two precludes such a proceeding. Nor can the territorial sea be regarded, as certain Civil Codes in Latin America suggest, as public property.

Argentine Civil Code, Art. 2374. — . . . the following are the *public property* of the general State or of the individual States:

16. The seas adjacent to the territory of the Republic, to a distance of one marine league, measured from the lowest tide line, but the right of police as to objects concerning the security of the country and the observance of the fiscal laws extends to a distance of four marine leagues measured in the same manner.

Chilian Civil Code of December 15th, 1855, Art. 593. — La mer qui touche les côtes (adjacentes) jusqu'à la distance d'une lieue marine, mesurée à compter de la ligne de la plus basse marée, est mer territoriale et appartient au domaine national; cependant, le droit de police pour tout ce qui concerne la sûreté du pays et l'observation des lois fiscales s'étend jusqu'à la distance de quatre lieues marines mesurées de la même manière.

Questions regarding the cession of the territorial sea and its classification in internal law are not, strictly speaking, questions for settlement by codification.

See FAUCHILLE, *op. cit.*, p. 72; Ch. DE VISSCHER et GANSHOT: "Le différend des Wielingen", *Revue de Droit international*, 3rd Series, Vol. I, p. 293; BJÖRKSTEN, *op. cit.*, p. 103.

As proof of the essentially dominant character of the rights of the coastal State in respect of the territorial sea, the fact that all schemes of codification seek to assert the right of dominion of the coastal State over the territorial sea may be claimed as decisive.

Cf. the project of the Institut de Droit international, 1894: "L'Etat a un droit de souveraineté sur une zone qui baigne la côte".

The project of the International Law Association, 1895, uses the same expression.

Cf. the project of the International Law Association, 1923 (Storby Project), Article 1: "L'Etat possède la *jurisdiction* sur une zone de la mer qui baigne ses côtes. Cette zone porte le nom de mer territoriale".

Cf. the project of the American Institute of International Law, 1924, Article 6, Paragraph 1: "The American Republics exercise the right of sovereignty not only over the water but over the bottom and the subsoil of their territorial sea. By virtue of that right, each of the said Republics alone can exploit or permit others to exploit all the riches existing within that zone".

Article 1 of the Convention to be proposed might therefore be worded as follows:

"*The character and extent of the rights of the riparian State.*

"Article 1. — The State shall have an unlimited right of dominion over the zone which washes its coast, in so far as, under general international law, the rights of common user of the international community or the special rights of any State do not interfere with such right of dominion.

"The right of dominion shall include rights over the air above the said sea and the soil and subsoil beneath it."

III. THE EXTENT OF THE TERRITORIAL SEA UNDER THE DOMINION OF THE COASTAL STATE.

The most difficult question is that of the extent of the territorial sea. The secondary question, namely, at what point the landward limit of the territorial sea is situated, will be dealt with later. The problem of the limit of the territorial sea on the side of the open sea is complicated by the fact that the very States which, actuated by the desire for dominion, are constantly satisfying their needs by extending their dominion in the territorial sea, nevertheless consistently refuse to sign any instrument of public law extending their dominion over a definite area. It is their traditional habit to establish definite zones for special purposes by means of their laws and administrative practice. The following synopsis will suffice to explain the matter clearly:

Great Britain. — The law on *jurisdiction* in territorial waters, known as the Territorial Waters Jurisdiction Act of August 16th, 1878, provides that any offence committed by any person, whether a British subject or not, within the limits of the territorial waters of His Majesty's possessions comes within the jurisdiction of the Admiralty (Article 2), and that for the purpose of offences coming within the jurisdiction of the Admiralty the territorial waters include all that portion of the high seas situated less than one maritime league from the coast, reckoned from low-water mark (Article 7).

By virtue of customary law, the extent of the *fishing zone* reserved for fishermen is three miles. This limit is established as between Great Britain and France, Belgium, the Netherlands, Germany and Denmark in Article 2 of the Hague Convention of May 6th, 1882.

The *Customs zone* used to extend for 12 miles under the old laws (the Hovering Acts 1736, 1838). Under the Customs Consolidation Act of 1876, the extent of the Customs zone is fixed at three nautical miles.

By virtue of customary law, the extent of British *neutral waters* is three nautical miles. (*Revue générale de Droit international public*, Vol. 21, p. 413, note by M. RÆSTAD.)

United States of America. — *Customs zone and neutrality zone:* Under the Naval Code, the *neutrality zone* extends for three nautical miles. Under the Acts of 1797, 1799 and 1807, the *Customs zone* extends for 12 nautical miles. The Supreme Court pronounced a judgment on April 30th, 1923, in which it deals first with the text of the 18th amendment to the Constitution. It notes, *inter alia*, that the territory subject to the jurisdiction of the United States includes the harbours, bays and other arms of the sea along their coasts and the belt of water which washes those coasts to the width of one nautical league or three geographical miles. . . . The Court refuses to allow any vessels entering the territorial waters of the United States, whether foreign or national, to carry any alcoholic liquors either as cargo or as stores, even under seal. (*Cf.* PAULUS, "La mer territoriale", *Revue de Droit international et de Législation comparée*, 3rd Series, Vol. 1, pp. 409 *et seq.*)

Netherlands. — Declaration by the Minister for Foreign Affairs in the Lower House in 1924: "Whereas, in view of recent Government communications, adhesion to the idea of extending the limit of the territorial sea from the point of view of the maintenance of *neutrality* cannot for the present be expected on the part of the principal maritime Powers (PAULUS, *op. cit.*, p. 412), the Netherlands have fixed three nautical miles as the limit of their neutral waters in their declarations of neutrality of 1904 and 1914".

German Reich. — Article 3 of the "Prisenordnung" of September 30th, 1909, reads: "Das Prisenrecht ist nicht geltend zu machen: (a) innerhalb *neutraler Hoheitsgewässer*, d. h. innerhalb eines Seegebietes, das in einer Breiteausdehnung von 3 Seemeilen von der Niedrigwasserküste gerechnet, die Küste und die zugehörigen Insel und Buchten begleitet; als zugehörig gelten: Inseln, wenn sie nicht weiter als 6 Seemeilen von einer demselben Staate gehörigen Festlandsküste entfernt sind, Buchten wenn ihre Küste ausschliesslich im Besitze neutraler Staaten steht und ihre Oeffnung 6 Seemeilen oder weniger ist".

In a note addressed to Finland on February 24th, 1924, Germany declares that she regards the three-mile zone as the only recognised zone. The note goes on to protest against Finland's action in extending her *Customs control* beyond this limit.

According to the schedule of zones prohibited to aerial navigation (Nachweisung der Grenzen der für den Luftverkehr verbotenen Zonen) attached to the Decree of the Prussian Ministers of Public Works and of the Interior dated April 29th, 1914 (*Deutsche Luftfahrzeitschrift* of May 13th, 1914, pp. 219, 220), the manœuvring prohibition extends to a distance of three nautical miles to seaward of the coast in respect of the zones (defined in detail in the schedule) of Königsberg, Swinemunde, Kiel, the North Sea coasts, and Heligoland.

Reserved fishing zone: As a contracting party to the International Convention on Fishing in the North Sea, concluded at The Hague on May 6th, 1882, Germany adopted the three-mile limit (Article 2) for the fishing zone reserved for the use of her nationals on the German coast of the North Sea between the Danish and Dutch frontiers (see Imperial Law of April 30th, 1884, putting the said convention into force). The same limit is also observed, though there is no express provision to that effect, on the German coast of the Baltic Sea between the Danish and Russian frontiers. (*Revue générale de Droit international public*, Vol. 21, p. 404.)

France. — *Fishing zone:* Three nautical miles according to the Decrees of 1862 and the law of 1888.

Customs zone: Two myriametres according to the law of March 27th, 1813.

Neutrality zone (Decree of October 19th, 1912): "Pour l'application des règles de la convention 13, en date du 18 octobre 1907, les eaux territoriales françaises s'étendent en deçà d'une limite qui est fixée à six milles marins au large de la laisse de basse mer, le long de toutes les côtes et des bancs découvrant qui en dépendent, ainsi qu'autour du balisage fixe qui détermine la limite des bancs non découvrants".

In the instruction of the French Minister of Marine of December 19th, 1912, concerning the application of international law in the event of war, it is stated in Articles 22 and 23: "Pour l'application de la XIII^{ème} Convention de La Haye, vous considérerez les eaux territoriales comme ne s'étendant jamais à moins de trois milles des côtes, des îles ou des bancs découvrant qui en dépendent, à compter de la laisse de la basse marée et jamais au delà de la portée du canon. Vous respecterez toute limite de cette nature qui se trouverait ainsi régulièrement fixée avant l'ouverture des hostilités".

Safety zone (Decree of October 24th, 1913, prohibiting the flying or manœuvring of aircraft in certain zones, Article 1): "Sauf autorisation spéciale, il est défendu aux aéronefs de passer ou d'évoluer: 1^o au-dessus de la zone comprise à l'intérieur du périmètre myriamétrique (en annexe, la zone maritime de dix kilomètres) indiqué pour: Toulon, Îles d'Hyères, Rochefort, Aix, Oléron, La Rochelle, Ré, Lorient, Groix, Brest, Ouessant".

Belgium. — *Fishing zone:* Three nautical miles under the law of August 19th, 1891.

Customs zone: One myriametre under the law of June 7th, 1832. — *Ordinary jurisdiction:* "La jurisprudence paraît se rallier à la limite de trois milles, notamment pour la détermination de la compétence dans les actions du chef de l'abordage." (*Revue générale de Droit international public*, Vol. 21, p. 408.)

Spain. — Territorial waters were established in Spain by Royal Decree of 1760. (FULTON, "The Sovereignty of the Sea", London, 1911, p. 569). The six-mile zone is the *Customs limit* under the Customs Law of October 15th, 1894, and

also the *fishing limit* under the decree of December 17th. The *neutrality zone*, which coincides with the *zone of jurisdictional waters*, extends for six miles.

Portugal. — The *Customs zone* extends for six nautical miles under the Customs Law of May 27th, 1911, Article 216.

Fishing zone: Three nautical miles under the law of October 28th, 1908. Under a Treaty of Commerce and Navigation concluded with Spain, the fishing zone reserved for Portuguese nationals extends for six nautical miles (Annex 6, Articles 2 and 3).

Italy. — Italy applies two limits in respect of Customs control: a zone of five kilometres for the supervision of navigation, and a zone of ten kilometres within which the captain of any vessel must be in possession of a passport authorising him to enter territorial waters (Customs Law of January 26th, 1896, Chapter II, Article 27). On the African coast, the Customs zone is 12 nautical miles wide (Royal Decree of February 4th, 1913, Article 2).

The Decree of June 16th, 1895, concerning foreign *warships* which in time of peace approach the ports or coastal waters of the area in which they are navigating, prohibits foreign warships from engaging in firing practice within gunshot of the shore, unless they have obtained special authorisation through the diplomatic channel to do so.

Under the terms of a decree of August 20th, 1909, foreign vessels in port may be required to withdraw to gunshot range if a state of siege is established. In case of war, the sea of the State may be completely closed. By "the sea of the State" is to be understood a zone of coastal sea ten nautical miles wide (*war and neutrality zone*).

Greece. — *Fishing zone:* Three nautical miles under the Royal Decree of January 8th, 1898.

Customs zone: A belt six nautical miles wide from the coast constitutes the zone of supervision.

Brasil. — The *neutrality zone* in the world war was three nautical miles wide; a neutrality zone five nautical miles wide was established by *Chile* and *Uruguay* in their declaration of neutrality of August 7th, 1914. (BJÖRKSTEN, *op. cit.*, p. 54.)

Denmark. — *Fishing zone:* "En accédant à la Convention internationale réglant la police de pêche dans la Mer du Nord, conclue à La Haye le 6 mai 1882, le Danemark a adopté la limite de trois milles marins pour la zone de pêche réservée aux pêcheurs nationaux sur les côtes danoises."

The present situation seems to be that Denmark recognises the three-mile zone in respect of all its coasts for purposes of fishing, in relation to the States signatory to the Hague Convention of May 6th, 1882, but that in relation to other States, notably Sweden, it maintains in respect of all its coasts a limit of one geographical league, which is also the general limit of Danish territorial waters. (RÆSTAD, in the *Revue générale de Droit international public*, Vol. 21.)

General limit (Royal Decree of February 12th, 1812, applicable both to Denmark and to Norway): "Our territorial sovereignty, in all cases in which it is necessary to determine its limits from the seashore, shall be deemed to extend to a distance of one ordinary nautical league, reckoned from the furthest island or islet which is not submerged by the sea."

Norway. — *Fishing zone:* The Royal Decree of December 22nd, 1906, which contains instructions for the warships responsible for the supervision of the coasts, declares that all persons other than Norwegian citizens or inhabitants of the Kingdom are prohibited from fishing in Norwegian territorial waters, the limit of which is fixed for purposes of fishing at a distance of one ordinary nautical league from the furthest island or islet which is not submerged by the sea.

By a law of July 14th, 1922, the *Customs zone* is fixed at a width of ten marine leagues (*Quartmeilen*).

Sweden. — *Customs zone:* Law of July 1st, 1904, Article 1, paragraph 2: one nautical league.

Neutrality zone: The regulations concerning maritime prizes of April 12th, 1808, Article 1, paragraph 1, provides that no vessel may be captured nearer the coast than at a distance of one nautical league (one-fifteenth of a degree).

According to paragraph 2 of the same article, the limit of neutral waters off a fortress coincides with the furthest gunshot range.

In the world war, Sweden, like Norway, was unable to maintain her claim to a neutrality zone of one nautical league. The belligerents paid no attention to this zone. In two publications dated November 29th, 1915, and June 19th, 1916, the submarine warships of the belligerents were prohibited from staying in or passing through Swedish waters within a limit of "three Swedish minutes", but it is highly characteristic that the publication of August 14th, 1916, which requires merchantmen to fly their flags in Swedish territorial waters, does not contain any special provisions regarding the extent of the neutrality zone (BJÖRKSTEN, *op. cit.*, p. 59).

Fishing zone (Royal Proclamation of May 5th, 1871): One nautical league. The same dispositions are contained in Article 1 of the Convention between Sweden and Denmark of July 14th, 1899.

Russia. — *Customs zone:* Under the law of December 10th, 1909, the Customs zone extends for twelve nautical miles.

Article 3 of the Peace Treaty between Soviet Russia and Finland establishes a zone of four miles for Russian territorial waters; under the terms of Paragraph 4 of Article 3, Russia has the right to extend her territorial sea to a zone exceeding four miles in width in the eastern part of the Bay of Kronstadt.

The practice of international law (conventions, conferences, exchanges of notes, arbitration tribunal awards) varies greatly. Sometimes the system of national legislation is adopted and definite zones are created.

Convention between the United States of America and the United Kingdom concerning the regulation of the traffic in alcoholic liquor, signed at Washington January 23rd, 1924, Article 1: The High Contracting Parties declare that it is their firm intention to maintain the principle that the real limit of territorial waters is at a distance of three nautical miles from the coast towards the high seas, reckoned from low-water mark. Similar conventions were concluded between the United States of America and Germany; the United States of America and Sweden (April 22nd, 1924); the United States of America and Norway (May 24th, 1924); the United States of America and Denmark (April 29th, 1924); and the United States of America and the Netherlands (PAULUS, *op. cit.*, p. 412). It is only in the Treaty concluded with Great Britain that the limit of three miles is fixed. But all these treaties allow Customs control to be exercised outside the zone of the territorial sea. The peculiarity of these conventions lies in the fact that the Customs limit is not the same in all cases. It depends upon the speed of the vessel, subject to control; for supervision may not be exercised at a greater distance from the coast than the vessel in question can cover in one hour.

A three-mile fishing zone is recognised in the following treaties: Great Britain-United States of America (October 21st, 1818); France-Great Britain (August 2nd, 1839, and November 11th, 1867); International Convention regarding Fishing in the North Sea (May 6th, 1882); Denmark-Great Britain (June 24th, 1901); United States of America-Japan-Russia-Great Britain (July 7th, 1911).

A six-mile fishing zone is recognised in the Treaty between Spain and Portugal of March 27th, 1893; a fishing zone of one nautical league between Denmark and Sweden (July 14th, 1899); a zone of one nautical mile between Austria-Hungary and Italy (December 6th, 1891, and February 11th, 1906); and a zone of ten nautical miles between Roumania and Russia (October 16th (O. S.), 29th (N. S.), 1907).

On November 29th, 1902, M. Asser, acting in the capacity of arbitrator, ruled, in the question of the United States fishing vessels "James Hamilton Lewis" and "C. H. White", which had been seized by Russian cruisers, that, in the absence of any agreement, Russian territorial waters could not extend as far as 11 miles from the coast.

In the arbitration award of 1893 in the Anglo-American dispute concerning seal-hunting in the Behring Sea, we find the following words: ". . . if such seals are beyond the ordinary limit of three miles . . .".

As regards the safety zone, the Convention of October 29th, 1888, concerning the Suez Canal stipulates a width of three miles.

A neutrality zone of five and three miles is provided for in the Anglo-American (U.S.A.) Treaty of December 31st, 1806.

A criminal-jurisdiction zone of five miles is provided for in the Treaty of Montevideo of January 23rd, 1889 (Article 12).

The "Elida" case. — "Die 'Elida' war ein schwedisches Fahrzeug, das am 8. Mai 1913 von einem deutschen Kreuzer Treleborg, jedenfalls ausserhalb der 3-Meilen-Grenze, aber vielleicht innerhalb der schwedischen 4-Meilen-Grenze festgenommen wurde. Das Kieler-Prisen-Gericht sprach die Prise frei. Das Urteil wurde unter andern darauf gegründet, dass die Festnahme wahrscheinlich innerhalb der 4-Meilen-Grenze und mithin in schwedischen Gewässern stattgefunden habe. Diese Betrachtungs-Weise konnte das Ober-Prisen-Gericht in Berlin nicht gutheissen. Die Prisen-Ordnung sei in diesem Punkte klar. Die 3-Meilen-Grenze sei die einzig anerkannte Grenze. Auch hat sich die deutsche Regierung im Jahre 1897 auf eine von der schwedischen Regierung an die deutsche Gesandtschaft in Stockholm gerichtete Mitteilung über die Fischerei-Hoheits-Grenze darauf beschränkt, den Anspruch Schwedens auf die 4-Meilen-Grenze für die Fischerei nicht zu bestreiten." (See BJÖRKSTEN, *op. cit.*, pp. 47 et seq.)

The "Herna" case. — "Ein norwegisches Fahrzeug wurde am 13. Dezember 1914 in einer Entfernung von $4\frac{1}{2}$ See-Meilen von der dänischen Seeküste festgenommen. In dem Urteile wurde festgestellt, dass, weil Dänemark keine breitere Neutralitäts-Zone als eine von 4 See-Meilen beanspruche, Frankreich keine andere zu respektieren brauche." (BJÖRKSTEN, *op. cit.*, p. 48.)

"Das Aalands-Abkommen vom 20. Oktober 1921 enthält Bestimmungen betreffend die Ausdehnung der Aaländischen Territorial-Gewässer, d.h. der Zone, welche der Neutralisierung unterliegt. Einmal darf sich der Umfang der Zone niemals über eine longitudinal und latitudinal genau angegebene Linie erstrecken (diese bildet eine Maximums-Grenze), sodann wird die Breite der Zone der Territorial-Gewässer innerhalb der Zone auf 3 SM. festgestellt (Art. 2)."

Sometimes, however, the view adopted is that of the sole dominion of the riparian State.

Under Article 4 of the Convention of 1888 concerning the Suez Canal, the provisions of that article are applicable to a zone of three miles outside the ports.

Cf. Hay-Pauncefote Convention of 1900, Article 2, paragraph 5: "The provisions of this article shall apply to waters adjacent to the Canal within three marine miles of either end".

"Nach Artikel 2 des Panama-Abkommens von 1903 erstreckt sich die durch das Abkommen festgestellte Zone 3 See-Meilen von den beiden Endungen des Kanals." (BJÖRKSTEN, *op. cit.*, p. 45.)

In opposing the Spanish claim to a six-mile zone, the United States of America and Great Britain upheld a three-mile zone. In 1875, Secretary Fish declared to Thornton: "We have always understood and assented that, pursuant to public law, no nation can rightfully claim jurisdiction at sea beyond a nautical league from its coasts". (FULTON: "The Sovereignty of the Sea", Edinburgh and London, 1911, p. 665, No. 2.)

"Auf der zweiten Haager Friedens-Konferenz wurde die Frage im Zusammenhang mit dem Minen-Abkommen behandelt. Der brit. Entwurf eines Minen-Abkommens enthielt das Verbot gegen die Legung von Minen ausserhalb der Territorial-Gewässer des Kriegsführenden, Festungen ausgenommen. In der 2. Unterkommission der 3. Kommission schlug Van der Heuvel anstatt des Ausdruckes 'Territorial-Gewässer' die Annahme einer fixen Grenz-Bestimmung vor. Der britische Delegierte erklärte, s.E. sei unter Küsten-Gewässer eine Küsten-Zone in einer Breite von 3 See-Meilen zu verstehen. Tornielli fand, dass die Feststellung der Ausdehnung der Küsten-Gewässer ausserhalb der Zuständigkeit der Konferenz liege. Dagegen wandte Van der Heuvel ein, es handle sich lediglich um die Feststellung einer Zone innerhalb deren Minen gelegt werden können. Der Ausschuss, dem die Ausarbeitung einer Konvention überlassen war, schlug in Artikel 2 seines Entwurfes die 3-Meilen-Zone vor; der Vorschlag wurde mit schwacher Mehrheit von der Kommission angenommen. Indem der Konferenz vorgelegten Entwurf war aber von keiner 3-Meilen-Grenze mehr die Rede; das Verbot gegen Minen-Legen auf offener See war weggelassen." (BJÖRKSTEN, *op. cit.*, pp. 46 et seq.)

"Während des Weltkrieges hat Deutschland ohne Rücksicht auf die schwedischen Ansprüche auf eine 4-Meilen-Zone mit Berechnung einer 3-Meilen-Zone Minen in den Schweden bespülenden Gewässern gelegt." (BJÖRKSTEN, *op. cit.*, p. 47.)

"Auf der vom 10.-20. Oktober 1921 abgehaltenen Aalands-Konferenz wurde im Entwurf eine 3-Meilen-Zone festgelegt." (BJÖRKSTEN, *op. cit.*, pp. 47 et seq.)

The Treaty concluded in 1924 between Great Britain and the Russian Soviet Republic declares (paragraph 2 of Article 5): "This article shall not be deemed to prejudice the views held by either party of the limits in international law of territorial waters".

The gunshot zone is identified with a width of three nautical miles in the Treaty concluded in 1806, but not ratified, between Great Britain and the United States, in Lord Stowell's award given in 1800 in the case of the "Twee Gebroeders" and in Story's judgment in 1812 in the case of the "Ana".

On February 25th, 1897, in the case of the Australian whaler "Costa Rica Packet", which had seized a Dutch ship, the arbitrator, M. F. de Martens, declared that the right of sovereignty of a State over territorial waters is determined by gunshot range. (FAUCHILLE, *op. cit.*, pp. 182 et seq.)

On November 29th, 1902, M. Asser, acting in the capacity of arbitrator, ruled, in the question of the United States fishing vessels "James Hamilton Lewis" and "C. H. White", which had been seized by Russian cruisers, that, in the absence of any agreement, Russian territorial waters could not extend as far as 11 miles from the coast. (FAUCHILLE, *op. cit.*, p. 183.)

All the codification projects are in agreement as to the necessity of establishing exact limits for the territorial sea.

Institut de Droit international, draft of 1894, Article 2: "La zone de mer territoriale s'étend à six milles marins (60 au degré de la latitude) de la laisse de basse marée sur toute l'étendue des côtes."

Article 4: "En cas de guerre, l'Etat riverain neutre a le droit de fixer, par la déclaration de neutralité ou par notification spéciale, sa zone neutre au delà de 6 milles, jusqu'à portée des canons des côtes."

Cf. OPPENHEIM, in the *Annuaire de l'Institut de Droit international* for 1913 (pp. 404 et seq.): "Comme je ne crois pas qu'il soit recommandable d'étendre la limite de la mer territoriale au delà de trois milles, je voudrais que l'Institut reconsidérât son attitude au sujet de l'étendue de la mer territoriale. . . J'adhère à la proposition de sir Th. Barclay d'abandonner l'article 4 des règles adoptées par l'Institut en 1894. Mais, en son lieu et place, j'aimerais proposer l'article suivant: 'En temps de guerre, la zone de la mer territoriale est la même qu'en temps de paix et des combats en mer ne sont permis, près des côtes des Etats neutres, qu'à une distance de portée de canon des côtes'. Je propose, comme texte de l'article 2 de l'avant-projet, un texte qui suivrait littéralement celui de l'article proposé par sir Th. Barclay en 1892: 'La zone de la

mer territoriale s'étend à trois milles marins de la laisse de basse mer dans toute l'étendue des côtes, à moins que l'usage continu et séculaire n'ait sanctionné une zone plus large.' La raison pour laquelle je m'oppose à une extension de la limite de trois milles est que la souveraineté reconnue d'un Etat riverain sur la mer territoriale ne comprend pas seulement des droits, mais implique aussi de lourdes responsabilités en temps de paix, de même qu'en temps de guerre, et surtout pour les neutres en temps de guerre. Il faut aussi tenir compte de ce que la Grande-Bretagne, les Etats-Unis et plusieurs autres Etats, pour des raisons d'ordre politique, ne consentiront jamais à une augmentation du rayon de la mer territoriale, et, à mon avis, l'Institut ne devrait pas se prononcer en faveur d'une règle qui n'a aucune chance d'être unanimement adoptée en pratique par les Etats."

Project of Captain Stormy (International Law Association). — Article 1: "La mer territoriale s'étend depuis le rivage jusqu'au point indispensable à l'effet de garantir la défense, la neutralité et d'assurer les services de la navigation et de la police maritime côtière en leurs diverses manifestations." On ne fait figurer ici le droit de pêche exclusive, car nous croyons que ce droit doit faire l'objet d'une réglementation séparée. Article 3: "En général, la largeur de la mer territoriale n'excédera pas six milles." Article 15: "Aucun Etat ne pourra modifier, en cas de guerre, des limites de sa mer territoriale." Article 14: "Les limites acceptées pour la mer territoriale seront marquées, à l'aide d'un signe universel particulier, sur les cartes nautiques dont l'échelle le permettrait, en vue de sa connaissance par tous les navigateurs."

"Im Jahre 1924 wurde die Frage des Küsten-Meeress auf der Stockholmer Tagung der International Law Association in der Vollversammlung erörtert. Die Kommission, die mit den Vorbereitungen der Frage beschäftigt war, schlug als allgemeine Grenze der Küsten-Gewässer 3 SM. vor. (Eine Minorität befürwortete die 6 SM. Grenze.) Die Kommission war darüber einig, dass die Seegrenze des Küsten-Staates für alle Staats-Funktionen nicht gleich zu sein brauche..." (BJÖRKSTEN, *op. cit.*, pp. 62 et seq.)

See also the report of Dr. DARDAY, *Report of the 25th Conference of the International Law Association*, pp. 547 et seq.

"Dans un projet sur les droits fondamentaux du continent américain, qui fut accepté provisoirement par la troisième Commission de l'Assemblée de juristes réunis à Santiago du Chili, en 1912, et qui fut, en 1917, présenté, à La Havane, à l'Institut américain de Droit international, M. Alvarez a proposé que la mer territoriale de l'Amérique est une distance de 6 milles marins" (Art. 14). (See ALVAREZ, *La Codificación del Derecho internacional en América*, p. 102.)

"C'est également la limite qu'a indiquée M. Pessoa dans le projet de code de droit international public qu'il a rédigé en 1911, à la suite de la décision de la troisième Conférence pan-américaine de 1906, relative à la codification du droit international, et qu'il a présenté en 1912 à l'assemblée des jurisconsultes tenue à Rio-de-Janeiro." (See PESSOA, *Projeto del código internacional publico*, 1911.)

American Institute of International Law: Draft Convention submitted to the session of the American Institute of International Law at Lima, Peru, December 20th, 1924. Article 3: "By territorial sea is meant the extent of the ocean which washes the coasts of the American Republics to a distance of . . . marine miles measured from the lowest point of low-water mark". Article 11: "The American Republics may extend their jurisdiction beyond the territorial sea for an additional distance of . . . marine miles for reasons of safety and in order to assure the observance of sanitary and similar regulations. . . ."

The necessity of doing so seems to us to be all the more urgent because, in spite of divergencies of doctrine, the theory most widely accepted accords to the riparian State the right to extend the limit of its territorial sea to the range of the coastal guns by unilateral acts.

See OPPENHEIM, paragraph 186, *International Law*. — STRUPP, *Grundzüge des Völkerrechtes*, p. 71: "Doch lässt sich nicht sagen, dass die 3-Meilen-Theorie einem Völkerrechtssatz entspräche. Auch die frühere Annahme der Kanonenschussweite vermag heute bei der grossen Tragweite der Küsten-Geschütze selbst nicht einmal mehr in dem Sinne einem Anhalt geben, dass das Küsten-Gewässer keines Falls weiter berechnet werden dürfe als auf Kanonenschussweite. So bleibt es dem einzelnen Landesrecht überlassen, die Küstenmeere bis dann von sich aus zu bestimmen". See the table of opinions given by FAUCHILLE, *op. cit.*, p. 177.

In view of the actual range of the coastal guns, we are faced by a positive rule of international law, the practical application of which would lead, at any rate in peace-time, to quite inadmissible results, which would restrict the freedom of the sea to an intolerable extent. This is also a point of importance in relation to war-time. (See the opinion expressed by OPPENHEIM, quoted *supra*, page 9.)

It is therefore necessary to decide upon a fixed territorial sea zone. If we examine the practice in international law, the codification projects and doctrine, with a view to establishing a fixed zone, we find a wide variety of limits. Whatever limits we may establish, we run the risk of prohibiting some State from exercising its administrative rights in connection with its dominion over the territorial sea to the extent to which it has been exercising them until the Convention comes into force. Further, we run the risk of restricting the rights of common user of other States in domains in which these rights have been exercised without question. On account of these difficulties, the efforts made in various quarters to fix a definite zone appear to have failed. For this reason, the problem can only be solved on the following lines: Within the zone of the territorial sea the rights of other States must be respected, as also the rights of common user in force in respect of the whole of the territorial sea (*e.g.*, the right of pacific passage), and the rights which have hitherto been exercised in consequence of the rights of common user of the sea or by virtue of special treaties. In other words, if a riparian State, such as, for example, the German Reich, has hitherto restricted the exclusive rights of fishing near the coast to a zone of three nautical miles, the Convention to be drawn up must not result, in consequence of the fixing of a wider zone, in fishing vessels not having right of access to the German territorial sea to the extent to which such right of access has hitherto been accorded to them. If the historically acquired rights of other States are respected in this manner, such States should be satisfied, the more so that in principle the width of the territorial sea is to be extended to more than three nautical miles. The most practical limit would perhaps be six miles.

In fixing this limit the following considerations are of importance: First, the three-mile limit cannot be regarded as the zone of dominion generally accepted according to the practice and doctrine of international law. Further, there is the important fact, mentioned above, that according to the most approved doctrine a State has the right to extend its dominion to the range

of the coastal guns; consequently, the recognition of the six-mile limit would still involve a sacrifice on the part of many riparian States.

A further argument in favour of the six-mile limit is that the projects of codification which fix a definite limit take a six-mile limit as their point of departure (*cf.* the project of the Institut de Droit international, 1894, and the project of the International Law Association, 1895).

As has already been observed, the idea of fixing the limit at six miles is not approved by those States which have hitherto exercised more extensive administrative rights than would be accorded to them if a six-mile zone were adopted. This brings us to the two-zone system recognised by many writers.

See the project of the American Institute of International Law. RÆSTAD: "La mer territoriale", pp. 175 *et seq.* "Il faut donc envisager, à mon avis, la possibilité d'une différenciation progressive des droits que les nations exercent sur mer...". See also WESTLAKE, *International Law*, 2nd edition, pp. 189 *et seq.*; BJÖRKSTEN, *op. cit.*, pp. 65 *et seq.*

The first zone would be fixed. The basis of this zone should be the right of dominion exercised in principle by two riparian States subject to the reservations mentioned above. In the second zone the only rights of riparian States which should be recognised are those which have hitherto been exercised for purely administrative purposes. The Convention should enumerate the rights which riparian States may exercise in the second, variable, zone by acts of public authority. The possibility must be borne in mind that States which have not hitherto exercised rights by acts of public authority in this second zone might also become entitled to exercise rights there in virtue of the Convention.

Nevertheless, there is a serious danger that States might exhibit a general tendency to create for themselves a second zone which would be analogous in character to the first. It would be well to take steps in advance to prevent this. If riparian States are restricted in the manner proposed, in the second zone, to the exercise of definite rights which have been exercised up to the time of the coming into force of the Convention, it will be easier to avoid the difficulty of having to establish an abnormal limit for the exercise of rights in the second zone, *i.e.*, the variable zone. It would be of decisive importance for the future to determine the area within which the rights in question could be exercised. The doubts felt, in consequence of the adoption of such regulations, by certain States which would be prohibited from satisfying needs arising subsequently outside the zone of dominion might be dispelled by the following considerations: In most cases the common interests of several States would be at stake and these might be satisfied by a revision of the Convention. But even in the case of a need felt by a single State, the State in question might, as an exceptional measure, be authorised to apply to an international tribunal for permission to exercise the right in question. Such a grant to a particular State of rights which would further restrict the common freedom of the sea would be in accord with the legal conception which is now accepted, that the open sea is not *res nullius* but *res communis*. This conception may be regarded as the nucleus of the idea of an organised dominion of the community of nations over the sea.

See POLITIS, minutes of the meeting of the Institut de Droit international, August 1st, 1925: "Contrairement à l'avis exprimé précédemment, M. Politis estime qu'il y a grand intérêt à prendre parti dans la question de savoir si la mer est *res nullius* ou *res communis*. D'après lui, c'est la seconde solution qui représente aujourd'hui la vérité scientifique. L'idée de la *res nullius* était jadis en harmonie avec la conception négative de la liberté. Elle ne s'accorde plus avec la conception positive de la solidarité, qui est à la base des relations internationales modernes... La nécessité d'un contrôle international sur tous les usages de la mer, même, s'il a lieu, près des côtes, pénètre tous les jours davantage dans les habitudes et dans la conscience des peuples."

Such a grant would create special rights for the satisfaction of the newly felt needs of a riparian State outside the fixed zone. It would imply the existence of certain organising institutions to which we shall refer later.

The category of rights to be recognised in the second zone on the basis of existing usage should include police measures to prevent the possibility of prohibited military exercises by another State, and measures of Customs and sanitary control. Exclusive economic rights of user outside the six-mile zone are not claimed to-day by any State. It should be forbidden to grant such rights in future, even if it is desired to enable riparian States in exceptional cases to obtain permission to exercise new rights in the second zone.

In addition to these arguments, which all deal with the limit of the exercise of rights by the riparian State in the domain of the sea, in so far as such limit is fixed on the side of the high seas, mention should also be made of the line which limits the rights of dominion of the riparian State on the landward side. This question is much simpler. The general practice of the States, all projects of codification and the prevailing doctrine agree in considering that this line should be low-water mark along the whole of the coast.

See BJÖRKSTEN, *op. cit.*, p. 91; FAUCHILLER, *op. cit.*, pp. 195 *et seq.* (With regard to special configurations, see pp. 11 *et seq.*)

Consequently, Article 2 of the Convention will read as follows:

"*Extent of the rights of the riparian State.*

"Article 2. — The zone of the coastal sea shall extend for six marine miles (60 to the degree of latitude) from low-water mark along the whole of the coast.

"The rights of other States which have been exercised by virtue of the common right of user of the high seas or of special treaties shall not be affected. States may exercise their rights of dominion by virtue of usage, and within the limits of such usage, beyond the zone of dominion in the following domains: police measures to prevent the possibility of military exercises being carried out by other States, and measures of Customs and sanitary control. Other rights beyond the zone of dominion may only be accorded to the riparian State by the body mentioned in Article 3 if they are demonstrated to be urgently necessary. Such grant shall in no case include rights of exclusive economic user outside the territorial sea."

IV. INTERNATIONAL WATERS OFFICE.

If the rules proposed by us be put into operation by Convention, there will still be very varied forms of legal rights in the parts of the sea near the coast, for, apart from the fundamental rights of common user in respect of the territorial sea, to which we shall return later, third States will be able to exercise various rights in respect of the territorial sea solely by virtue of the fact that they exercised such rights before the conclusion of the Convention in consequence of the common usage of the high seas or of special treaties. Again, riparian States could exercise special rights in waters which do not, strictly speaking, form part of the territorial sea. The legal position in this respect cannot be changed. The present state of affairs will continue. It is therefore necessary to prevent, at any rate for the future, the possibility of conflicts arising as a result of this confused legal position. This is not, we think, in any way impossible. All the questions which may arise can be reduced to this one question: To what point does the common right of user of the sea extend, and to what point do the rights of particular States, especially the riparian State, extend? This question of the limitation of the common use of waters is not new to jurists. It arises also in the interior of States, and civilised States have endeavoured to solve it by establishing registers of special waters, sometimes in connection with the establishment of land registers and sometimes separately.

These documents, which are published and controlled by State authorities, contain a record of all special rights restricting common use; and these records create the law for the future. All that is necessary is to transplant this institution to the domain of legal rights which restrict the common use of waters in the neighbourhood of riparian States.

International unions with special offices were established for many administrative purposes even before the formation of the League of Nations. The duty of an International Waters Office would be to compile a register of the rights which particular States consider they possess in the fixed zone of foreign riparian States, or which such riparian States consider that they possess outside their own fixed zone.

In the case of rights arising out of the traditional common use of waters not hitherto included in the fixed zone, the registration of such rights in favour of any State will suffice to ensure their enjoyment in future by all other States. In the case, however, of rights arising from special treaties, such rights can, naturally, only be claimed by the States signatory to these treaties, and only provided that they register them within a fixed time-limit. A time-limit must also be fixed for the registration of rights which the riparian State claims to exercise outside the fixed zone of the territorial sea. The legal instruments concerned must be presented and registered. The onus of proof will be upon the State applying for the registration of a right in its favour. Applications must be communicated to all the States signatory to the Convention; they may be opposed within a time-limit to be fixed. If an application is opposed, the question will be decided, in the first instance, by a mixed commission of experts and jurists. Appeal lies from decisions of this commission to the Permanent Court of International Justice. All States will be informed of the registration of a right. The register will be published.

The same procedure would apply in cases in which a State claims to have an urgent and new need outside the sphere of its dominion over the territorial sea. It must apply to the International Waters Office, which may only grant a right after publication of the application and provided that it is not opposed. In the event of opposition, the question goes before a mixed commission, before which the State claiming the right must prove that it cannot otherwise protect the interests affected. In this case also, both parties have a right of appeal to the Permanent Court of International Justice.

The International Waters Office will also be responsible for publishing maritime charts showing the zones of the territorial sea.

Article 3 of the Convention ought therefore to read as follows:

"International Waters Office and registration in the International Waters Register.

"Article 3. — The States signatory to the Convention undertake to establish an International Waters Office.

"The duty of this Office is to compile a register of rights possessed by the different States in the fixed zone of foreign riparian States, or by the riparian States themselves outside the fixed zone.

"The registration of a right in the International Waters Register kept by the International Waters Office in favour of any State in a foreign territorial sea shall be in favour of all States, if such right is founded upon common usage.

"A time-limit of . . . shall be fixed by the International Waters Office for the submission of all applications for such rights, as also for rights claimed by a riparian State outside its fixed zone by virtue of usage.

"The relevant legal instruments must be presented and registered. The onus of proof shall be upon the State applying for registration of a right in its favour. Applications must be communicated to all the States parties to the Convention.

"Applications may be opposed within a time-limit to be fixed. If an application is opposed, the question is decided, in the first instance, by a mixed commission of experts and jurists. Appeal lies from decisions of this commission to the Permanent Court of International Justice. All States shall be informed of the registration of a right. The Register shall be published.

"The same procedure shall apply in cases in which a State claims to have an urgent new need outside the sphere of its dominion over the territorial sea. It must apply to the International Waters Office, which may only grant a right after publication of the application and provided that it is not opposed. In the event of opposition, the question shall go before a mixed commission, before which the State claiming the right must prove that it cannot otherwise protect the interests affected. In this case also, appeal lies to the Permanent Court of International Justice.

"The International Waters Office shall also be responsible for publishing maritime charts showing the zones of the territorial sea."

V. BAYS.

With regard to bays, the following dispositions are found in internal legislation, in international treaties, in the codification projects, and in international arbitration awards.

"Nach dem Vorbild eines ältern Englisch-Französischen Vertrages über die Kanal-Fischerei, eines französischen Reglements vom 2. August 1839 und vom 24. Mai 1843, eines französischen Fischer-Gesetzes vom 1. März 1888, einer Bekanntmachung des britischen Handels-Amtes vom November 1868 enthaltend eine Anerkennung der Gebiets-Hoheit des norddeutschen Bundes in seinen Buchten, wurde im Haager Vertrag vom 1883 über die Fischerei in der Nordsee folgende Bestimmung aufgenommen: Artikel 2, Absatz 2: 'Pour les baies, le rayon de trois milles sera mesuré à partir d'une ligne droite tirée en travers de la baie dans la partie la plus rapprochée de l'entrée, au premier point où l'ouverture n'excèdera pas dix milles.'" (SCHÜCKING, "Das Küstenmeer im internationalen Rechte", p. 22.)

"Norwegen gehört auch zu denjenigen Staaten, welche grössere Buchten beanspruchen. Von jeher besteht solcher Anspruch hinsichtlich der Vestfjord. Die Verordnung vom 17. Dezember 1896 verbot unter anderm den Walfang im Varanger Fjord und innerhalb einer Linie gezogen von Kiberg bis zur Mündung der Gråuss-Jakobselv, und bei Thiberg noch innerhalb einer geographischen Meile und Ufer." (BJÖRKSTEN, *op. cit.*, p. 83.)

"Auch Russland hat Souveränität über grössere Meerbusen beansprucht. Solange Finnland und die Baltischen Staaten zu Russland gehörten, wurde der finnische Meerbusen als ein russischen Eigengewässer behandelt. Der Tages-Befehl der Ost-See-Flotte vom 24. Juni (alten Stils) 1914 verordnete, dass der finnische Meerbusen für die Dauer der Kriegs-Operationen für die Schifffahrt geschlossen sein solle. Im Jahre 1896 verbot Russland das Fischen mit Schleppnetzen im Weissen Meer, ein britischer 'Trawler' wurde dort im Jahre 1910 beschlagnahmt. In dem im Sommer 1924 unterzeichneten Abkommen zwischen Russland und Gross-Britannien wurde den Russen das ausschliessliche Recht zum Fischfang in diesem Meer südlich der Parallele 67 Grad 40 Sekunden zugestanden." (BJÖRKSTEN, p. 83.)

"In den beiden Englisch-Französischen Fischer-Zonen vom 3 SM., gemäss den Verträgen von 1839 und 1867, wird als Grundlinie eine Linie festgestellt, die von dem einen Mündungsufer gezogen wird, in einer solchen Bucht deren Mündung nicht breiter als 10 SM. ist." (BJÖRKSTEN, *op. cit.*, p. 84.)

"Lord Fitzmaurice a déclaré, le 21 février 1907, à la Chambre des Lords d'Angleterre, qu'on ne pouvait comprendre comme territoriales que les baies dont l'entrée ne dépasse pas six milles; c'est aussi l'opinion qu'a émise, le 6 juin 1870, lord Granville, secrétaire d'Etat britannique pour les Affaires étrangères. On la trouve encore soutenue aux Etats-Unis par le juge Forster, dans la question des 'Halifax Fisheries' et, en 1890, par le juge Blatchford, au nom de la Cour suprême des Etats-Unis, dans l'affaire *Manchester v. Massachusetts*. (FAUCHILLE, *op. cit.*, p. 373.) La Cour d'arbitrage de La Haye, dans sa sentence arbitrale du 7 septembre 1910, rendue au sujet de l'affaire des pêcheries des côtes septentrionales de l'Atlantique entre les Etats-Unis et la Grande-Bretagne, après avoir déclaré que les baies territoriales s'étendent aussi loin qu'elles conservent la configuration et les caractéristiques d'une baie, a refusé de considérer comme un principe rigoureux de droit international s'imposant aux Etats la règle de la territorialité des baies dont l'ouverture n'excède pas six milles et a recommandé aux parties litigieuses d'admettre comme principe, sauf en ce qui concerne certaines baies qu'elle énumère et pour lesquelles elle adopte de plus longues distances, de ne regarder comme territoriales que les baies dont l'entrée ne dépasse pas dix milles. Un des arbitres, le Dr. Drago, émit une opinion dissidente: Après avoir soutenu qu'il existait une classe de baies, les baies historiques qui, quelle que soit leur largeur, sont territoriales, il déclara que, pour les autres, c'est-à-dire pour les baies communes et ordinaires, il ne pouvait pas y avoir de règles générales et que le principe à poser devait être tiré dans chaque cas de la pratique suivie par la nation intéressée." (FAUCHILLE, p. 374.)

See also other cases of international practice mentioned by FAUCHILLE, *op. cit.*, pp. 374 et seq.

As regards practice, see RAESTAD, *op. cit.*, pp. 146 et seq.: "Quant à l'étendue des baies territoriales, la pratique, telle qu'elle s'est affirmée dans les conventions de pêche, a dégagé une tendance marquée vers la limitation des prétentions quelquefois exagérées à l'empire des baies. Mais la limitation arbitraire introduite par lesdites conventions — la ligne de dix milles — n'a pas réussi à anéantir la territorialité des baies appelées historiques." Cf. also SALMOND, "Territorial Waters", in *The New Quarterly Review*.

Institut de Droit international: Resolution of 1894, Article 3: "Pour les baies, la mer territoriale suit les sinuosités de la côte, sauf qu'elle est mesurée à partir d'une ligne droite tirée en travers de la baie dans la partie la plus rapprochée de l'ouverture vers la mer, où l'écart entre les deux côtes de la baie est de 12 milles marins de largeur, à moins qu'un usage continu et séculaire n'ait consacré une largeur plus grande."

In 1895, the International Law Association fixed the width at ten marine miles.

Cf. OPPENHEIM, in the *Annuaire de l'Institut de Droit international* for 1913, pp. 406 et seq.: "La rédaction de cet article (Article 3) a besoin d'être modifiée, puisque la distinction nécessaire n'y est pas faite entre les baies qui sont environnées de terres d'un seul Etat et les autres. Il est universellement reconnu que les baies qui sont environnées des terres de deux ou plusieurs Etats, quelque étroite que soit leur embouchure, ne sont pas territoriales, mais forment partie de la haute mer. Pour cette raison, je propose le texte suivant pour l'article 3: 'Pour les baies qui sont environnées des

terres de deux ou plusieurs Etats, la mer territoriale suit les sinuosités de la côte. Pour les baies qui sont environnées de terres d'un seul Etat, la mer territoriale suit les sinuosités de la côte, sauf qu'elle est mesurée...

"Quant à déterminer combien l'embouchure des baies doit être étroite, afin qu'on puisse les considérer comme territoriales, il est impossible, à mon avis, de poser d'autres règles que celle-ci: 'L'ouverture vers la mer doit être assez étroite pour être commandée par des batteries de la côte'. Toutefois, si l'Institut était d'avis de poser la règle que l'ouverture ne doit pas être plus large que 12 milles, je n'y ferais pas d'objections, car la portée du canon augmente constamment."

Project STORNY, Article 6: "Dans les baies, golfes, criques et anses de la côte, la mer territoriale suivra, en général, la configuration de celle-ci, sauf qu'elle doit être comptée à partir d'une ligne droite tirée à travers la baie, golfe, crique ou anse, dans la partie la plus rapprochée de l'entrée de la mer où la séparation des côtes soit telle que les deux zones de mer territoriale déterminées chacune et séparément, conformément au critérium du présent projet de convention, se trouvent en effet pratiquement unies." Article 7: "L'Etat pourra comprendre dans les limites de la mer territoriale les estuaires, golfes, baies ou parties de la mer adjacente où un usage continu et séculaire aura consacré sa juridiction, ou qui, dans le cas où ces précédents n'existaient pas, seraient d'une nécessité inéluctable selon le concept de l'article 2."

Project of the American Institute of International Law, Article 4, paragraph 1: "For bays extending into the territory of a single American Republic, the territorial sea follows the sinuosities of the coast, except that it is measured from a straight line drawn across the bay at the point nearest the opening into the sea where the two coasts of the bay are separated by a distance of ... marine miles, unless a greater width shall have been sanctioned by continued and well-established usage."

The facts and opinions which have been quoted give an idea of the variety of usages and of the multiplicity of conceptions. The impression which the table creates proves once again the necessity for codification. If codification is to be effective, due consideration must be shown in this matter also to the various conceptions which are entertained. Such a method demands that a clear distinction should be drawn, on the basis of the usages in force, between bays to which the rules of ordinary international law should be applied, even if these are not at present beyond doubt, and the bays in respect of which a particular State has claimed to occupy a special legal position (historical bays).

Let us begin by examining the former. These may be divided into two categories: (1) bays which are bordered by the territory of a single State; (2) bays which are bordered by the territory of two or more States.

See, as regards international practice in relation to the second group of bays, FAUCHILLE, *op. cit.*, pp. 384 *et seq.* Project of the American Institute of International Law, Article 4: "In the case of an international bay whose coasts belong to two or more different countries, the territorial sea follows the sinuosities of the coast, unless there exists a convention to the contrary".

As regards bays which are bordered by the territory of a single State, there is general agreement on the point that the entrance to the bay on the side of the opening towards the sea must not exceed a certain width. The waters of these bays are not regarded as territorial waters but as internal waters. See Sir Cecil HURST, "The Territoriality of Bays", *British Year-Book of International Law*, 1922-23, pp. 42 *et seq.*

Divergencies of opinion only arise on the following question: How narrow must the entrance to the bay be in order that this rule may be applicable? If we adopt a six-marine-mile zone for the territorial sea, it would seem logical to apply the rule in question to all bays whose imaginary entrance line does not exceed 12 marine miles in width, for the riparian State dominates on both sides all the part nearest to the opening towards the sea. This being so, it would seem logical to assign all the waters within the bay to the riparian State, but not *qua* territorial sea. We must recognise the more absolute right of dominion which a State exercises over its internal waters. For bays which are bordered by a single State, but the entrance to which exceeds 12 miles in width, it must be admitted in case of doubt, *i.e.*, if no historical right can be upheld in respect of the territorial sea, that the territorial sea is governed by the general rule (*i.e.*, that it follows the sinuosities of the coast).

The same rule of law is applicable to bays whose shores belong to various States, without reference to the width of the bay. All the recent codification projects are in agreement on this point.

There remains to be considered the legal status of bays which are only bordered by a single State and which are subject for historical reasons to claims of exclusive right of user. As we have already observed, such a right must be recognised on principle. The position is an anomalous one, and for that reason such rights must be dealt with in the same way as the rights to be exercised outside the fixed zone of the territorial sea by particular States. At the same time, it must not be forgotten that in the case of bays such rights lead to the recognition of a general right of dominion over the waters in question (the internal waters of the bay) and not merely to the exercise of certain special rights of dominion (such as, for example, the right of sanitary or Customs control).

As these historical rights restrict in a special manner the common use of the sea, it is necessary that they should be definitely formulated in an international convention, as was proposed in respect of the rights of the riparian State outside the territorial sea. This should be done under the same conditions as in the case of the rights enumerated in Article 3, *i.e.*, the rights in question should be registered in the International Waters Register. It should be made impossible for such rights to be acquired in the future.

Article 4 of the Convention should therefore read as follows:

"Bays.

"Article 4. — In the case of bays which are bordered by the territory of a single State, the territorial sea shall follow the sinuosities of the coast, except that it shall be measured from a straight line drawn across the bay at the part nearest to the opening towards the sea,

where the distance between the two shores of the bay is 12 marine miles, unless a greater distance has been established by continuous and immemorial usage.

"In the case of bays which are bordered by the territory of two or more States, the territorial sea shall follow the sinuosities of the coast.

"As regards the recognition of rights which are in contradiction with the tenor of the general rules, the provisions of Article 3 concerning presentation and registration in the International Waters Register shall be applicable. It shall not be possible to acquire such rights in the future."

VI. ISLANDS.

Special difficulties may arise in cases where—as frequently happens—there is an island or a number of islands situated off a coast. Is the zone of the territorial sea to be measured from the coast of the mainland or from the coast of the island on the side of the high seas? We find material for the solution of this question in national legislations, in the practice of States and in the codification projects.

"Nach dem Nordsee-Abkommen soll die 3-Meilen-Grenze von der niedrigen Wasser-Linie und den 'Iles et des bancs qui en dépendent' gerechnet werden. Der Ausschuss der II. Friedens-Konferenz, dem die Ausarbeitung des Entwurfes eines Minen-Abkommens überlassen wurde, schlug vor, dass die 3-Meilen-Grenze von der Niedrig-Wasser-Linie wie 'des Iles et des flots qui en dépendent' gerechnet werden solle. Die Veränderung des Ausdruckes des Nordsee-Abkommens wurde in folgender Weise begründet:

"Aux embouchures des grands fleuves et, à vrai dire, partout dans le monde . . . on trouve des récifs et des bancs de sable à une distance beaucoup supérieure à trois milles de la côte; si l'on ne rend pas le texte plus précis, en supprimant la mention des bancs, il sera loisible d'étendre l'application de l'article 2 à ces bancs et ces récifs entièrement ou en partie submergés, et le principe adopté, qui interdit, en règle générale, de placer des mines en dehors des eaux côtières, pourra être compromis."

"Die französische Verordnung vom 18. Oktober 1912, die die Neutralitäts-Grenze Frankreichs auf 6 SM. feststellte, bestimmt, dass sie von der Küste 'et les bancs découvrants qui en dépendent, ainsi qu'autour du ballage fixe qui détermine la limite des bancs non découvrants' zu rechnen sei.

"Das Aaland-Abkommen bestimmt (Art. 2, § 11): 'Les eaux territoriales des Iles d'Aaland sont considérées comme s'étendant à une distance de trois milles marins de la laisse de basse mer des Iles, flots et récifs non constamment submergés'."

"Das Dekret des Dänisch-Norwegischen Königs von 1745 rechnet die 4-Meilen-Grenze von den Untiefen und Schären ausserhalb der Norwegischen Küste. Das Gesetz vom 14. Juli 1922, welches die Zoll-Grenze Norwegens auf 10 SM. feststellte, hat eine neue Formulierung eingeführt, indem es bestimmt, dass diese in einer Entfernung von 10 SM. ausserhalb der Inseln und Felseninseln, die nicht ständig von dem Meere überspült werden, liegen solle."

"Nach Artikel 3 des Dorpater Friedensvertrages zwischen Soviet-Russland und Finland bestimmt sich die Ausdehnung der Territorial-Gewässer Finnlands im finnischen Meerbusen 'à partir de la côte ou à partir du dernier flot ou rocher dépassant le niveau de la mer'. Nach Anmerkung 1 des Artikel 3 des Vertrages werden die auf den beiden russischen Seekarten gezogene Grenze für authentisch erklärt." (BJÖRKSTEN, *op. cit.*, pp. 85 et seq.)

Under the terms of the peace treaties which put an end to the world war of 1914-19, the maritime frontiers include, in principle, islands and islets situated less than three miles from the coast. This is laid down in particular in Article 30 of the Treaty of Sèvres with Turkey; and the same provision is found in Article 6 of the Treaty of Lausanne of July 24th, 1923.

The rules issued by the Institut de Droit international in 1894 merely state that the territorial sea extends for six marine miles from low-water mark along the whole of the coast; the Rapporteur, Mr. Barclay, declared, however, that the expression "coast" included the coast of the islands. (See the *Annuaire de l'Institut de Droit international*, Volume 12, p. 126, and Volume 13, pp. 293, 298 and 329.)

American Institute of International Law: Article 5: "With regard to islands and keys possessed by an American Republic outside or within the limits of its territorial sea, each shall be surrounded by a zone of territorial sea coming within the definition of Article 3. In case of an archipelago, the islands and keys composing it shall be considered as forming a unit and the extent of territorial sea referred to in Article 3 shall be measured from the islands farthest from the centre of the archipelago."

In this question also our task is to define a law which is in process of formation, for already we are able to refer to facts and doctrines based upon the conception of a uniform law.

As regards the doctrine, see BJÖRKSTEN, *op. cit.*, pp. 86 et seq.

The zone of the territorial sea is measured not from the mainland but from the coast of the islands off the mainland. This rule can only be maintained on the twofold hypothesis that we are dealing with islands which are not always completely submerged by the sea and that the islands in question are not so far distant from the coast that they would be outside the zone of the territorial sea if the latter were measured from the coast of the mainland. Agglomerations of islands situated off the coast must be regarded as units, and consequently the island which is situated farthest from the centre of the agglomeration of islands in the direction of the high seas is taken as the basis for measuring the zone of the territorial sea.

As regards islands which are artificially created by anchorage to the bed of the sea, and which have no solid connection with the bed of the sea, but which are employed for the establishment of a firm foundation, e.g., for enterprises designed to facilitate aerial navigation, we must be guided by the view that such an enterprise cannot claim that a special zone of territorial sea is constituted round such artificial island. Such fictitious islands must be assimilated to vessels voyaging on the high seas.

It has been discussed whether a zone of territorial sea should be established around artificial islands which are actually connected with the bottom, such as islands designed to carry light-houses; there is no uniform legal doctrine as regards such islands. This is evident from the

fact that two such eminent authorities as the English judge, Lord Russell, and the jurist, M. L. Oppenheim, have expressed divergent views.

Lord RUSSELL states: "If a lighthouse is built upon a rock or upon piles driven into the bed of the sea, it becomes, as far as that lighthouse is concerned, part of the territory of the nation which has erected it". OPPENHEIM says: "Il n'y a pas de droits de souveraineté sur une zone de la mer qui baigne les phares".

We must also abandon the attempt to settle the difficulties arising out of the presence of permanent ice near the coast. (For international practice, see FAUCHILLE, *op. cit.*, page 203.)

The cases mentioned by Fauchille (Spitzbergen, Alaska) are not sufficient to enable us at the present time to claim that there is a definite legal conception which could be used as a basis for a codified rule. No project of codification refers to the matter.

Article 5 of the Convention would therefore read as follows:

"Islands.

"Article 5. — If there are natural islands, not continuously submerged, situated off a coast, the inner zone of the sea shall be measured from these islands, except in the event of their being so far distant from the mainland that they would not come within the zone of the territorial sea if such zone were measured from the mainland. In such case, the island shall have a special territorial sea for itself."

VII. COMMON LAND FRONTIERS.

Difficulties may arise with regard to the fixing of the frontier of the territorial sea at places where two States have a common land frontier meeting a particular coast. The question is whether we should regard as the limit between the two territorial seas an imaginary line constituting the prolongation of the land frontier between the two States in the same direction towards the sea or if a line should merely be drawn at 90° to constitute the frontier line between the two territorial seas at the point on the coast where the territories of the two States join.

In the case of existing States, the matter will be settled by historical considerations.

In the event of a political change in the existing frontiers between riparian States, it would be advisable to establish special rules in each case having regard to the special geographical circumstances which have led to the fixing of a new frontier. It would be better to arrange for the conclusion of a special agreement between the States concerned, or for the settlement of the matter by arbitration or an ordinary tribunal, than to lay down an immutable principle. For example, a similar frontier dispute between Sweden and Norway was settled by an award of the Permanent Arbitration Court at The Hague in 1909, while on the occasion of the separation of Finland from Soviet Russia the matter was settled by contractual agreement.

See STRUPP: "Der Schwedisch-Norwegische Grenzstreit", quoted by SCHÜCKING in *Das Werk vom Haag*, Series 2, Volume 1, pp. 47 *et seq.*; BJÖRKSTEN, *op. cit.*, pp. 93 *et seq.*

VIII. STRAITS.

There remains to be considered, as we have already observed, the application to narrow straits of the rules of law concerning territorial waters. Although the theory of territorial waters is not without influence on the question of artificial maritime channels, these can clearly be eliminated, as they are not included in the definition of the subject under discussion by the Rapporteur of the Second Sub-Committee.

As regards straits, we are not called upon to consider those which are not subject to conventional regulation. Further, we are only called upon to consider straits the entrance to which is not more than 12 marine miles in width, for, in the case of wider straits, the ordinary principles of territorial waters apply. This is so whether the straits which are more than 12 miles wide are in the possession of several States or of a single State. Difficulties only arise where, although the strait is less than 12 marine miles wide at the entrance, it exceeds this limit in its subsequent course.

In this case it will be necessary to distinguish according as the strait is surrounded by the territory of several States or only by the territory of one State. In the former event, the principles concerning territorial waters will, of course, be applicable; in the latter, legal practice is based on the idea that, if the entrance and the issue of a strait less than 12 marine miles wide belong to the riparian State, all the waters of the strait must belong to that State, in accordance with the principle governing bays.

It seems to us of capital importance that this principle should be codified.

Likewise, the following principle: In the case of a strait less than 12 marine miles wide, bordered by several riparian States, difficulties arise with regard to the fixing of the boundary of the territorial waters within the strait; for, if it were decided to assign to each riparian State the ordinary six marine miles, there would be frequent disputes as to the right of dominion over the soil. Different solutions are possible. International practice, doctrine and codification projects have dealt with the question on various occasions.

For international practice and doctrine, see the well-documented work of GUERRA, "Les eaux territoriales dans les détroits, spécialement dans les détroits peu larges", *Revue générale de Droit international public*, 1924, pp. 232 *et seq.*

Institut de Droit international: Article 10 of the project of 1894: "Les dispositions des articles précédents s'appliquent aux détroits dont l'écart n'excède pas 12 milles, sauf les modifications et distinctions suivantes: les détroits dont les côtes appartiennent à des Etats différents font partie de la mer territoriale des Etats riverains qui y exerceront leur souveraineté jusqu'à la ligne médiane; les détroits dont les côtes appartiennent au même Etat et qui sont indispensables aux communications maritimes entre deux ou plusieurs Etats autres que l'Etat riverain font toujours partie de la mer territoriale du riverain, quel que soit le rapprochement des côtes ..."

Article 11: "Le régime des détroits actuellement soumis à des conventions ou usages spéciaux demeure réservé."

STORNY project: Article 8: "Dans les détroits s'appliqueront les mêmes règles que les précédentes. Si les deux côtes appartiennent à un même Etat et si la largeur du détroit est inférieure ou pratiquement égale au total de l'étendue qui correspond aux eaux juridictionnelles des côtes, toute la largeur du détroit fait partie de la mer territoriale. Si les côtes, dans ce cas, appartenaient à deux ou plusieurs Etats, la séparation des juridictions serait fixée par convention entre lesdits Etats riverains."

Project of the American Institute of International Law. In the American project questions concerning straits are not dealt with in the section on the territorial sea but in a special section entitled: "Straits and Natural Channels connecting two Seas". According to Article 20 of this section, the principles governing the territorial sea (Articles 6-11) are applicable to straits and channels.

Article 17: "In straits and natural channels connecting two open seas and separating two or more Republics—either on two continents, a continent and an island, or two islands—the limit of the territorial waters of each Republic shall be the middle of the strait or channel separating them, if the width of this is less than ... miles. In such case, each one of the said Republics has within its own zone the right of sovereignty and jurisdiction which it possesses over its territorial sea."

Article 18: "If the strait or channel is more than ... miles in width, the right of jurisdiction of the riparian American Republics shall extend, in the case of each of them, for ... miles from their respective coasts. Outside this limit navigation shall be entirely free, but only if each entrance to the strait is more than ... miles in width; otherwise navigation in the said zone shall be subject to the regulations of the riparian Republics. As regards the installations mentioned in Article 15, these may only be established by the riparian Republics by common agreement."

Article 19: "If the strait or channel separates two coasts of the same Republic, the said Republic shall be the sole proprietor and navigation shall be subject to its regulations."

The legal view most generally favoured fixes as the limit the middle of the strait.

A rule of law not without practical importance which has been established as regards rights in straits serving as a passage to open seas is that such a strait may never be closed. This rule is in accordance with the idea that a riparian State is not entitled in time of war completely to close its territorial sea.

See SCHÜCKING: "Die Verwendung von Minen im Seekrieg", *Zeitschrift für Internationales Recht*, 1906, pp. 121 et seq.

This involves matters concerning belligerent rights which are outside the scope of the present report. We consider, therefore, that we can leave on one side the application of the doctrine of belligerent rights to measures of constraint applied under peace-time regulations, such, for example, as the pacific blockade of a riparian State by other States.

For this reason, the Convention need only contain the following disposition with regard to the question of straits:

"Straits.

"Article 6. — The regime of straits at present subject to special conventions is reserved. In straits of which both shores belong to the same State the sea shall be territorial even if the distance between the shores exceeds 12 miles, provided that that distance is not exceeded at either entrance to the strait.

"Straits not exceeding 12 miles in width whose shores belong to different States shall form part of the territorial sea as far as the middle line."

IX. PACIFIC PASSAGE.

The doctrine which we have adopted, based upon the fundamental right of dominion of the riparian State over the territorial sea, has never denied that all States possess rights of common user over the territorial sea, the most important of which is the right of free passage. The question to what extent, in the event of war, the rights of common user possessed by States over foreign territorial seas can be restricted by the rights of belligerents and neutrals need not be examined here.

The right of free passage is frequently recognised in national legislations and in conventional practice.

We may refer in this connection to a decree issued by France on May 26th, 1913, for the purpose of determining in time of war the conditions of access and sojourn for vessels other than French warships in anchorages and harbours along the coast (Article 2). In Italy, it is expressly declared, in a law dated June 16th, 1912, with regard to the regulation of the transit and anchorage of merchant vessels along the coasts of a State, that "the transit and sojourn of national or foreign merchant vessels may be prohibited at any time — in time of peace as well as in time of war—and at any place whatever, whether internal or external, in the seas of the State, if this is considered necessary in the interests of national defence."

We find the same doctrine in the United States:

"We do not contest the right of vessels of other nations", wrote Secretary Bayard on May 28th, 1886, in a note to Mr. Manning, Secretary to the Treasury, "to pass freely through the zone of the territorial sea, provided that in so doing they do not become a source of peril for the shore or give rise to suspicions of smuggling".

The Treaties of Peace with Germany, June 28th, 1919 (Article 321), of Neuilly-sur-Seine with Bulgaria, November 27th, 1919 (Article 212), and of Sèvres with Turkey, August 10th, 1920 (Article 328), after stipulating that Germany, Bulgaria and Turkey undertake respectively to grant freedom of transit through their territories, on the routes most convenient for international transit, to vessels coming from or going to territories of any of the Allied and Associated Powers, declare that "for this purpose the crossing of territorial waters shall be allowed".

In Conventions concluded on June 28th, September 10th and December 9th, 1919, with the Principal Allied and Associated Powers, Poland (Article 17), the Kingdom of the Serbs, Croats and Slovenes (Article 15) and Roumania also undertook to grant freedom of communication and transit to those Powers across their "territorial waters".

A similar provision is also to be found in the Convention of April 21st, 1921, regulating as regards transit the relations between Germany, Poland and the Free City of Danzig (Article 1).

Finally, the same principle is formulated collectively in the Convention on Freedom of Transit signed at Barcelona on April 20th, 1921. It was stated in the draft of this Convention that "transit across territorial waters shall be free" (Article 2), and in Article 2 of the final text of the annexed Statute that, "in order to ensure the application of the provisions of this article (concerning free transit), the Contracting States will allow transit in accordance with the customary conditions and reserves across their territorial waters". The rule thus adopted—which clearly does not concern warships, since the Convention only relates to transit considered in its commercial aspect—is to "continue in force in time of war so far as such rights and duties (the rights and duties of belligerents and neutrals) permit" (Article 8). Its adoption, however, is without prejudice to the rights of sovereignty or authority of the Contracting States over routes available for transit (*cf.* preamble to the Convention), and it may be suspended on grounds of public health or security, or in case of an emergency affecting the safety of the State or the vital interests of the country (Articles 5 and 7). (FAUCHILLE, see pp. 1090 *et seq.* and pp. 169 *et seq.*)

Article 32, Section 6, Paragraph 1, of the Peace Treaty of Dorpat grants to merchant vessels the right of free passage across the waters of the Contracting Parties. Freedom of passage across the territorial waters is expressly provided for in the Treaty of Commerce and Navigation between Great Britain and Finland dated December 14th, 1923 (Article 11, Paragraph 2).

All the codification projects admit the right of free passage.

Institut de Droit international: Article 1: "L'Etat a un droit de souveraineté sur une zone qui baigne la côte, sauf le droit de passage inoffensif réservé à l'article 5." Article 5: "Tous les navires, sans distinction, ont le droit de passage inoffensif par la mer territoriale, sauf le droit des belligérants de réglementer et, dans un but de défense, de barrer le passage dans ladite mer pour tous navires et sauf le droit des neutres de réglementer le passage dans ladite mer pour les navires de guerre de toutes nationalités."

Cf. Article 10 of the Hague Convention of 1907 on the rights and duties of neutrals: "La neutralité d'une Puissance n'est pas compromise par le simple passage dans ses eaux territoriales des navires et des prises des belligérants".

The projects of the International Law Association contain the same provisions as the project of the Institut de Droit international.

Article 7 of the project of the American Institute of International Law reads as follows: "Merchant vessels of all countries may pass freely through the territorial sea, subject to the laws and regulations of the Republic to which the said sea belongs. Neither warships nor merchant vessels can sojourn in the territorial sea, or fish there, or commit any act involving the violation of those laws and regulations, without the authorisation of the said Republics."

Article 12: "Subject to the preceding restrictions, transit through this zone shall be absolutely free, as on the high sea."

In view of this general legal agreement as to the existence of the right of free passage, it might be held that a codification of the rule is superfluous, were it not that we are dealing with a principle the consequences of which may vary considerably in detail and may give rise to doubts and disputes. In the first place, we must decide whether in applying the rule of free passage a distinction is to be made between merchant vessels and warships. It has been pointed out in the doctrine on the subject that a right of free passage for warships can only be presumed and that the riparian State may arbitrarily prohibit the passage of warships through its territorial sea by the same right as it forbids access to its ports and internal waters. This view is, for example, expressed by the eminent professor, M. POLITIS.

See POLITIS, in the "Chronique des faits internationaux", *Revue générale de Droit international public*, Vol. 8, pp. 341 *et seq.*: "En temps de paix, il est admis comme principe général que l'accès des eaux territoriales ou nationales d'un Etat est présumé libre pour les navires de guerre étrangers. Ce principe constitue une dérogation à la règle qu'une force armée étrangère ne peut, sans l'autorisation expresse du gouvernement, pénétrer sur le territoire. Aussi doit-il être restreint aux termes de la convention ou dans les limites de la coutume qu'il a établie. Or, la coutume admet que le libre accès des navires de guerre étrangers est basé sur la concession présumée du souverain et cette présomption doit, par conséquent, disparaître toutes les fois que l'intention contraire est manifestée. Tout Etat a le droit de fermer aux navires de guerre étrangers ses ports . . . Aussi bien la mesure est-elle exceptionnelle, la règle la plus généralement suivie étant celle de la liberté moyennant certaines conditions."

In connection with this opinion it should be pointed out that such a restriction of the right of free passage to merchant vessels alone is foreign to international law. At the same time, the project of the American Institute of International Law gives rise to doubt on the subject, inasmuch as it refers only to *merchant* vessels of all countries as being entitled to pass freely through territorial seas.

Of course, we are dealing only with "pacific" passage. It is much more natural to doubt the pacific character of the passage in the case of a large war fleet which enters the territorial sea of a foreign State at a time of general political tension than in the case of an ordinary merchant vessel. This does not, however, affect in any way the legal principle that even warships possess

a right of common user in respect of foreign territorial waters which cannot be restricted arbitrarily, but only for reasons of national self-preservation.

It is of importance that this principle should be codified, in order that all vessels without distinction may be assured the right of free pacific passage. This right should even be extended to submarines, though in their case it has often been disputed when occasion has arisen.

Sir Thomas Barclay, in his 1925 Preliminary Report on the Revision of the Resolutions adopted by the Institut de Droit international regarding Territorial Waters, writes (page 4): "En ce qui concerne le droit de passage inoffensif, faut-il le limiter à la navigation sur la surface ? En d'autres termes, y a-t-il lieu d'interdire le passage, même inoffensif, de vaisseaux sous-marins submergés et ainsi invisibles de la rive ? La question me paraît très discutable, car cette navigation échapperait au contrôle de la police côtière. Ainsi, le sous-marin pourrait endommager des câbles sans être vu. Il est possible, d'ailleurs, que la pêche pourrait être exercée par des bateaux submersibles . . . "

A very reasonable attitude, however, was adopted towards the regulation of this question by the eminent Professor Diena, who proposed that submarine vessels should be required to pass through territorial waters on the surface (Minutes of the meeting of the Institut de Droit international, August 1st, 1925).

Without this safeguard, the riparian State could not be certain whether the passage was really pacific.

So far as concerns the right of free passage, no distinction whatever should be drawn between vessels coming from another territorial sea, or from the high seas, or proceeding from an international river to the high seas in the course of their voyages. In the last-mentioned case, the right of free passage through territorial waters is also recognised by the Barcelona Statute of April 20th, 1921, on the Regime of Navigable Waterways of International Concern. In this case, the merchant ships in question would, on leaving the international river and entering the territorial sea, become subject to the rules governing the rights of merchant vessels in the territorial sea, for the Statute on the Regime of Navigable Waterways of International Concern recognises only the right of free access to the sea.

Some uncertainty might arise as to vessels sojourning in a foreign territorial sea. Accordingly, the American Institute of International Law thought it necessary to include in its project the following clause: "Neither warships nor merchant vessels can sojourn in the territorial sea without the authorisation of the said Republics".

In our opinion, such a rule is not necessary in so far as the vessels are sojourning in the foreign territorial sea with the intention of proceeding further: where, for example, a sailing vessel is awaiting favourable weather, or a steamship is unable to continue its voyage pending urgent repairs.

A right of free passage must cover a sojourn of this kind. If a merchant vessel remains at anchor with the object of awaiting the arrival of smugglers at a certain place in order to transfer prohibited imports to them, it obviously cannot justify its sojourn by invoking the right of free passage. To avoid risks of this kind, the riparian State may place restrictions on such sojourn. (For the sojourn of warships in a territorial sea, see p. 54.)

Furthermore, the right of free passage includes the passage of persons and goods whose admission to the foreign territory is prohibited — assuming, of course, that the passage required is merely through the territorial waters in question. The crew of a German fishing-boat found in Moroccan territorial waters was recently prosecuted in the French naval courts, not only on the ground that fishing was prohibited but on the ground that the vessel had entered Moroccan territory without special authorisation and in contravention of an explicit prohibition. It would be desirable to formulate definitely the right of transit for persons and goods as a corollary of the principle of free passage. As regards that part of the territorial sea which connects international rivers with the high seas, this principle is already established by Article 3 of the Statute on the Regime of Navigable Waterways of International Concern.

Article 7 of the proposed Convention would contain the following provisions:

"Pacific passage.

"Article 7. — All vessels, without distinction, shall have the right of pacific passage through the territorial sea. In the case of submarine vessels, this right shall be subject to the condition of passage on the surface. The right of passage includes the right of sojourn, in so far as the latter may be necessary for navigation. For the sojourn of warships, see Article 12.

"The right of free passage includes the right of passage for persons and goods, independently of the right of access to the foreign mainland."

X. COASTING TRADE.

The right of the riparian State to reserve the coasting trade to its own nationals is an exception to the right of passage through foreign territorial waters. On this subject there is a general juridical conception which is embodied in numerous national enactments and in international conventions, and which is also reflected in the doctrine of international law.

The rule excluding vessels flying a foreign flag from the coasting trade is enforced by the legislation of almost every European country: Germany, Law of May 22nd, 1881; France, Law of September 21st, 1793, Law of April 2nd, 1889, Law

of July 22nd, 1909; Portugal, Article 1315 of the Commercial Code of 1833 kept in force by the law approving the Commercial Code of 1888; Spain, Decree of July 15th, 1870; Italy, Law of July 11th, 1904. Great Britain: the Navigation Act of 1849 restricted the coasting trade to British subjects, but an Act of March 23rd, 1854, substituted a system of freedom for the system of prohibition, subject to the Government's right to withdraw by Order in Council the right of engaging in the coasting trade from the vessels of States which do not admit reciprocity. The coasting trade is free in Belgium and the Netherlands on payment of an indemnity. Finland has reserved the maritime coasting trade to her own vessels. Paragraph 4 of the "Commercial Law" of December 27th, 1919: "Commercial navigation between places situated in Finland shall only be carried on by Finnish vessels". See also the Treaty of Peace of Dorpat, Article 32, Section 6, paragraph 3: "The term coasting vessels, however, shall not include vessels navigating between the ports of the Baltic and the ports of other seas contiguous to Russia, including the seas in the interior of that country". Treaty of Commerce and Navigation concluded by Finland with Denmark, August 3rd, 1923, Article 17; with Germany, January 19th, 1923, Section 22, paragraph 2; with Great Britain, December 14th, 1923, Article 13, paragraph 3: "It is also understood that, in the event of the coasting trade of either party being exclusively reserved to national vessels, the vessels of the other party, if engaged in trade to or from places not within the limits of the coasting trades so reserved, shall not be prohibited from the carriage between two parts of the territories of the former party of passengers holding through tickets or merchandise consigned on through bills of lading to or from places not within the above-mentioned limits, and while engaged in such carriage these vessels and their passengers or cargoes shall enjoy the full privileges of this treaty."

The coasting trade is prohibited by the following conventions: France-Sweden and Norway, February 14th, 1865, Article 4; France-Austria, December 11th, 1866, Article 5; France-Russia, April 1st, 1874, Article 10; France-Spain, December 18th, 1877; France-Portugal, December 19th, 1881, Article 23; France-Great Britain, February 28th, 1882, Article 8; France-Austria-Hungary, April 9th, 1884, Article 8; France-Mexico, November 27th, 1886, Article 19; Peru-Portugal, 1853; Peru-United States, 1870; Peru-Russia, 1874; Peru-Argentina, 1874. Germany specially authorised the coasting trade with Siam, February 7th, 1872, Article 1; Roumania, February 14th, 1877, Article 1; Austria-Hungary, May 23rd, 1881, Article 11.

Cf. BJÖRKSTEN, *op. cit.*, p. 113: "Man unterscheidet zwischen kleiner Cabotage (*petit cabotage*) und grosser Cabotage (*grand cabotage*). Unter jener ist die Schifffahrt zwischen zwei demselben Staate zugehörigen am selben Meere belegenen, unter dieser die Seefahrt zwischen zwei demselben Staat zugehörigen, aber an verschiedenen Meeren gelegenen Häfen zu verstehen." P. 114: "In dem dem Entwurf des Wasserstrassen-Abkommens begleitenden Bericht, welcher der Konferenz von Barcelona vorgelegt wurde, wurde folgende Definition des Begriffs Cabotage gegeben: 'Les mots transports locaux signifient les transports autres que les transports à l'importation, les transports à l'exportation, les transports en transit, avec ou sans transbordement d'un navire ou bateau dans un autre, avec ou sans mise à quai, avec ou sans mise en entrepôt intermédiaire'."

Cf. also Charles DE VISSCHER, *Le Droit international des communications*, p. 144.

It would be of advantage to codify the legal conception of the coasting trade, because certain doubts as to what is to be covered by the term could then be cleared up. If a codified rule could really be arrived at, it would give expression to an undoubtedly increasing tendency in the evolution of modern law. The question at issue is this: The most essential reason for reserving the coasting trade to the riparian State is, in accordance with the accepted doctrine of the theory of ancient international law, the desire to reserve the fishing in the territorial sea to the people of the coast, who are generally poor. This is largely a local and manual (*handwerklich*) industry, and it seems to us entirely irrational to extend the notion of coasting trade under the name of "long-distance coasting trade" (*grand cabotage*) so as to make it cover voyages from a port in a particular State to a port in a remote colony. The only possible result of such a legal conception would be to impose intolerable restrictions on the common use of the sea. Happily, there is now perceptible in the practice of States a tendency to confine the notion of the coasting trade to its original limits. Such tendencies as this are in the interests of international freedom of commerce and transit. Thus, on the occasion of the elaboration of the Ports Statute, the Geneva Conference of 1923 made the following recommendations:

"The Conference recommends that all States, including those which are not Members of the League of Nations, should accept the fundamental principles of the above-mentioned Statute and should refrain from inequitable economic measures, such as, in particular, an abusive extension of the scope of the maritime coasting trade.

"More especially, the Conference recommends to the States signatories to the Convention on the International Regime of Maritime Ports, or adhering thereto, and under the same sovereignty as other States whose territory is situated overseas, or States which have such territories under their sovereignty or authority, to apply, in all circumstances, in their ports or in the ports of the above-mentioned territories, and in the conditions laid down in Articles 2, 5 and 6, the same treatment to their own ships carrying on trade between their territories and such States or overseas territories, and also to their cargoes and passengers, as is applied to the ships of other Contracting States utilising the aforesaid ports and carrying on other trade than the trade specified above."

"The Brazilian delegation, supported by certain other delegations, made a definite statement that, as regards the conveyance between two ports in the same country of national or nationalised goods and of passengers coming from or destined for these ports, the general conditions as to transport, including, for example, harbour dues, pilotage, towage and railway rates, were not governed by the Convention. The Committee, however, considered that it was inadvisable to make a pronouncement on this subject. On the other hand, in whatever way the meaning of the phrase 'coasting trade' might be extended—the Committee did not wish to define its scope—the latter considered that a vessel, which called in turn in the course of a voyage at two or more ports between which navigation was reserved, should not be regarded as engaged in coasting trade unless it disembarked in one such port a cargo or passengers embarked at another such port."

A Convention drawn up at Barcelona, Article 5 of the Statute on the Regime of Navigable Waterways of International Concern, manifests the same tendency, as regards the coasting trade on important international rivers, to restrict the meaning of the coasting trade in the interests of freedom of commerce and transit:

"A riparian State has the right of reserving for its own flag the transport of passengers and goods loaded at one port situated under its sovereignty or authority and unloaded at another port also situated under its sovereignty or authority. A State which does not reserve the above-mentioned transport to its own flag may nevertheless refuse the benefit of equality of treatment with regard to such transport to a co-riparian which does reserve it."

We therefore recommend that the following article be included in the Convention:

"Coasting trade.

"Article 8. — A riparian State has the right of reserving for its own flag the transport of passengers and goods loaded at one port situated under its authority and unloaded at another port also situated under its authority. A State which does not reserve the above-mentioned transport to its own flag may nevertheless refuse the benefit of equality of treatment with regard to such transport to a co-riparian which does reserve it."

XI. JURISDICTION.

Questions of special difficulty arise when we come to consider how far a vessel passing through territorial waters is subject to the civil and criminal jurisdiction of the riparian State. We feel that in considering this question it is well to distinguish two cases — that of a vessel passing through foreign territorial waters and that of a vessel at a port in a foreign riparian State; for the legal position is essentially different. The port forms a portion of the inland waters, as is also perhaps implied by the definition given in the Ports Statute.

See DE VISSCHER, *op. cit.*, pp. 108 *et seq.*: "A très juste titre, la Conférence a estimé qu'un port maritime se caractérise essentiellement non par le fait qu'il est situé sur la mer, mais par le fait qu'il est régulièrement fréquenté par les navires de mer ... Un port situé sur une voie d'eau intérieure tomberait donc sous l'application du Statut, s'il est utilisé normalement pour la navigation maritime ..."

The territorial sea, on the other hand, has an entirely different character. For the present, therefore, we must leave on one side the case of a vessel in foreign ports; we shall deal with it later.

In our opinion, to subject vessels passing through the territorial sea to the full jurisdiction of the riparian State would be to restrict the use of the territorial sea to the detriment of such vessels. Applying this principle to civil jurisdiction, it would, for example, be possible for the creditors of a shipowner, on learning that their debtor's vessel was passing through the national territorial sea, to obtain an order from the Courts of the riparian State enabling them to have the vessel stopped in the middle of her voyage and seized as security.

Throughout the history of international law, there is no known case in which the Courts of a riparian State have been able to extend their competence to the point of ordering such a seizure or of taking such action as to compel witnesses to attend by coercion or arrest according to the rules of civil procedure. On the contrary, M. Fauchille quotes a decision of the French Cour de Cassation refusing to admit such competence on the ground that, "si les eaux territoriales sont remises aux pouvoirs de police et de sûreté de l'Etat, elles ne forment pas une portion du territoire français ou colonial et ne rentrent pas, dès lors, dans l'une quelconque des circonscriptions judiciaires en lesquelles il a été divisé". (*Proux v. Courcoux*, Chambre civile, November 20th, 1918, FAUCHILLE, p. 1096.)

It must not, however, be overlooked that opposite views are represented both in the doctrine of international law and in the codification projects. These views are clearly connected with the needs of criminal jurisdiction and assimilate the case to that of the legal position in connection with ports.

It is noteworthy, for example, that, whereas the Institut de Droit international adopts the principle of the exemption of vessels passing through the territorial sea from the jurisdiction of the riparian State, the distinguished jurist, Oppenheim, takes the opposite view; that is to say, he extends the jurisdiction of the riparian State to vessels passing through the territorial sea. The proposals put forward by the American Institute of International Law appear, in substance, to support Oppenheim's doctrine, since they subject vessels to the legislation of the riparian State and make no exception in the matter of jurisdiction. The riparian State could thus claim the right to unlimited jurisdiction over vessels passing through the territorial sea.

Cf. Institut de Droit international, Article 8, paragraph 1: "Les navires de toutes nationalités, par le seul fait qu'ils se trouvent dans les eaux territoriales, à moins qu'ils ne soient seulement de passage, sont soumis à la juridiction de l'Etat riverain ..."

Oppenheim project: "Les navires de toutes nationalités, par le seul fait qu'ils se trouvent dans les eaux territoriales, sont soumis à la juridiction de l'Etat riverain."

Project of the American Institute of International Law: Article 7, paragraph 1: "Merchant vessels of all countries may pass freely through the territorial sea, subject to the laws and regulations of the Republic to which the said sea belongs".

There is a decision of the Federal Court of the United States which seems to admit of an intermediate point of view. It recognises in principle the jurisdiction of the riparian State, but endeavours to attenuate the monstrous consequences of this juridical conception by admitting the discretionary power of that State in regard to the application of the principle — a solution which does not seem entirely satisfactory.

Cf. NIELSEN: "The Lack of Uniformity in the Law and Practice of States with regard to Merchant Vessels", *American Journal of International Law*, Vol. 13, 1919, p. 81: "The general principles laid down in the cases to which attention has been called are concisely summarised with citations in the following extract from the opinion of the Court in the case of

Esther, in which suit was brought against the Swedish steamship by a seaman to recover unpaid wages and damages for personal injury.... In the absence of treaty stipulations, the Courts of Admiralty have civil jurisdiction in all matters appertaining to the foreign ship... in certain cases when the Court has the vessel in its territorial jurisdiction... The exercise of this civil jurisdiction... is not imperative but discretionary, and the Courts from motives of convenience or international comity will not take jurisdiction without the assent of the country to which the ship belongs, where the controversy involves matters arising beyond the territorial jurisdiction of this country, or relates to differences between the master and the crew, or the crew and the shipowners..."

The question has been dealt with more frequently from the point of view of criminal jurisdiction. Of course, the writers and the Courts who wish to exempt passing vessels from the jurisdiction of the riparian State admit that the latter is competent to deal with offences against the regulations issued, in accordance with law, by the riparian State with regard to trade in the territorial waters (fishing, Customs and health control). On the other hand, the writers and the Courts who favour the jurisdiction of the riparian State over vessels passing through territorial waters contend that it has unlimited criminal jurisdiction in respect of all offences committed on board a foreign vessel passing through its territorial waters. British jurisprudence accepts this view in principle since the famous "Franconia" case, and the principle is established in the Territorial Waters Jurisdiction Act. In practice, however, this doctrine is restricted by the fact that no such criminal proceedings can take place except at the special request of one of the principal Secretaries of State. Except in the case of Great Britain, national legislation and international practice are divergent. Most countries are opposed to the conception admitted by Great Britain.

"Le système français fait application à la mer territoriale des règles de l'avis du Conseil d'Etat français du 21 novembre 1806 sur le régime des navires de commerce étrangers dans les ports. Il part du principe que la mer territoriale est une portion de l'Etat côtier qui doit soumettre à sa juridiction pénale les faits coupables commis à bord de tous les bâtiments marchands existant dans ladite mer, à l'exception de ceux qui ne portent pas atteinte à l'intérêt du riverain, pour lesquels la compétence doit appartenir aux tribunaux de l'Etat du navire. Les faits qui échappent ainsi à la juridiction territoriale sont: (1) les infractions à la discipline et aux services intérieurs; (2) les crimes ou les délits commis à bord entre gens de l'équipage, à quelque nationalité que ceux-ci appartiennent, qui n'ont pas troublé la tranquillité du territoire ou au sujet desquels le secours de l'autorité locale n'a pas été réclamé." (FAUCHILLE, *op. cit.*, p. 1099.)

"Le système de l'avis du Conseil d'Etat du 20 novembre 1806 a été consacré par les conventions signées par la France, en son nom ou au nom des pays du protectorat français, avec la Bolivie, le 5 août 1897, article 21; la République Dominicaine, le 25 octobre 1882, article 21; l'Espagne, le 7 janvier 1862, article 24 (2); les Etats-Unis, le 23 février 1853, article 8; la Grèce, le 7 janvier 1876, article 21; le Honduras, le 22 février 1856, article 23; l'Italie, le 26 juillet 1862, article 13; le Portugal, le 11 juillet 1866, article 12; la Russie, le 1^{er} avril 1874, article 11; le Salvador, le 5 juin 1878, article 21 (1 et 2)." (TRAVERS, *Le Droit pénal international*, Vol. 2, pp. 378 et seqq.)

The Treaty concluded on December 2nd, 1856, between the French and Spanish Governments quite definitely departs from the principles of the opinion given by the Conseil d'Etat on November 20th, 1806. According to Article 25 of this agreement: "Toute embarcation naviguant, passant ou pêchant dans la Bidassoa demeurera soumise exclusivement à la juridiction du pays auquel elle appartiendra, et ce ne sera que sur les îles et sur le territoire ferme soumis à leur juridiction que les autorités de chaque Etat pourront poursuivre les délits de fraude, de contravention aux règlements ou de toute autre nature que commettraient les habitants de l'autre pays; pour prévenir les abus et les difficultés qui pourraient résulter de l'application de cette clause, il est convenu que toute embarcation touchant à l'une des rives, y étant amarrée ou s'en trouvant assez rapprochée pour qu'il soit possible d'entrer directement au rivage, sera considérée comme se trouvant déjà sur le territoire du pays auquel appartient cette rive." (TRAVERS, *op. cit.*, p. 384.)

The Franco-Spanish Treaty has served as a model for all the subsequent conventions concluded by France, namely, with Italy, July 26th, 1862, Article 13; Portugal, July 11th, 1866, Article 12; Russia, April 1st, 1874, Article 2; Greece, January 7th, 1876, Article 21; Salvador, June 5th, 1878, Article 21; San Domingo, October 20th, 1882, Article 21; Bolivia, August 5th, 1897, Article 21.

The laws of a considerable number of other countries, while conforming in principle to the diplomatic agreements enumerated above, follow in practice the system described in the opinion of the French Conseil d'Etat of November 20th, 1806. Mention may be made of Belgian legislation, of Article 189 of the Mexican Penal Code and of Article 53 of the Portuguese Penal Code. The general ideas of the French system have also been adopted in Italy. (TRAVERS, pp. 390 et seqq.)

According to KOHLER (*Internationales Strafrecht*, p. 240), Germany has adopted the French system: "Das ergibt sich aus den Gesetzen vom 30. April 1884 und 4. März 1884, welche die Bestimmungen der Internationalen Nord-See Verträge auf die Küsten-Gewässer erstrecken, also einerseits der deutschen Gesetzgebung das Recht bestätigen, derartige Bestimmungen zu treffen, andererseits den fremden Fahrzeugen eine relative Selbstständigkeit zuerkennen. Daher auch die Bestimmung des § 129 Seemanns-Ordnung 1902, wonach eine Strafklage gegen einen Kapitän von Seiten eines Mitgliedes der Schiffsmannschaft nicht bei einem ausländischen Gericht erhoben werden darf. Es ergibt sich ferner für Deutschland, wie für andere Länder, aus der den Konsuln eingeräumten Polizei-Befugnis über die internen Verhältnisse der Inland-Schiffe, die in dem ausländischen Hafen liegen. Vergleiche das deutsche Gesetz über Bundes-Konsulate 1867, § 33, so dann die Dienst-Instruktion für Konsuln, 22. März 1873, worin ausgesprochen ist, dass bei internationalen Streitigkeiten des Schiffes die Lokal-Behörden nur einzuschreiten haben, wenn sie ersucht werden, oder wenn die öffentliche Ordnung gefährdet ist. Man vergleiche auch die deutschen Konsular-Verträge, z. B. den Konsular-Vertrag mit Russland 8. Dezember 1874, Artikel 11: 'Den Konsuln... steht ausschliesslich die Aufrechterhaltung der innern Ordnung an Bord ihrer nationalen Schiffe zu'."

Certain Latin-American countries, however, accept the British view.

"Conformément au principe du droit anglais et plus absolu, l'article 5 du code pénal chilien soumet à la loi chilienne les infractions commises à bord des navires étrangers autres que les navires de guerre, dans les ports chiliens et les eaux chiliennes. Par application de cette disposition, la Cour de la Séréna a, en 1876, affirmé la compétence des tribunaux chiliens pour connaître d'un vol commis à bord du vapeur anglais 'Eten', alors que ce bâtiment était, non pas dans un port, mais dans les eaux territoriales, à la hauteur de Huasco.

"L'article 2 du code d'instruction pénale de la République de l'Equateur contient une disposition semblable.

"Le Traité de Montevideo du 23 janvier 1889, relatif au droit pénal international, conclu entre le Paraguay, le Pérou, la République Argentine et l'Uruguay, a pleinement consacré le système de la loi anglaise de 1878 et des législations du

Chili et de l'Equateur. L'article 11 porte que les délits commis à bord des navires de commerce seront jugés et punis conformément à la loi de l'Etat dans les eaux duquel se trouvera le navire à l'époque où une infraction aura été commise." (TRAVERS, *op. cit.*, pp. 401 et seq.).

The practice of the United States Courts does not appear to be uniform.

"Der Standpunkt der amerikanischen Gerichts-Praxis ist nicht ganz klar. Viel spricht dafür, dass man in der Union hauptsächlich dem französischen System nach dem Urteil von 1859 nahe steht. In dem Falle Wildenhus von 1886 wurde vom Richter erklärt, dass auf Grund des internationalen Rechts ein Schiff das den Hafen eines fremden Staates zu Handelszwecken anlaufe, mangels anderweitiger Vertrags-Bestimmungen der lokalen Gerichtbarkeit unterworfen sei." (BJÖRKSTEN, *op. cit.*, p. 124.)

"But it had come to be generally recognised that, in comity, all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and which did not involve the peace or dignity of the country or the tranquillity of the port, should be left to be dealt with by the authorities of the nation to which the vessel belonged." (WHEATON, *International Law*, pp. 168 seq.)

As regards the codification projects, the Institut de Droit international, as we have already observed, takes the view that vessels passing through territorial waters are not as a general rule subject to criminal jurisdiction, except in the case of injury to the rights and interests of a riparian State or of one of its nationals not on board the vessel.

Institut de Droit international, Article 6: "Les crimes et délits commis à bord de navires étrangers de passage dans la mer territoriale par des personnes qui se trouvent à bord de ces navires, sur des personnes ou des choses à bord de ces mêmes navires, sont, comme tels, en dehors de la juridiction de l'Etat riverain, à moins qu'ils n'impliquent une violation des droits et des intérêts de l'Etat riverain ou de ses ressortissants ne faisant partie ni de l'équipage ni des passagers."

The same principle is adopted in the project drawn up by M. Storny for the International Law Association (Article 18). It should be observed that the project of the American Institute of International Law limits criminal jurisdiction in the same way in Article 10, although, as we have pointed out above, it lays down the principle that the riparian State has unlimited jurisdiction over vessels passing through its territorial waters.

The American Institute of International Law: Article 10: "Crimes committed on board a merchant vessel in the territorial sea belonging to an American Republic shall be subject to the jurisdiction of the country to which the vessel belongs, unless they disturb the order and public tranquillity of the region where they have been committed. In this case, they shall be subject to the authority of the Republic where the act in question was committed."

The distinguished Professor Oppenheim proposes that Article 8 of the project of the Institut de Droit international should be revised so as to establish, as regards vessels passing through territorial waters, the joint competence, in matters of criminal jurisdiction, of the riparian State and of the State from which the vessel comes.

It would seem urgently necessary to clear up this vitally important question by way of codification. In our view, the predominant tendency in international practice and in the projects for codification should be followed, that is to say, the competence of the riparian State in matters of criminal jurisdiction in respect of vessels passing through the territorial sea should be limited. It is the business of law to settle questions of capital importance in a satisfactory manner. If, however, we consider the actual circumstances, we are obliged to ask what reason there is for recognising the criminal jurisdiction of a riparian State, which in most cases cannot possibly be exercised for purely practical reasons. We allude primarily to vessels passing through territorial waters without putting in at any port, and consequently without any intention of entering into closer relations with the riparian State. We also have in mind the case of vessels which, although they have called at a port in a riparian State, have left it and are heading for the high seas by way of the territorial sea. As a general rule, the riparian State is ignorant of what occurs on board such vessels.

The practical importance of the question of jurisdiction becomes much greater when a crime is committed on board a vessel while it is crossing the territorial sea to put in at a port of the riparian State. In the ordinary way, the authority in control of the vessel, representing the authority of the national Government, would take steps to bring the offender to justice. If, however, the offence was an offence against the authority in control of the vessel itself, and if the authority legitimately in control of the vessel had been rendered impotent, as in the famous "Franconia" case, it would be sufficient for the port authorities, by virtue of their right to maintain public order, to arrest the offender and notify the official representative of the State concerned.

Even if, as against a convention limiting in the manner suggested the penal jurisdiction of the riparian State, individual Governments invoked arguments based on legal conceptions conflicting with those of their countries, such a convention would have most valuable effects if it imposed the restrictions in question. It is obvious that the principle that vessels passing through territorial waters are completely exempt from the jurisdiction of the riparian State cannot be applied unconditionally.

The riparian State ought indeed to be legally entitled to take action in respect of all offences jeopardising the maintenance of order in territorial waters. We shall deal later with the power of the riparian State to establish such legal rules and with the penalties for their infringement.

For the moment, we are considering prosecutions for offences which are not closely connected with the specifically territorial character of the waters. Such offences can only come under the criminal jurisdiction of the riparian State if their consequences have not been confined to the vessel, crew and passengers (if, for example, the pilot, after coming on board, is murdered or paid in false money). It is, of course, essential, as a condition of the jurisdiction of the riparian State, that such offences should be punishable according to the laws of that State and that its Courts should be competent to try such cases.

Any disputed questions in international private law which may arise out of such incidents will not be dealt with here.

Article 9 of the Convention should contain the following provisions:

"Jurisdiction.

"Article 9. — Vessels of foreign nationalities passing through territorial waters shall not thereby become subject to the civil jurisdiction of the riparian State.

"Further, crimes and offences committed on board a foreign vessel passing through territorial waters by persons on board such vessels against persons or things also on board shall, as such, be exempt from the jurisdiction of the riparian State.

"Offences, the consequences of which are not confined to the vessel or the persons belonging to it, are subject to the criminal jurisdiction of the riparian State in so far as they constitute offences against its established law; and its tribunals have competence to deal with them."

XII. REGULATIONS.

If, in accordance with the foregoing arguments, the riparian State is to be recognised as possessing a right of jurisdiction within certain limits over vessels passing through its territorial waters, that State has undoubtedly, as a consequence of its power of dominion, a *potestas legislativa et executoria*.

Accordingly, the riparian State is the legislator within the limits of the territorial waters under its dominion. Vessels and their crews which are merely passing through the territorial waters can only be bound by the legal regulations established to protect those of the riparian State's interests which are specially concerned with the territorial waters. The practical outcome of this doctrine would be the establishment of the principle that a general regulation of the riparian State based upon the conception of the *jus soli* could not apply to a child born on a foreign vessel passing through the territorial waters. Consequently, such child would not acquire the nationality of the riparian State. On the other hand, a vessel passing through territorial waters can never urge an exceptional situation as a ground for the non-application of the regulations issued by the riparian State in regard to police matters, Customs duties and health dues in its territorial waters.

The doctrine and practice of international law agree in upholding the right of the riparian State to legislate and exercise administrative authority in its territorial waters for the following purposes: regulation of navigation, preservation of marine signals and lighthouses, prevention of shipwreck, regulation of pilotage, protection of submarine cables, regulation of Customs inspection, including the inspection of prohibited imports or exports, supervision of fishing, health control, assistance at sea, and boarding of vessels. All such lists are, of course, merely explanatory, and the riparian State will have the right to employ its legislative and administrative authority in favour of various interests deserving of its protection which may arise in connection with navigation in territorial waters. It therefore seems preferable to give expression to this legal doctrine in the proposed Convention. In this connection, we propose to examine more closely the rights referred to, as doubts have been raised as to their scope.

In the first place, in connection with the endeavour to secure a safe route for navigation, the following rule is to be found in the Barcelona Statute on Freedom of Transit:

Article 2, first sentence: "Subject to the other provisions of this Statute, the measures taken by Contracting States for regulating and forwarding traffic across territory under their sovereignty or authority shall facilitate free transit by rail or waterway on routes in use convenient for international transit."

Cf. Article 10, paragraph 1, of the Statute on the Regime of Navigable Waterways of International Concern: "Each riparian State is bound, on the one hand, to refrain from all measures likely to prejudice the navigability of the waterway or to reduce the facilities for navigation and, on the other hand, to take as rapidly as possible all necessary steps for removing any obstacles and dangers which may occur to navigation."

It would perhaps be desirable to require a similar undertaking in respect of territorial waters; but it is very doubtful whether riparian States would be willing to give it, for, in our view, no such obligation yet exists in general international law.

As regards preoccupations in connection with vessels foundering in territorial waters, mention should be made of certain progressive treaties recently concluded between Finland and other countries.

See BJÖRKSTEN, *op. cit.*, p. 122: "Einige von den Verträgen Finnlands mit fremden Mächten enthalten Bestimmungen betreffend verunglückten Schiffen. Ihnen liegt der Gedanke zu Grunde, das Interesse des Eigentümers zu schützen. Die vollständigsten Vorschriften enthalten Artikel 19 des finnländisch-englischen Handels- und Schiffahrts-Vertrages vom

3. August 1921. Er stellt den Grundsatz der Gleichberechtigung und Meist-Begünstigung auf. Er sieht ein Zusammenwirken der Behörden des Territorial-Staates und des konsularen Vertreters des Flaggen-Staates vor. Geborgene Waren unterliegen keinen Zöllen, soweit sie nicht dem Verbrauch der territorialen Staaten überlassen werden. Ungefähr dieselben Regeln gelten für Finnland und Gross-Britannien auf Grund des Handels-Vertrages vom 15. Dezember 1924, Artikel 16, Absatz 2 ff. In derselben Richtung geht auch Artikel 5 des Schiffahrts-Vertrages mit Schweden vom 26. Mai 1923. Es kann als allgemeine Regel, welche nicht eigentlich eine Rechtsregel, sondern vielmehr eine solche der Völker-Sitte ist, festgestellt werden, dass der Vertreter des Flaggen-Staates intervenieren darf."

It cannot be said, however, that this is already a generally established legal conception.

Pilotage.— In France, a law dated March 27th, 1882, regulates the question of buoyage in territorial waters. As regards signals of distress and signals connected with pilotage, regulations were made in England by the Merchant Shipping Act of 1873, and in Germany by a decree of August 14th, 1876. An Act of Parliament of December 21st, 1913, excludes foreign pilots from British waters.

Article 11 of the Statute on the International Regime of Maritime Ports, first sentence: "Each Contracting State reserves the right to organise and administer pilotage services as it thinks fit".

The Institut de Droit international has the following clause in its seventh article: "Les navires qui traversent les eaux territoriales se conformeront aux règlements spéciaux édictés par l'Etat riverain, dans l'intérêt et pour la sécurité de la navigation et pour la police maritime".

Article 2 of the Storny project of the International Law Association is as follows: "La mer territoriale s'étend depuis le rivage jusqu'au point indispensable, à l'effet de garantir la défense, la neutralité et d'assurer les services de la navigation et de la police maritime côtière en leurs diverses manifestations".

Article 6, paragraph 3, of the American codification project reads: "The American Republics may also enact all laws and regulations which they may deem necessary to assure the observance of measures of hygiene, security, police and Customs, in so far as they are in accordance with the international conventions concluded by them. The said laws and regulations should be communicated to the Pan-American Union".

Submarine cables.— In France, a law of December 20th, 1884, imposes penalties in respect of the damaging of cables in French waters. Numerous other countries have also enacted laws and decrees on this subject. As regards the codification projects, see under *Pilotage*.

Customs inspection.— The rights of Customs inspection are formulated very clearly by M. FAUCHILLE, p. 159: "L'Etat côtier est autorisé à établir dans ses eaux territoriales une surveillance douanière qui entraîne le droit de police sur les navires, la visite et la détention des bâtiments et barques soupçonnées de contrebande, la capture des articles prohibés et leur confiscation, la répression par voies d'amende et de confiscation."

A special codified rule would seem superfluous. National legislations, international practice and the codification projects are all in general agreement with the definition given by M. Fauchille.

See "La Pratique" in M. FAUCHILLE's treatise, *op. cit.*, pp. 159 *seq.* See also the American project of the American Institute of International Law, Article 11, paragraph 1: "The American Republics may extend their jurisdiction beyond the territorial sea parallel with such sea for an additional distance of . . . marine miles for reasons of safety, and in order to assure the observance of sanitary and Customs regulations".

In connection with the scope of the powers of the Customs police, a controversy of some importance arose last year. After the entry into force of the American prohibitionist legislation, a decision of the United States Supreme Court of April 30th, 1923, recognised the right of Customs officials to seize all alcoholic liquor in American territorial waters, including even alcoholic liquor which it was not proposed to import illegally but which would at the end of a voyage have been unloaded at a port where its importation was not prohibited. The execution of this decision by the American Customs authorities gave rise to protests from various European States—Great Britain, France, the Netherlands, Portugal, Denmark, Italy, etc.

The Statute on the International Regime of Maritime Ports adopted by the General Conference on Communications and Transit gave States power to prohibit the transit of goods of which the importation into the State concerned is prohibited. It seems, however, more than doubtful whether this principle can also apply to territorial waters, for, in the case of land transit, it must be assumed that the State concerned has the right to decide what goods it will accept for transit.

As against this sovereign right of the State there is no recognised right attaching to other States. The legal position is entirely different in territorial waters, for here the vessels of other States have a right of free passage. This right of free passage includes a general right of transport (see Article 7, paragraph 2, of the proposed Convention). The right to transport alcoholic liquor could only be refused if the riparian State could prove the impossibility of maintaining the import prohibition in respect of alcoholic liquor, and such proof would be a matter of great difficulty. In any case, the question arises whether a rule should not be introduced to reconcile the interests concerned, as provided in Article 17 of the Statute on the Regime of Maritime Ports:

"Each Contracting State shall be entitled to take the necessary precautionary measures in respect of the transport of dangerous goods or goods of a similar character, as well as general police measures, including the control of immigrants entering or leaving its territory, it being understood that such measures must not result in any discrimination contrary to the principles of the present Statute."

Supervision of Fishing.— In connection with the right of the riparian State to reserve fishing rights exclusively to its own nationals, it may be asked whether the right of supervision over fishing can be extended so far as to include the power of refusing access to the sea to all foreign fishing-boats whatever. Such a step would, of course, constitute the most effective means of putting down illegal fishing, but it would conflict with the right of free passage which is established

for all vessels. This legal conception is also reflected in the well-known North Sea Fisheries Convention of 1882.

Health Supervision. — See FAUCHILLE, *op. cit.*, p. 161. For the codification projects, see under *Pilotage*.
Ceremonial at Sea. — See FAUCHILLE, *op. cit.*, p. 167.

The right of the riparian State to issue regulations governing the obligations arising out of the boarding of vessels in territorial waters, the obligation to furnish assistance in urgent cases, and the claims which may result, is not disputed. It would undoubtedly be desirable to extend the Conventions of 1910 on the Safety of Life at Sea and on the Boarding of Vessels—which deal with the boarding of vessels and the furnishing of assistance on the high seas—to cover identical or similar circumstances occurring in territorial waters.

Within the limits of the riparian State's rights of legislation and administration, that State should obviously have the legal power to enforce those rights; accordingly, it should be granted not only the right to take necessary measures of constraint but also a power of jurisdiction to deal with offences. This is a general legal conception and finds its specific expression in a right of pursuit which may extend even on to the high seas. Except in an arbitral award rendered by the distinguished Dutch jurist ASSER, the existence and scope of this right of pursuit have never been disputed in international practice.

See TRAVERS, *op. cit.*, III, pp. 248 *sqq.* See also the project of the Institut de Droit international, Article 7, second and following sentences: "L'Etat riverain a le droit de continuer sur la haute mer la poursuite commencée dans la mer territoriale, d'arrêter et de juger le navire qui aurait commis une infraction dans les limites de ses eaux. En cas de capture sur la haute mer, le fait sera toutefois notifié sans délai à l'Etat dont le navire porte le pavillon. La poursuite est interrompue dès que le navire entre dans la mer territoriale de son pays ou d'une tierce Puissance. Le droit de poursuite cesse dès que le navire sera entré dans un port de son pays ou d'une tierce Puissance."

Project of the American Institute of International Law: Article 9: "Merchant vessels which violate the provisions of the present Convention or the laws and regulations of an American Republic in regard to its territorial sea are subject to the jurisdiction of the said Republic. Such Republic has the right to continue, within the zone contiguous to its territorial sea, the pursuit of a vessel commenced within its territorial waters, and to bring the vessel before its Courts".

It would further be desirable to lay down the principle that all the rights exercised by the riparian State over foreign vessels in its territorial waters, and also its rights to levy dues, must be applied without discrimination. No dues must be levied except dues intended solely to defray expenses of supervision and administration. The adoption of this principle should be recommended; it has already found expression in the Conventions on the Regime of Navigable Waterways of International Concern and in the Statute on Freedom of Transit.

Article 3 of the Statute on Freedom of Transit: "Traffic in transit shall not be subject to any special dues in respect of transit (including entry and exit). Nevertheless, on such traffic in transit there may be levied dues intended solely to defray expenses of supervision and administration entailed by such transit. The rate of any such dues must correspond as nearly as possible with the expenses which they are intended to cover, and the dues must be imposed under conditions of equality ..."

Article 7 of the Statute on the Regime of Navigable Waterways of International Concern: "No dues of any kind may be levied anywhere on the course or at the mouth of a navigable waterway of international concern, other than dues in the nature of payment for services rendered and intended solely to cover in an equitable manner the expenses of maintaining and improving the navigability of the waterway and its approaches or to meet expenditure incurred in the interest of navigation. These dues shall be fixed in accordance with such expenses ..."

It would be desirable, in accordance with the project of the American Institute of International Law, which provides for the registration with the Pan-American Union of all binding regulations governing navigation in territorial waters, that such regulations should be registered at a central office. Their registration at the International Waters Office would undoubtedly be of great value. One of the duties of the Office would be to publish such regulations.

Accordingly, Article 10 of the Convention should contain the following provisions:

"Regulations.

"Article 10. — Within its territorial waters, the riparian State shall have the power of legislation and administration for the following purposes: regulation of navigation, preservation of marine signals and lighthouses, prevention of shipwreck, regulation of pilotage, protection of submarine cables, regulation of Customs inspection, including the inspection of prohibited imports and exports, supervision of fisheries, health control, assistance at sea, and collisions.

"The riparian State shall have the right to extend its legislative and administrative action to other domains when interests deserving of its protection in territorial waters are affected.

"Within the limits of the riparian State's right of legislation and administration, it shall be granted also the right to employ the necessary means of constraint to enforce its jurisdiction, in order that it may be able to deal with offences.

"The riparian State shall have the right to continue on the high seas the pursuit of a vessel commenced within its territorial waters, and to arrest and bring before its Courts a vessel which has committed an offence within its territorial waters. If, however, the vessel is captured on the high seas, the State whose flag it flies shall be notified immediately. The pursuit shall be interrupted as soon as the vessel enters the territorial waters of its own

country or of a third Power. The right of pursuit is extinguished as soon as the vessel has entered a port of its own country or of a third Power.

" Within the territorial waters no dues of any kind may be levied, except dues intended solely to defray expenses of supervision and administration. Such dues or charges shall be levied under conditions of equality.

" All regulations issued by riparian States regarding their territorial waters shall be registered and published by the International Waters Office."

XIII. RICHES OF THE SEA.

In virtue of its right of dominion over the whole area of its territorial waters, the riparian State possesses for itself and for its nationals the sole right of ownership over the riches of the sea. This right covers the fauna found in the waters, and also everything which may be found above or below the subsoil of the territorial sea (coral-reefs, oil-wells, tin-mines).

As a rule, the most important of the riparian State's rights in respect of the riches of the sea are fishing rights. It may monopolise these or reserve them for its own nationals. Considering international law in this aspect, we may distinguish three groups of States.

1. States which by legislative enactment entirely exclude foreign fishermen from their fisheries.

E.g., France (Law of March 1st, 1888, Decree of September 23rd, 1911); Germany (Article 296 (a) of the Penal Code and Law of February 26th, 1876); Belgium (Law of August 19th, 1891); the Netherlands (Law of October 26th, 1889); Great Britain (Act of August 2nd, 1883); Russia, Spain, Norway, Sweden and Denmark.

Among the treaties which have reserved to nationals the right of fishing in territorial waters mention should be made of those concluded by France with Great Britain, August 2nd, 1839, and November 11th, 1867, and with Spain, February 6th, 1882; by Germany with Great Britain, 1874; by Italy with Mexico, April 6th, 1890, and with Austria-Hungary, December 6th, 1891; and by Denmark with Great Britain, June 24th, 1901. The Convention concluded at The Hague on May 6th, 1882, between Germany, Belgium, Denmark, France, Great Britain and the Netherlands, regarding the supervision of fishing in the North Sea outside territorial waters, lays down that within those waters national fishermen shall enjoy the sole fishing rights along the whole of the coasts of their respective countries and the islands and ice-packs off those coasts; but it adds that the right thus conferred upon them shall in no way limit the recognised right of free movement enjoyed by all fishing vessels voyaging or mooring in the said waters, provided that such vessels observe the special police regulations of the riparian Powers.

In transferring the island of Newfoundland from France to England, the Treaty of Utrecht of March 13th/April 14th, 1713, allowed the French to retain exclusive fishing rights over a portion of the coast of the island; but these rights, after having been confirmed in principle by the Treaties of Paris, February 10th, 1763; Versailles, September 3rd, 1783; Amiens, March 27th, 1802; and Paris, May 30th, 1814, and November 20th, 1815, gave rise to protracted difficulties between the two countries and were abolished by an agreement, dated April 8th, 1904, between France and Great Britain.

On gaining their independence under the name of the United States of America, the British colonies in North America concluded in 1783 a convention with Great Britain allowing the people of the United States to continue to enjoy fishing rights on the coasts of Newfoundland, and Conventions, dated October 20th, 1818, and May 8th, 1871, again regulated the fishing rights of the United States in waters under British sovereignty, notably in Canada. Difficulties quickly arose, however, on this subject between the two countries, and the resulting dispute was settled by an arbitral award of the Hague Court on September 7th, 1910 (see FAUCHILLE, *op. cit.*, p. 163).

2. States which by separate treaties grant to the nationals of the other Contracting States fishing rights in their territorial waters, with or without reciprocity.

A Convention of July 15th/28th, 1907, between Japan and Russia granted to Japanese subjects the right to take fish of every kind, except seals for the fur trade and sea otters, along the Russian coasts in the Sea of Japan, the Sea of Okhotsk and the Behring Sea, and a Treaty of July 14th, 1899, modified on October 5th, 1907, between Denmark and Sweden granted to the subjects of the two countries the right of trawling herring in a certain zone along the Swedish and Danish coasts. By Article 7 of their Treaty of Peace of October 14th, 1920, Finland and Soviet Russia mutually granted to each other's nationals fishing rights and the right of free navigation for fishing vessels in the territorial waters along the seaboard ceded to Finland upon the Arctic Ocean and in those to the north and east of the Rybachii Peninsula remaining under the sovereignty of Russia, as far as Cape Sharapov.

3. States which do not enforce their right to exclude foreign fishermen.

Italy requires foreigners to take out a licence.

Article 1 of the Colombian Law (Law 96 of 1902) lays down that "the Government has power to organise fishing in the waters of the Republic in such manner as it may think best for the national interests".

The legal conception is perfectly clear, but the American project is the only one of the codification projects which expresses it.

Article 6: "The American Republics exercise the right of sovereignty not only over the water but over the bottom and the subsoil of their territorial sea.

"By virtue of that right, each of the said Republics alone can exploit, or permit others to exploit, all the riches existing within that zone."

Cf. also the Storny project, Article 22: "Les droits exclusifs de pêche demeurent soumis aux pratiques et conventions existantes, jusqu'à ce qu'une réglementation adéquate fixe les normes qui correspondent le mieux, tant au droit exclusif des Etats sur leurs côtes qu'à l'exploitation rationnelle et la conservation des espèces utilisables de la faune maritime en dehors de la zone d'exclusivité."

The riparian State has the right to regulate fishing. (See above on the supervision of fishing.) The regulation of fishing on the high seas and the exploitation of other riches of the sea can only be settled by collective agreement; but these are questions of another kind and are being dealt with by a special Sub-Committee.

To express the universally accepted legal conception, we must include the following article in the Convention:

"Riches of the sea, the bottom and the subsoil.

"Article 11. — In virtue of its sovereign rights over the territorial sea, the riparian State shall exercise for itself and for its nationals the sole right of taking possession of the riches of the sea, the bottom and the subsoil."

XIV. WARSHIPS.

The general legal conception is that warships, and State-owned vessels treated on the same footing, occupy a special position in territorial waters. We have already pointed out that they cannot be arbitrarily denied access to foreign territorial waters—that, indeed, they can invoke the right of free passage. On the other hand, owing to the peculiar character of warships, the riparian State can institute special precautionary measures. Dispositions of this kind are by no means exceptional in international practice.

"Quoiqu'on reconnaisse aux navires de guerre le droit d'appliquer la législation de leur pavillon, l'ordonnance néerlandaise du 30 octobre 1909, le décret français du 21 mai 1913 et le règlement équatorien du 8 janvier 1917 ont décidé qu'aucun bâtiment de guerre étranger ne pourra mettre à exécution une sentence de mort dans les eaux territoriales." (FAUCHILLE, *op. cit.*, p. 171.)

The right of the riparian State to take such measures as we have mentioned is beyond dispute. If it is to be recognised that warships have a certain special position in foreign territorial waters, this "ex-territoriality" (as it is often called) must not be understood to mean that the regulations made by the riparian State for its territorial waters are in principle not applicable to warships. Of course, in view of the peculiar character of warships, which constitute a portion of the military force of the State to which they belong, all measures of control, constraint and justice over them are excluded. On the other hand, the riparian State cannot be held bound to tolerate any offences which may be committed against its laws and its interests by foreign vessels. As regards questions concerning ports, the Institut de Droit international, at its session held at The Hague in 1898, proposed in the draft regulations adopted on August 23rd, 1898, the following Article 13:

"Les navires de guerre étrangers admis dans les ports doivent respecter les lois et les règlements locaux, notamment ceux qui concernent la navigation, le stationnement et la police sanitaire. En cas de contravention grave et persistante, le commandant, après avis officieux et courtois resté sans effet, pourrait être invité et, au besoin, contraint à reprendre la mer. Il en serait de même si les autorités locales jugeaient que la présence de son navire est une cause de danger pour la sûreté de l'Etat. Mais, à moins d'extrême urgence, ces mesures rigoureuses ne doivent être employées que sur l'ordre du Gouvernement central du pays."

Adopting the same principles, the French Decree of May 21st, 1913, lays down (Article 8) that: *"Les bâtiments de guerre étrangers qui relâchent dans un port ou dans les eaux territoriales sont tenus de respecter les lois fiscales et les lois et règlements de la police sanitaire. Ils sont également tenus de déléger à tous les règlements de port, règlements auxquels sont assujettis les bâtiments de la marine nationale."*

This principle might also be applicable to cases of warships committing offences against the laws of the riparian State in its territorial waters. Such measures could not, of course, be taken except in cases of serious and continued offences, or in cases of extreme urgency. Under all other circumstances the diplomatic channel should be used.

The following article expresses a legal conception which is already in existence:

"Warships.

"Article 12. — The exercise by warships of the right of free passage may be subjected by the riparian State to special regulations. Foreign warships when admitted to territorial waters must observe the local laws and regulations, particularly those relating to navigation, anchoring and health control. If a serious and continued offence is committed, the commander of the vessel shall receive a semi-official warning in courteous terms, and if this is without effect he may be requested and, if necessary, compelled, to put to sea. The same dispositions shall apply if the local authorities consider that the presence of the vessel threatens the safety of the State. Except in cases of extreme urgency, however, these stringent measures shall only be taken upon the instructions of the central Government of the country.

"In the case of minor offences, the diplomatic channel shall be used."

XV. THE RIGHT OF JURISDICTION OVER FOREIGN MERCHANT VESSELS IN PORTS.

The mandate conferred upon the Rapporteur and the Sub-Committee by the Committee of Experts for the Progressive Codification of International Law also covers questions relating to the State's right of jurisdiction over foreign merchant vessels in its ports.

This question is really extraneous to the problem of the territorial sea; but there is undeniably a certain analogy between them.

Moreover, the Statute on the Regime of Maritime Ports drawn up at Geneva in 1923 regulated other aspects of the rights connected with maritime ports. The question of the jurisdiction of the State over foreign merchant vessels in its ports was, however, not even touched. If it were regulated in a Convention dealing with the territorial sea, a valuable addition would be made to the Statute on the Regime of Maritime Ports.

In approaching this question of jurisdiction, it must always be remembered that the legal status of maritime ports is different from that of the territorial sea. Even in the Statute on the Regime of Maritime Ports, which ensures the right of common user to a very wide extent, maritime ports are regarded in their geographical aspect as inland waters of the State, and are accordingly given a legal status different from that of the territorial sea.

The riparian State's right of dominion over foreign vessels in its ports is obviously greater than over vessels which are merely passing through the territorial sea. This rule is also relevant in considering how far the riparian State can reserve to itself the jurisdiction over the foreign merchant vessels in its ports. Regarding the matter purely logically, we must in this case also recognise the unlimited jurisdiction of the riparian State. International practice is quite explicit in according to the riparian State a much wider jurisdiction in maritime ports than over vessels passing through the territorial sea. As regards the civil jurisdiction of the riparian State over vessels passing through the territorial sea, we nowhere find it disputed or restricted. (See FAUCHILLE, *op. cit.*, pp. 1082-1088.) The competence of the riparian State as regards measures of civil process and non-contentious jurisdiction in maritime ports is regulated on the same lines.

See FENWICK, *International Law*, p. 195: "Merchant vessels in foreign ports are not exempt from civil suit *in rem* brought by a citizen of the foreign State, nor are the officers or crew of the vessel exempt from civil suit *in personam* or from criminal prosecution. But the jurisdiction of the foreign State does not, according to one precedent, extend so far as to interfere with personal and property rights on board the vessel as regulated by the law of the flag State. In the case of the 'Creole' submitted to arbitration by the United States and Great Britain in 1853, it was held by the arbitrator that the authorities of Nassau, in liberating a number of slaves who had revolted against the officer of the ship and had put in at the port of Nassau, had acted 'in violation of the established Law of Nations' and that the claimants were 'justly entitled to compensation for their losses'."

See draft regulations of the Institut de Droit international, 1898, Article 37: "Les officiers publics, officiers de l'état civil, notaires et autres, requis pour procéder à des actes de leurs fonctions et de leurs ministères sur des navires étrangers ancrés dans un port, doivent s'y rendre; et leurs actes, reçus en la forme et dans les conditions réglementaires d'après la loi locale, ont le même effet et la même valeur que s'ils avaient été faits par des officiers publics à terre, dans l'étendue de leurs circonscriptions locales."

The regulation of the penal jurisdiction of the riparian State is a more complex question, because the dominant *prima facie* conception of the scope of a riparian State's power of dominion has been the subject of important reservations in practice. These reservations relate to an historical decision of the French Conseil d'Etat, referred to in the following quotation:

"Distinguant entre les faits qui se passent sur ces navires, il a proclamé les solutions suivantes: (1) Le navire étranger admis dans un port français est soumis à la compétence de la juridiction française pour tout ce qui touche aux intérêts de l'Etat, pour les lois de police et pour les délits commis, même à bord, par des gens de l'équipage envers des personnes étrangères à celui-ci; (2) Le navire étranger échappe, au contraire, à la compétence de la juridiction française et est soumis à celle des autorités de son propre pays pour les actes de pure discipline intérieure et pour les délits commis à bord de la part d'un homme de l'équipage envers un autre homme du même équipage, ces délits présentant une analogie avec les faits de discipline intérieure; (3) Toutefois, l'autorité locale a le droit d'intervenir pour les actes commis à bord entre gens de l'équipage, si son secours est réclamé ou si la tranquillité du port est compromise."

It must, however, be recognised that the principle admitted by the Conseil d'Etat has not gained universal acceptance. The British Territorial Waters Jurisdiction Act of 1878, already quoted, is diametrically opposed to it and extends the legal competence of the riparian State in the matter of penal jurisdiction not merely to offences committed on board foreign vessels passing through the territorial sea but also to foreign vessels in maritime ports. This theoretical attitude is weakened in practice by the fact that in every case a request by one of the principal Secretaries of State is a *sine qua non* of criminal prosecution for an offence committed on board a foreign vessel in a British port. The fundamental rule of the British system has been applied in more concrete fashion in the legislation of certain Latin-American countries and in the codification project of the American Institute of International Law.

In international practice, therefore, there is no universally accepted legal conception, though it would undoubtedly be desirable to establish such unanimity by means of a convention. We must therefore decide in favour of one of the three systems in vogue. (For the practice of States, see FAUCHILLE, *op. cit.*, pp. 1027-1057.) The theory of the unlimited competence of the riparian State is more logical, but practical considerations urge the general recognition of the French system.

A foreign vessel in a port generally wishes to leave the port as soon as possible, and not to enter into relations with the authorities of the riparian State except so far as is absolutely necessary in order to fulfil certain official formalities. It does not seem equitable to impose obligations on foreign vessels in this connection as the result of an offence which has had no effects outside the vessel itself. Moreover, the punishment of the offender has been provided for, inasmuch as the captain of the vessel is authorised to take the necessary steps for instituting a criminal prosecution. Most countries still endeavour to preserve their nationals from the criminal jurisdiction of foreign courts; we may mention, by way of example, the rules for the non-extradition of nationals, which are often even embodied in constitutions. All these considerations can be given their due weight if the French system of restricting the penal jurisdiction of the riparian State is followed. The recognition of this principle would entail little alteration in international practice, for, as we have pointed out, it is only a few American States which take a different view in practice.

The action which can be taken by the port authorities with a view to the criminal prosecution of the crew and passengers of a foreign vessel may be very simply defined. Within the limits of the riparian State's criminal jurisdiction in maritime ports, it can take all steps with a view to criminal prosecution which the exercise of that jurisdiction may dictate. In this connection, various writers have dealt with the question of asylum, namely, the question whether the captain of a foreign vessel in a port has the right to receive on board, and to protect from pursuit by the port authorities, refugees who are nationals of the riparian State. It may be asked whether such refugees, when received on board foreign vessels, can be arrested and whether the captain is liable to criminal prosecution. Doctrine and international practice are agreed that no such right of asylum exists for persons wanted by the official authorities of the riparian State.

See FAUCHILLE, *op. cit.*, pp. 1066 *sqq.* This work also contains the 1897 and 1898 projects of the Institut de Droit International, together with an exhaustive account of international practice.

FENWICK, *op. cit.*, pp. 199 *sqq.* "Foreign merchantships, not being exempt, except by comity, from the jurisdiction of the State in whose parts they drop anchor, may not be made an asylum for fugitive, criminal or political refugees. It has been questioned, however, whether a foreign merchantship is so far under the jurisdiction of the State as to give the local authorities the right to enter upon the vessel and arrest a passenger who, as a political refugee, has taken passage upon the vessel in the port of a third State. Calvo relates the case of one Sotelo, a political refugee, who took passage in 1840 on board a French vessel at one Spanish port and was arrested upon the arrival of the vessel at a second Spanish port. In the case of Gomez, a political refugee from Nicaragua, who took passage on board a United States steamship in the harbour of Guatemala in 1888, and whose arrest was sought by the local authorities when the vessel stopped en route at the port of Nicaragua, the Department of State refused to support the action of the captain in declining to deliver the passenger. 'It is clear', said Secretary Bayard, 'that Mr. Gomez voluntarily entered the jurisdiction of a country whose laws he had violated. Under the circumstances, it was plainly the duty of the captain of the "Honduras" to deliver him up to the local authority upon their request.' In contrast to the ruling in the Gomez case, Secretary Blaine contested, in 1890, the right of the Government of Guatemala to demand the surrender of Barrondia, a political refugee who had taken passage on board a Pacific Mail steamer at a Mexican port, and who was temporarily within the jurisdiction of Guatemala when the vessel called at a port en route. In a later case, involving a political refugee from Honduras, named Bonilla, Secretary Grasham, while admitting the right of the local authorities to demand the surrender of a passenger, instructed the American Minister to protest against the act of the commander of the port in firing upon the vessel whose captain refused to surrender the refugee."

There has been some uncertainty as to political offences. (See FAUCHILLE, *op. cit.*, p. 1070 *sqq.*) So far, no unanimous legal doctrine has been established to the effect that political offenders possess such a right of asylum. (See the *Sarvarkar-Kohler* case in SCHÜCKING, *Das Werk vom Haag*, Vol. 5, pp. 65 *sqq.*)

The following article should therefore be included in the Convention:

"Jurisdiction over foreign merchant vessels in maritime ports.

"Article 13. — In maritime ports foreign merchant vessels shall be subject without restriction to the civil and non-contentious jurisdiction of the riparian State.

"The criminal jurisdiction of the riparian State shall be restricted to the punishment of offences committed on board which are not directed against a member of the crew or against passengers and their property. Its criminal jurisdiction shall further be restricted to cases in which the captain of the vessel has asked the port authorities for assistance and cases in which the peace or public order in the port has been disturbed."

XVI. SETTLEMENT OF DISPUTES.

If the Convention proposed by us were accepted, we should still have to reckon with the possibility of disputes arising in connection with its application and interpretation. Such disputes between States could be regarded in all circumstances as purely legal disputes, which could be settled without exception by an award of a court of arbitration. No State could contend that the jurisdiction of a court of arbitration in disputes arising out of the application or interpretation of this Convention would endanger its independence, its honour or its vital interests. We therefore think it desirable that the Convention itself should provide for the compulsory settlement of all disputes, and we have only to consider how this recommendation can be carried into effect. It might be possible to confer the sole competence on the Permanent Court of International Justice. (See the conventions in which the Permanent Court has been declared exclusively competent to deal with all disputes—SCHÜCKING and WEHBERG, *Die Satzung des Völkerbundes*, 2nd edition, pp. 521-531.) It would, however, we think, be more satisfactory and more liberal to leave the parties to the dispute free to submit it either to the Permanent Court of International Justice or to a special court of arbitration. In accepting this latter method, we should simply

be following the example given by a whole series of international conventions. (These are enumerated in the work mentioned above—SCHÜCKING and WEHBERG, *Die Satzung des Völkerbundes*, 2nd edition, p. 531.)

In such cases the parties to the dispute would have the option of bringing it before the mixed commission which we propose should be attached to the International Waters Office to settle disputes arising out of registration as mentioned above.

Accordingly, Article 14 of the Convention would read as follows:

"Settlement of Disputes.

" Article 14. All disputes arising out of the application or interpretation of this Convention shall be subject to compulsory settlement by the Permanent Court of International Justice or by a court of arbitration constituted by agreement between the parties."

The Rapporteur trusts that his examination of the question and his proposals will furnish the Sub-Committee with a useful groundwork for discussion. He cannot conclude without expressing his heartiest thanks to his secretary, M. Paul Guggenheim, Doctor of Law, who has afforded him such great and devoted assistance in composing this report.

	General Zone	Fishing	Customs	Neutrality	Jurisdiction	Public Safety
Brazil				3 miles		
Belgium		3 miles	1 myriametre		3 miles	
Chile				3 miles		
Denmark	1 league	1 league and 3 miles				
Spain		6 miles	6 miles	6 miles	6 miles	
United States of America			3 miles	3 miles		
France		3 miles	2 myriam- metres	6 miles		Radius 1 myriametre
Great Britain		3 miles	3 miles	3 miles	1 marine league	
Greece		3 miles	6 miles			
Italy			5 and 10 kms. 12 miles			Cannon range
Norway		1 league	10 marine leagues			
Netherlands				3 miles		
Portugal		3 miles and 6 miles	6 miles			
Germany		3 miles	3 miles	3 miles		3 miles
Russia	4 miles generally		12 marine miles			
Sweden		1 league	1 league	1 league		
Uruguay				5 miles		

DRAFT CONVENTION.

ARTICLE 1.

The character and extent of the rights of the riparian State.

The State shall have an unlimited right of dominion over the zone which washes its coast, in so far as, under general international law, the rights of common user of the international community or the special rights of any State do not interfere with such right of dominion.

The right of dominion shall include rights over the air above the said sea and the soil and subsoil beneath it.

ARTICLE 2.

Extent of the rights of the riparian State.

The zone of the coastal sea shall extend for six marine miles (60 to the degree of latitude) from low-water mark along the whole of the coast.

The rights of other States which have been exercised by virtue of the common right of user of the high seas or of special treaties shall not be affected. States may exercise their rights of dominion by virtue of usage, and within the limits of such usage, beyond the zone of dominion in the following domains: police measures to prevent the possibility of military exercises being carried out by other States, and measures of Customs and sanitary control. Other rights beyond the zone of dominion may only be accorded to the riparian State by the body mentioned in Article 3 if they are demonstrated to be urgently necessary. Such grant shall in no case include rights of exclusive economic user outside the territorial sea.

ARTICLE 3.

International Waters Office and registration in the International Waters Register.

The States signatory to the Convention undertake to establish an International Waters Office. The duty of this Office is to compile a register of rights possessed by the different States in the fixed zone of foreign riparian States, or by the riparian States themselves outside the fixed zone.

The registration of a right in the International Waters Register kept by the International Waters Office in favour of any State in a foreign territorial sea shall be in favour of all States, if such right is founded upon common usage.

A time-limit of . . . shall be fixed by the International Waters Office for the submission of all applications for such rights, as also for rights claimed by a riparian State outside its fixed zone by virtue of usage.

The relevant legal instruments must be presented and registered. The onus of proof shall be upon the State applying for registration of a right in its favour. Applications must be communicated to all the States parties to the Convention.

Applications may be opposed within a time-limit to be fixed. If an application is opposed, the question is decided, in the first instance, by a mixed commission of experts and jurists. Appeal lies from decisions of this commission to the Permanent Court of International Justice. All States shall be informed of the registration of a right. The register shall be published.

The same procedure shall apply in cases in which a State claims to have an urgent new need outside the sphere of its dominion over the territorial sea. It must apply to the International Waters Office, which may only grant a right after publication of the application, and provided that it is not opposed. In the event of opposition, the question shall go before a mixed commission, before which the State claiming the right must prove that it cannot otherwise protect the interests affected. In this case also, appeal lies to the Permanent Court of International Justice.

The International Waters Office shall also be responsible for publishing maritime charts showing the zones of the territorial sea.

ARTICLE 4.

Bays.

In the case of bays which are bordered by the territory of a single State, the territorial sea shall follow the sinuosities of the coast, except that it shall be measured from a straight line drawn across the bay at the part nearest to the opening towards the sea, where the distance between the two shores of the bay is 12 marine miles, unless a greater distance has been established by continuous and immemorial usage.

In the case of bays which are bordered by the territory of two or more States, the territorial sea shall follow the sinuosities of the coast.

As regards the recognition of rights which are in contradiction with the tenor of the general rules, the provisions of Article 3 concerning presentation and registration in the International Waters Register shall be applicable. It shall not be possible to acquire such rights in the future.

ARTICLE 5.

Islands.

If there are natural islands, not continuously submerged, situated off a coast, the inner zone of the sea shall be measured from these islands, except in the event of their being so far distant from the mainland that they would not come within the zone of the territorial sea if such zone were measured from the mainland. In such case, the island shall have a special territorial sea for itself.

ARTICLE 6.

Straits.

The regime of straits at present subject to special conventions is reserved.

In straits of which both shores belong to the same State, the sea shall be territorial, even if the distance between the shores exceeds 12 miles, provided that that distance is not exceeded at either entrance to the strait.

Straits not exceeding 12 miles in width whose shores belong to different States shall form part of the territorial sea as far as the middle line

ARTICLE 7.

Pacific passage.

All vessels without distinction shall have the right of pacific passage through the territorial sea. In the case of submarine vessels, this right shall be subject to the condition of passage on the surface. The right of passage includes the right of sojourn in so far as the latter may be necessary for navigation. For the sojourn of warships, see Article 12.

The right of free passage includes the right of passage for persons and goods independently of the right of access to the foreign mainland.

ARTICLE 8.

Coasting trade.

A riparian State has the right of reserving for its own flag the transport of passengers and goods loaded at one port situated under its authority and unloaded at another port also situated under its authority. A State which does not reserve the above-mentioned transport to its own flag may nevertheless refuse the benefit of equality of treatment with regard to such transport to a co-riparian which does reserve it.

ARTICLE 9.

Jurisdiction.

Vessels of foreign nationalities passing through territorial waters shall not thereby become subject to the civil jurisdiction of the riparian State.

Further, crimes and offences committed on board a foreign vessel passing through territorial waters by persons on board such vessels against persons or things also on board shall, as such, be exempt from the jurisdiction of the riparian State.

Offences, the consequences of which are not confined to the vessel or the persons belonging to it, are subject to the criminal jurisdiction of the riparian State, in so far as they constitute offences against its established law and its tribunals have competence to deal with them.

ARTICLE 10.

Regulations.

Within its territorial waters, the riparian State shall have the power of legislation and administration for the following purposes: regulation of navigation, preservation of marine signals and lighthouses, prevention of shipwreck, regulation of pilotage, protection of submarine cables, regulation of Customs inspection, including the inspection of prohibited imports and exports, supervision of fisheries, health control, assistance at sea and collisions.

The riparian State shall have the right to extend its legislative and administrative action to other domains when interests deserving of its protection in territorial waters are affected.

Within the limits of the riparian State's right of legislation and administration, it shall be granted also the right to employ the necessary means of constraint to enforce its jurisdiction in order that it may be able to deal with offences.

The riparian State shall have the right to continue on the high seas the pursuit of a vessel commenced within its territorial waters and to arrest and bring before its Courts a vessel which has committed an offence within its territorial waters. If, however, the vessel is captured on the high seas, the State whose flag it flies shall be notified immediately. The pursuit shall be interrupted as soon as the vessel enters the territorial waters of its own country or of a third Power. The right of pursuit is extinguished as soon as the vessel has entered a port of its own country or of a third Power.

Within the territorial waters no dues of any kind may be levied, except dues intended solely to defray expenses of supervision and administration. Such dues or charges shall be levied under conditions of equality.

All regulations issued by riparian States regarding their territorial waters shall be registered and published by the International Waters Office.

ARTICLE 11.

Riches of the sea, the bottom and the subsoil.

In virtue of its sovereign rights over the territorial sea, the riparian State shall exercise for itself and for its nationals the sole right of taking possession of the riches of the sea, the bottom and the subsoil.

ARTICLE 12.

Warships.

The exercise by warships of the right of free passage may be subjected by the riparian State to special regulations. Foreign warships when admitted to territorial waters must observe the local laws and regulations, particularly those relating to navigation, anchoring and health control. If a serious and continued offence is committed, the commander of the vessel shall receive a semi-official warning in courteous terms and, if this is without effect, he may be requested, and, if necessary, compelled, to put to sea. The same dispositions shall apply if the local authorities consider that the presence of the vessel threatens the safety of the State. Except in cases of extreme urgency, however, these stringent measures shall only be taken upon the instructions of the central Government of the country.

In the case of minor offences, the diplomatic channel shall be used.

ARTICLE 13.

Jurisdiction over foreign merchant vessels in maritime ports.

In maritime ports, foreign merchant vessels shall be subject without restriction to the civil and non-contentious jurisdiction of the riparian State.

The criminal jurisdiction of the riparian State shall be restricted to the punishment of offences committed on board which are not directed against a member of the crew or against passengers and their property. Its criminal jurisdiction shall further be restricted to cases in which the captain of the vessel has asked the port authorities for assistance and cases in which the peace or public order in the port has been disturbed.

ARTICLE 14.

Settlement of disputes.

All disputes arising out of the application or interpretation of this Convention shall be subject to compulsory settlement by the Permanent Court of International Justice or by a court of arbitration constituted by agreement between the parties.

(Signed) Dr. Walther SCHÜCKING,

Professor of Public Law, Member of the Permanent Court of Arbitration, Member of the Reichstag, Member of the Institut de Droit international, Corresponding Member of the American Institute of International Law.

II. OBSERVATIONS BY M. BARBOSA DE MAGALHAES.

[Translation.]

I. Introduction.

As I was unable to read the excellent report by our colleague Professor Schücking before it was printed, I am venturing to submit now, for the enlightened consideration of the Committee, the observations suggested to me by that report, in order to defend my views, which, although perhaps not differing in essentials from those of the distinguished Rapporteur, nevertheless diverge from his views on certain important points.

In doing this, I propose to take in the same order the problems which are considered and discussed in the report, and solutions for which are proposed in the project accompanying it, but I shall only touch upon those in respect of which I feel that an explanation of my views is necessary.

In the first place, I desire to state that, in my opinion, the question of the territorial sea is one of those which call most urgently for a solution by way of convention, and that such solution is at the same time perfectly feasible, notwithstanding the important divergencies noticeable alike in doctrine, internal legislation, international usage, conventions and treaties.

These divergencies are not fundamental, and, moreover, it is not difficult to discover certain tendencies towards uniformity. Although the establishment of uniformity may encounter certain obstacles, arising out of the economic interests of certain States, it does not, strictly speaking, constitute a political problem.

It should be added that the divergencies with regard to the solution of certain problems are often due to the absence of unanimously accepted and recognised principles of international law and to the resultant diversity in internal legislation and in treaties rather than to the existence of clear-cut opinions which it is sought to maintain at all costs.

II. *The Legal Status of Territorial Waters.*

The eminent Rapporteur, in his short but adequate review of the theories which have been put forward as to the legal status of territorial waters—theories which he agrees with FAUCHILLE in dividing into two general categories—expresses himself in favour of that which is based upon the idea of the dominion of the coastal State over the territorial sea, adding, however, that this dominion must be restricted by certain rights of common user in favour of other States and by the provisions of such treaties as may have been concluded by the coastal State.

In accordance with this idea, he proposes the following text for Article 1 of his project :

"The State shall have an unlimited right of dominion over the zone which washes its coast, in so far as, under general international law, the rights of common user of the international community or the special rights of any State do not interfere with such right of dominion.

"The right of dominion shall include rights over the air above the said sea and the soil and subsoil beneath it."

I am in agreement with the idea but not with the proposed article.

First, it seems to me that the expression "unlimited right" does not answer to the facts, seeing that there are no unlimited rights, and, further, that it is not in harmony with the rest of the article: this right is so far from being unlimited that it is found necessary to add immediately afterwards that it is subject to the restrictions imposed by the rights of common user of the international community or by the special rights of any State.

The word "unlimited" is, moreover, superfluous from every point of view.

The actual provisions of the project must be referred to in order to ascertain the extent of this right of dominion.

I propose, therefore, the deletion of this word.

I also propose the deletion of the restrictions mentioned in Article 1. I do not mean to suggest by this that these restrictions do not exist, but I consider that it is not necessary to mention them in this generic form in Article 1, and that to do so could only cause difficulty.

Those restrictions which are constituted by the rights of common user of the international community should be clearly and explicitly stated in the draft, and they are in fact to be found there—if not all of them, at any rate the chief ones. If they are not all mentioned there, and if it is considered that any others should be mentioned, the omission should be made good in order to avoid difficulties and controversies in the future, that being the essential object of the draft.

As regards the restrictions arising out of the special rights of any State, it is not necessary either to mention them or to make a reservation in regard to them, for, if they are laid down in conventions or treaties which are binding upon the parties, it is obvious that they are not affected by the general law, that is to say by the convention drawn up as a result of the discussions on the draft.

Consequently, it seems to me that Article 1 would gain much in clarity and simplicity if it were drafted as follows :

"The State shall have a right of dominion over the zone which washes its coast and over the air above the said sea and the soil and subsoil beneath it."

III. *The Extent of the Territorial Sea under the Dominion of the Coastal State.*

This is the question which gives rise to the greatest number of divergencies, and which, as the report observes, is the most difficult to solve: it is at the same time the one in respect of which a uniform solution is the most necessary.

It involves various problems, three of a general character and some others of a special character. The general problems are as follows :

(a) Should the extent of the territorial sea always be the same, or should it vary according to the rights and obligations of the coastal State ?

- (b) What is this extent to be if it is to be uniform, or, if it is to vary, how many zones must be established and what special rights or obligations must be attached to them ?
(c) From what point must the zone or zones constituting the territorial sea be reckoned ?

There are various special problems, some of which are referred to in detail later in the report.

(a) If the solution of the first of these problems is to be in harmony with the theory of the dominion of the coastal State over the territorial sea, it must consist in the establishment of a uniform limit for the territorial sea, or of a single zone to constitute it.

It is indeed incomprehensible that there should be so great divergencies in connection with this right of dominion as are at present to be found in doctrine, in internal legislation and in treaties.

To establish several zones with successive restrictions on the right of dominion of the coastal State is like building a staircase with a certain number of steps leading from the coast to an extreme point where there would merely be a vestige of dominion.

One can understand that the right of dominion should be subject to certain restrictions, but this is not, strictly speaking, a question of restrictions; it is proposed to limit the right of dominion (which is in any case attenuated by natural circumstances) to a very small number of manifestations, if not to one only.

If this line is followed, the views taken by States will be as numerous and as diverse as those of the publicists and as the solutions adopted in internal legislation and in treaties.

Moreover, inasmuch as States have rights to exercise and obligations to fulfil in the territorial sea, it is not desirable that there should be different areas for the exercise of all or any of the rights and for the fulfilment of all or any of the obligations; there must be correlation. For example, the monopoly of fishing and of the coasting trade for nationals should have as a corollary the obligation to exercise supervision and to preserve order and safety within the same area. It is illogical that a State should have the obligations in respect of a three-mile zone and the rights in respect of a six-mile zone, or *vice versa*.

The draft establishes a general zone of six marine miles; but it also establishes another zone, without any fixed or uniform limit, in the following terms:

"States may exercise their rights of dominion by virtue of usage, and within the limits of such usage, beyond the zone of dominion in the following domains: police measures to prevent the possibility of military exercises being carried out by other States, and measures of Customs and sanitary control."

In this second zone yet other rights may be exercised beyond the zone of dominion and without restriction of area, if they are accorded by the International Waters Office in consideration of proved and urgent necessity.

But, it will be asked, what is the legal character of the right of coastal States in this second zone? Is it still a right of dominion? If so, why is it more restricted than in the first zone? And why is its exercise conditional upon a declaration by the International Waters Office? If it is not a right of dominion, it is desirable to establish its legal character, if only in order that the usage and urgent necessity upon which the coastal States base their claims to it may be appreciated.

Whatever the position may be, it seems to me that the recognition of this right based upon usage, and the consequent existence of two zones, will give rise to difficulties and controversies which it is desirable to avoid; in my opinion, there ought to be only one zone, without prejudice to the power which the International Waters Office might exercise as an exceptional measure, not, as the draft under consideration provides in Articles 2 and 3, to accord rights in consequence of some urgent and sudden necessity, but, as the ALVAREZ draft provides¹, to authorise the coastal States to occupy the area of water necessary for the establishment, for a given period, of installations designed to serve one of the following purposes of general interest, viz.:

- (1) Bases for non-military aircraft;
- (2) Wireless telegraphy stations;
- (3) Submarine-cable stations;
- (4) Lighthouses;
- (5) Scientific research;
- (6) Stations for assisting the victims of shipwreck.

I prefer this provision of the ALVAREZ draft to that of the SCHÜCKING draft, because it is more explicit. I also prefer that there should be a single zone, not merely for the reasons briefly set forth above, but also because I would suggest that the single zone should be greater in extent.

(b) It is well known that the opinions which have been held and the solutions which have been proposed with regard to the extent of the territorial sea are very varied; this is made clear in the report, both by the text and by the table which follows it; we may accept the statement of M. BOYÉ² and M. Johan HJØRT³ that there is no generally acknowledged usage or principle in international law with regard to territorial waters. It may, however, be observed that there are two opinions and solutions which have met with most acceptance: one establishing a fixed limit of three miles, and another establishing the variable limit of gunshot range; moreover, the latter limit has sometimes been assimilated to the former, that is to say, it has been presumed that gunshot range would not exceed three miles.

¹ Draft for the Regulation of Maritime Communications in Peace-time, submitted to the Stockholm Conference of the International Law Association in 1924.

² "Territorial Waters, with Special Reference to Norwegian Legislation", memorandum presented to the Stockholm Conference of the International Law Association in 1924.

³ "The Principal Facts concerning Norwegian Waters."

To-day, owing to improvements in artillery, this variable limit exceeds three, and even six or twelve, miles. In the recent draft conventions the limit is fixed at six miles; it should be noted, however, that some of them, such as the ALVAREZ (1924) and SCHÜCKING drafts, provide for a second zone; another (Captain STORNY's draft) lays it down that "en général" the maximum limit of the territorial sea shall be six miles; another (the draft of the Institut de Droit international) provides that the limit of the territorial sea shall be six miles, but may be extended in time of war as far as gunshot range; while yet another (the 1924 draft of the American Institute of International Law) establishes a supplementary area . . . marine miles in width (the figure is not stated), "for reasons of safety and in order to assure the observance of sanitary and similar regulations".

This shows the tendency towards the extension of the territorial sea—an extension which is fully justified by the conditions of modern life: the greater rapidity of transport, the increase and greater efficacy of the means of action at the disposal of States¹, the necessity of employing these means of action in a constantly growing area, especially as regards certain fields of activity such as police measures for purposes of protection and of Customs and sanitary control (SCHÜCKING and ALVAREZ drafts and drafts of the Institut de Droit international), the protection of maritime navigation and scientific research (ALVAREZ draft), the exclusive utilisation of vegetable or mineral products, and, more particularly, the maintenance of exclusive fishing rights².

As regards the last-named category of exclusive rights, the extension of the territorial sea has been demanded with insistence at recent national and international fishery congresses.

The Fishery Congress of 1898, at Bergen, recommended that the limit of the territorial sea should be fixed at ten miles, and for certain purposes at six miles.

At the Congress of the International Marine Association held at Lisbon in 1904, Sir Thomas BARCLAY drew attention to the inadequacy of the three-mile limit; the nations which had interests in the North Sea, with the exception of Great Britain, were unanimous in considering that the territorial sea should extend for eight or ten miles; the Spanish delegate, NAVARRETE, stated that in his country the fishermen in the north and north-east were asking that the territorial sea should extend for twenty miles; the Russian delegate proposed that it should extend for ten miles; and the United States of America suggested eleven miles.

At the Fifth International Fishery Congress, held at Rome in 1911, Alberto CASTANO proposed that the minimum extent of territorial waters should be fifteen miles.

At the National Fishery Congress held at Madrid, in 1916, Odon DE BUREN, who is now Director-General of Fisheries in Spain, urged the necessity of extending the territorial sea to include the whole of the continental shelf.

At the Basque Fishery Congress which was held at St. Sebastian from September 22nd to 25th, 1925, a resolution was passed to the effect that the Spanish and French Governments should come to an agreement to extend the littoral zone of the two countries to a distance of twelve to fifteen miles from the coast with a view to ensuring the mutual observance of the regulations issued by each of the two Governments concerning intensive methods of trawling.

These demands are fully justified by technical considerations.

The maritime species of fish, particularly the edible varieties, are not uniformly distributed throughout the whole sea. Whether they are sedentary or migratory, their biological characteristics demand special conditions which, generally speaking, are only to be found together in proximity to the coast or at a relatively short distance therefrom. These conditions consist principally in the light, the salinity and the temperature of the water, its depth, the abundance and good quality of the plankton and of the vegetable growths suitable for the deposit of the eggs, and yet other considerations. It goes without saying that all this has only been discovered by biologists in comparatively recent times, inasmuch as research work only became intensive in the second half of the nineteenth century, and there is still much that requires verification. What fishermen knew, however, because they had occasion to notice it every day, was that those edible varieties of fish which were to be found quite near the coasts did not inhabit the high seas.

At one time a notion of an essentially geomorphological nature gained credence. It was observed that at a certain distance from the coast—a distance which varied to some extent—the bottom of the sea is marked by a sort of great step, almost always abrupt, which divides it into two quite distinct regions. The region extending from this step to the coast-line has been called the "continental shelf". The other, much vaster, which extends beyond this step, is the abysmal region; the rare species of fish found in this region are generally inedible. On the other hand, those which inhabit the continental shelf are for the most part edible.

As has already been observed, the width of the continental shelf is very variable. On the Atlantic coast of the Iberian Peninsula it is small in comparison with that of the continental shelves of France, England and other northern European countries. The following conclusions may be drawn from these facts:

(a) Edible varieties of fish are crowded together, so to speak, near the coasts of the countries whose continental shelf is narrow, whereas they are scattered about the high seas off coasts whose shelf is more extensive;

¹ FAUCHILLE, after asking the question: "les progrès de la science, et spécialement les progrès de la science aéronautique, ne devront-ils pas avoir nécessairement une influence sur la détermination de la mer territoriale?", reproduces passages from the article entitled "L'Aviation sur les eaux territoriales", published by M. Henry COUANNIER, in the *Revue juridique internationale de la Locomotion aérienne*, vol. IV, pp. 252 et seq., and concludes as follows: "Pour être logique jusqu'au bout, c'est donc, d'après M. Henry Couannier, cette portée (celle de la vue d'un avion) qu'il faudrait admettre comme mesure de la zone territoriale; et ainsi la longueur de cette zone devrait être d'environ 15 milles, au lieu de 6."

² It should be mentioned here that the necessity of extending the zone of the territorial sea in case of war has also been recognised (1894 draft of the Institut de Droit international).

Although, according to a statement by the Committee, we are not called upon for the moment to consider the codification of the public international law of war, that aspect of the problem ought not to be forgotten.

(b) Consequently fishing is more sought after on narrow shelves because it is more fruitful there than elsewhere.

As long as fishing was more or less restricted and there was an abundant supply of the various species, it was a matter of virtual indifference to the fishermen of each country that foreign fishermen should share the abundance with them; the sea sufficed for all. But now that circumstances have changed, it is felt to be necessary to make corresponding changes in the existing situation and to extend the zone of the territorial waters in order that the exclusive enjoyment of fishing rights may not become merely theoretical in the case of certain States.

The question must also be considered in another aspect, which is extremely important if one of the desiderata of the Committee, namely, the protection of maritime wealth, is to be realised.

Apart from the question of exclusive fishing rights, it is the duty of all coastal States, both in their own interests, in order that they may obtain the greatest possible benefit from these exclusive rights, and in the general interest of world trade, to take the necessary steps for the protection of fish¹.

Admiral ALMEIDA D'EÇA, Portuguese delegate to the Seventh International Fishery Congress, which was to have been held at Santander in 1921 but did not take place, said:

"It is a well-known fact that the edible species of fish, whether sedentary or migratory, have their habitat in comparatively shallow water; the great depths are inhabited by abysmal species, which are not edible. It is in shallow water that the conditions necessary for the normal existence of the edible species—temperature, light, plankton and shelter—are all favourable.

"As, of course, the shallow water is to be found near the coasts, the edible species live or swim about there. The reason why species suitable for fishing are to be found on banks remote from the coasts is simply that, in spite of the distance, the depth of the water is not great. In other words, depth is a vital factor in the conditions affecting the edible species.

"Having established this connection between shallow water and the existence of edible species, we can see what has happened and was bound to happen. Sea-fishing is carried on either near the coasts or on banks. This has been the practice from time immemorial and is still the practice; and, as it was assumed that the various species were inexhaustible, fishing was carried on without respite, improvements being continually made in the apparatus employed for catching the greatest possible quantity of fish. The same activity was displayed in rivers; but in this case its destructive effects were recognised more quickly, and consequently, in our own country as elsewhere, restrictive measures are to be found in legislation from the Middle Ages onwards. As regards the sea, however, it is fair to say that until the nineteenth century there was no recognition whatever of the need for protecting species, that is to say, for issuing and enforcing regulations (as to seasons, apparatus, width of mesh, use of harmful substances, dynamite, etc.) to moderate the destructive intensity of fishing. This necessity became increasingly evident as the quest for fish grew more intensive, owing to improvements in apparatus, the growing demand of the markets, better land-transport facilities, and finally the entirely new industry of preserving in airtight receptacles, which, together with the earlier industries of salting and pickling, called for a greater quantity of fish every day. Thus arose the practice of taking all kinds of fish, whether full-grown or quite small, because all were consumed, either fresh or preserved, and the factories were continually calling for more. Ultimately—though it took time—it was realised that some limit should be set to this intensive fishing; and countries then began to lay down regulations for their fishermen, which, it must be admitted, the latter did not, and perhaps do not yet, view with favour. They regard them as vexatious restrictions on their activity, whereas they are really made in their own interests, since the whole object is to avoid exhausting such a profitable source of wealth.

"But—and this is the difficult point—regulations of this kind are almost useless if they are not widely enough applied. Every State can legislate for its own fishermen, and decide what they may or may not do, in its own territorial waters; it can even, up to a certain point, prevent irregular fishing by them outside its territorial waters, by inspecting the apparatus on the boats before they put out to sea and the catch when they bring it back to port. This control, however, can be exercised by the State only over its own nationals; over foreigners it has no power outside the so-called territorial waters. The outer limit of territorial waters, as now recognised, does not, however, coincide with the greatest depth at which edible species of fish are to be found. There is no barrier, no wall, separating territorial waters from the high seas, where fishing is free to all. For the edible species the barrier is the drop from the continental shelf; they are not to be found beyond this line; but if the geographical position of the drop does not coincide with the limit of the territorial waters, they are to be found beyond that limit, and are then exposed to all the methods which lead to their extermination and destruction. Whereupon the fishermen of each country quite reasonably say: 'What is the meaning of this? My Government will not let me fish in such-and-such a way within a certain limit or even beyond, while foreigners can fish as they like outside the limit. They take all the fish, and there is nothing left for us.'

"That is the principal and most important reason for considering it necessary to extend the outer limit of the territorial waters of each country *for the purposes of fishing*. By this method alone can each country really ensure the protection of species.

¹ In the Treaties of October 2nd, 1885, and March 27th, 1893, Spain and Portugal mutually agreed that fishing within a limit of six miles should be reserved exclusively to the nationals of each of the two countries and that the use of destructive appliances should be prohibited within a limit of twelve miles.

"It will be seen, therefore, that, in the delimitation of territorial waters from the point of view of fishing, two main factors—the fauna peculiar to each region and its depth—must be taken into consideration. It follows that regulations, if established on a scientific basis, cannot be uniform for all countries. Portugal, as regards the whole of her coast-line, and Spain, as regards part of hers, are the two European countries which need the greatest width of territorial waters, because they have the narrowest continental shelf, beyond which, as has been pointed out, edible species do not live. In northern Europe, Norway is in substantially the same position."¹

Moreover, the work of protecting species will be much more effective if it is done by each State in its own territorial waters than if it is done by some international organisation to which it might be entrusted by convention.

There would thus be this general advantage in increasing the extent of the territorial sea. I therefore propose that a single zone be established for the territorial sea. This solution is, in my opinion, consonant with the circumstances and tendencies of our time, and at the same time simpler and better calculated to avoid complications and disputes; it is free from objection (for it will profit all coastal States alike while in no way affecting the position of non-coastal States) and it offers definite advantages.

I would accordingly word Article 2 of the draft as follows :

"The zone of the coastal sea shall extend for twelve marine miles (60 to the degree of latitude) from low-water mark along the whole of the coast.

"Beyond this zone, riparian States of the sea possessing a navy or merchant marine may occupy such area of the high seas as is necessary for the establishment of permanent or other constructions, provided that these are intended for any of the following public purposes:

- "(1) As bases for non-military aircraft;*
- "(2) For wireless stations;*
- "(3) For submarine-cable stations;*
- "(4) For scientific research;*
- "(5) To provide assistance for shipwrecked mariners;*
- "(6) For searches for wrecks or treasures."*

Immediately following this Article 2, I would have two other articles:

"Article 2 (a). — It is expressly forbidden to fortify the constructions referred to in the preceding article, or to use them even indirectly as bases of supply for warships or war aircraft or for submarines.

"Article 2 (b). — These constructions must be approved in advance by the International Waters Office, and shall be under its immediate control. The Office shall order the immediate demolition of any works set up in contravention of the provisions of the preceding article.

"The State committing such infringement may further be sentenced to a fine to be determined by the Commission."

As a necessary consequence, I would amend Article 3 of the SCHÜCKING draft in accordance with the foregoing exposition.

This wording of Article 2 defines the inner and outer limits of territorial waters, and thus solves the third general problem to which we refer above.

We have still, however, to determine the lateral limits of territorial waters. This is not done in the SCHÜCKING draft, but the problem is touched upon in Section VII ("Common Land Frontiers") of the report.

In describing the two general solutions which could be given to this problem, the Rapporteur is anxious that the matter should not be dealt with in the proposed Convention, and that, as regards existing States, historical rights should be the deciding factor; in the case of a political change in the frontiers between coastal States, he thinks that it would be advisable to establish special rules in each case, the new frontier being determined with due regard for the special geographical circumstances. He thinks it preferable to let the States concerned conclude a special agreement and apply for the decision of an arbitral or other tribunal, rather than to establish an immutable principle.

As regards the second hypothesis, I share his view, though I feel that, if the lateral limits of the territorial sea were defined in the Convention (as I think they can and should be), the same rules could be applied in certain cases of changes of frontier between two coastal States.

What I do not see, however, is why these rules could not be embodied in the Convention. I think this ought to be done.

Accordingly, I would include in the draft a clause containing a general definition of the lateral limits of the territorial sea in the following terms.

"Article 2 (c). — The limit between the territorial waters of a State and those of another contiguous State is constituted by a line drawn perpendicular to the coast from the point at which the frontier between the two States meets that coast."

¹ *As águas territoriais e as pescas.* Memorandum to the Seventh International Fishery Congress, Santander, 1921, by VICENTE ALMEIDA D'ÉÇA, delegate of the Portuguese Government, p. 11.

I would also introduce another clause covering and regulating the special case in which the frontier between the coastal States is formed by a river.

It is recognised that the line which divides the inland course of a river between two States is not the median line between the two banks, but the line of the "thalweg", i.e., the line of the greatest depth. It is now known that the river does not actually come to an end at its mouth, but continues a little way into the sea, running over an *exterior bed*, which is almost always defined by banks on either side, and which also has its thalweg (*exterior thalweg*).

This line of the greatest depth is the course followed by vessels entering the estuary or leaving it for the sea; in many cases, indeed, it is marked for the use of shipping by buoys or beacons, the cost of which is borne by the two neighbouring States.

The bar is the common property of both States, and, consequently, vessels leaving the river ports of either of them, or entering from the high seas, are entitled to cross the bar, though, as we have pointed out, they have to follow the line of the *exterior thalweg*.

Clearly, therefore, in such a case it is the line of this *exterior thalweg*, and not a straight line drawn from the point where the bar is divided into two, which should form the lateral limit of the territorial waters of the two neighbouring States.

If this were not the case, the bar, though remaining in law under the common dominion of the two States, would cease to be so in fact, because its entrance would be situated in the territorial waters of one of them. This would be a very serious restriction, particularly in case of war, on the rights of the other State, and would conflict with the legal principle that when a right is recognised all action essential for the exercise of that right is in consequence also recognised.

The bar is common property; consequently the course followed by vessels entering and leaving should also be common property.

This is to the advantage of both States, for there is no doubt—indeed, it is a well-known fact—that the line of the *exterior thalweg* may, and sometimes does, shift in course of time, so that either of the two contiguous States might suffer if my solution were not adopted.

I would accordingly add to Article 2 (c) proposed by me above the following clause:

"When the frontier between two contiguous States is formed by a river which touches both of them and is common to both where it reaches the coast, the line of demarcation between the territorial waters of the two States is formed by the line of the exterior thalweg of the river as far as it can be traced, and thereafter by a line perpendicular to the coast as far as the outer limit of the territorial waters."

V. Bays.

As regards bays, I accept Article 4 of the draft, but I think that the latter part of the first paragraph should be amplified to cover cases in which, even in the absence of continuous and immemorial usage, recognition might be given to the absolute necessity for the State concerned to secure its defence and its neutrality and to maintain navigation and maritime police services.

This clause, which is in harmony with the theory which DRAGO, developing and further defining the ideas of Edmund RANDOLPH¹ expounded in his note on Arbitration in connection with the Newfoundland Question in 1910², and also with the views of other authors³, contains its own justification.

To regard as being part of the high seas narrow areas of sea within the limits of territorial waters, and running inland following the broken line of the coast, would involve great difficulties and risks both for the State itself and for the community of nations, owing to the disputes to which such a situation might give rise.

It may even be said that national feeling and the most legitimate interests of the State affected (e.g., Norway) would be deeply wounded.

This disposition is to be found in Article 7 of the draft submitted by Captain STORNY to the Buenos Aires Conference of the International Law Association in 1922, in the following terms:

"L'Etat pourra comprendre dans les limites de sa mer territoriale les estuaires, golfes, baies ou parties de la mer adjacente où un usage continu et séculaire aura consacré sa juridiction ou qui, dans le cas où ces précédents n'existeraient pas, seraient d'une nécessité inéluctable, selon le concept de l'article 2" (in order to secure defence and neutrality and to maintain navigation and maritime police services of all kinds).

In justification of this article, the distinguished author of the draft says:

"Nous considérons cet article comme étant de la plus grande importance; il affirme sous une forme plus concluante la partie finale de l'article 3 du Projet de Définition et Régime de la Mer territoriale, de l'Institut de Droit international. Il contient aussi, évidemment, en synthèse, la doctrine des 'baies historiques', selon la manière dont cet ancien principe fut formulé par le docteur Drago."

¹ In the *Grange* case (Delaware Bay), 1793.

² "Une certaine catégorie de baies, qui peuvent être appelées les baies historiques, forment une classe distincte et à part et sans aucun doute appartiennent au pays riverain, quelles que soient la profondeur de pénétration et la largeur de leur ouverture, quand ce pays a affirmé sa souveraineté sur elles et que des circonstances particulières, telles que la configuration géographique, l'usage immémorial et par-dessus tout les nécessités de la défense justifient une telle prétention." — *Revue de Droit international public*, vol. XIX, p. 482.

³ Emer DE VATEL, M. DE MARTENS, etc.

"La clause finale de l'article s'explique parfaitement pour les nations nouvelles (américaines, par exemple), dont beaucoup parmi elles possèdent des côtes étendues, encore peu peuplées, et chez lesquelles on ne peut présenter les antécédents d'un domaine séculaire comme chez les nations qui comptent mille années d'existence ou davantage."

I therefore propose to add at the end of paragraph 1 of Article 4:

"... or if recognition is given to the absolute necessity for the State affected to secure its defence and its neutrality and to maintain navigation and maritime police services."

VI. Islands.

I agree with Article 5 of the draft, but I would observe that it does not cover the case of archipelagoes of which all the component islands are separated from the mainland by more than twice the width of the territorial sea—unless it was the Rapporteur's idea to apply the same provision to them, which would mean that each of the islands in an archipelago would have its own territorial sea.

If this is meant, it should be made clear in the draft in order to remove all doubt; for it is well known that at least one other solution has been proposed, namely, to regard the islands forming an archipelago as a single unit, and to reckon the limit of the territorial sea from the islands farthest from the centre of the archipelago (ALVAREZ draft, submitted at the Stockholm Conference of the International Law Association in 1924, and draft submitted by the American Institute of International Law to the Governing Council of the Pan-American Union, March 2nd, 1925).

In my opinion, however, this latter solution is preferable, for it takes more account than the former of the necessity for securing the defence and neutrality of the State concerned and maintaining navigation and maritime police services, and at the same time it seems to me more in conformity with international usages.

It seems obvious that the existence of narrow strips of non-territorial water between islands in one and the same archipelago may give rise to serious difficulties, which it would be preferable to avoid.

I therefore propose that the following clause be added to Article 5:

"In the case of archipelagoes the component islands are considered as forming a whole, and the width of the territorial sea shall be measured from the islands most distant from the centre of the archipelago."

VII. Regulations.

To conclude these observations—which for lack of time I can neither develop as I should have wished and as the complexity and importance of the subjects demand, nor extend to other points in the report and draft—I propose to consider Article 10.

Is the list of purposes for which a coastal State can exercise its right of legislation and administration given simply *exempli gratia*, or is it intended to be limitative?

The second paragraph of the article: "The riparian State shall have the right to extend its legislative and administrative action to other domains when interests deserving of its protection in territorial waters are affected"—appears to show that the list merely consists of examples. but that the action of the coastal State for other purposes not included in the list is contingent upon their being deserving of its protection.

But who is to be judge of that? The International Waters Office? No, for no such powers are conferred upon it by Article 3 or Article 10 or any other article. The other States? But if so, how and by what procedure? That would involve a prolongation of the system of arbitrary judgment and of the uncertainties, disputes and conflicts the removal of which is the whole object of the draft. The State itself? But in that case it seems to me neither necessary nor expedient to lay down a restriction which is not really a restriction at all, and which, if it were, would conflict with the coastal State's right of dominion over the territorial sea, as recognised in Article 1.

I therefore propose that Article 10 be drafted in general terms, perhaps as follows:

"Within its territorial waters the riparian State shall have the power of legislation and administration in every field of social activity, subject to the restrictions embodied in the present Convention, and may employ the necessary means of constraint to enforce," etc. (the rest as in the proposed article).

In conclusion, I must express my high appreciation of the report of our colleague Professor SCHÜCKING, which has once more illustrated his immense learning, profound intellect and high judicial spirit.

While the excellence of the report resides in the methodical manner in which it is composed and in the vast quantity of material which it furnishes for the study and discussion of such a difficult and delicate question as that of territorial waters, the accompanying draft is remarkable from the technical juridical point of view.

Lisbon, January 10th 1926.

(Signed) BARBOSA DE MAGALHAES.

III. OBSERVATIONS BY Mr. WICKERSHAM.

The report of M. Schücking, the distinguished Rapporteur, upon Question (b) submitted by the main Committee to the Sub-Committee composed of M. Schücking, M. de Magalhaes and Mr. Wickersham, reached the last-named only a few days before he left New York and he, therefore, was unable to prepare his observations on the same before coming to Geneva. On his arrival he completed his study of the report, and a conference with the distinguished Rapporteur concerning it led the latter to accept a number of modifications suggested by Mr. Wickersham — modifications which are indicated in the revised recommendations attached to the report¹. Later, the observations and suggestions of M. de Magalhaes were received and discussed, and with respect to them the undersigned desires to record certain observations.

I.

M. de Magalhaes' observations on the nature of the jurisdiction of the littoral State over the territorial sea had already been considered by the Rapporteur and Mr. Wickersham and the former had accepted the formula adopted by the Institut de Droit international instead of that contained in his original report.

II.

Concerning the extent of the territorial sea, M. de Magalhaes objected to the limit of three miles embodied in M. Schücking's revised suggestions and he further objected to M. Schücking's recommendation of two zones. He desires the adoption of a single zone of sufficient width to permit the exercise of all the rights in the adjacent waters enjoyed by a littoral State. The undersigned objects to these suggestions for the following reasons:

1. The so-called territorial waters are as much a part of the realm of the littoral State as is its land—subject only to certain rights and usages on the part of vessels of other States which have become a part of the law of nations. Such, for example, is the right of innocent passage of such vessels through these waters, without subjecting themselves to the jurisdiction and laws of the littoral State save for exceptional purposes. Within this belt of water the sovereignty of the littoral State may be fully exercised and any restriction upon it or exception to it must be clearly established by a State claiming the same.

2. But a littoral State frequently may, and in practice often does, for certain particular purposes, exercise a certain jurisdiction beyond the limit of its territorial waters. The right to this jurisdiction depends upon: (a) *recognised usage* or (b) *international convention*.

(a) *By long-continued usage, acquiesced in by other nations.*

Examples of this are furnished through the exercise by the United States of America of the right of visitation of foreign vessels coming to one of her ports, for the enforcement of her revenue, sanitary or pilotage laws, within a distance of four marine leagues from her coast. The right to exercise this power was first asserted by Act of Congress of March 7th, 1799, authorising revenue officers to board incoming vessels "within four leagues of the coast" and examine ships' papers, etc., and punish the master and the ship for unloading or transshipping cargo within that distance. This provision has been embodied in statutes subsequently enacted (U.S. Rev. Stats., Sections 2760-5, 2814-5, 2867-8, 3067).

The exercise of this right and acquiescence in it by other nations, as OPPENHEIM says, establishes a rule of international law (see I. MOORE's Digest, 731; I. OPPENHEIM 340).

Great Britain also by similar Acts (since repealed) authorised similar visitation within four leagues of the coast (*cf.* George II, c. 35) and at a later date, within a distance of eight leagues of her coast (16 and 17 Vict., c. 107; 39 and 40 Vict., c. 363).

These rights depend upon the broad principle of national defence—a principle which led Great Britain to declare, in the British Territorial Waters Jurisdiction Act (41 and 42 Vict., 579 of 1878), that "the rightful jurisdiction of Her Majesty extends to such distance as is necessary for the defence and security of such dominions". This broad declaration is, so far as the undersigned has been able to discover, supported by no modern authority and is no longer maintained by the Government of Great Britain.

The right to pursue a vessel which has committed an offence in territorial waters against the laws of the littoral State, provided the pursuit begins in such waters and continues until it is interrupted by capture, or by the pursued vessel entering its own territorial waters or those of a third State—a right well recognised in the law of nations—is another example of the

¹ See p. 71.

exercise of certain rights in the high seas beyond the territorial sea. This is known as the doctrine of "hot pursuit".

(b) *By international convention.*

In many instances such rights arise out of treaties between two or more States. Such are the rights of pursuit and visitation of vessels suspected of violating or endeavouring to violate the laws of the United States against the importation of intoxicating liquors, embodied in the ten or more treaties recently entered into between the United States and other States to be hereinafter referred to.

The right of visitation, etc., conferred by these treaties it is agreed may be exercised outside the limits of the territorial waters and within a distance from the coast of the United States which may be traversed in one hour by the vessel suspected of the offence. With the high speed of modern vessels, this distance might well be thirty or forty miles.

The foregoing observations are directed to show the impracticability of endeavouring to embrace in a single zone of the waters adjacent to the shores of a State all the rights over vessels in such waters which, by the right of sovereignty, custom or convention, that State may exercise.

III.

As to the width of the territorial sea, so-called, M. Schücking's report demonstrates the lack of agreement among States, some claiming one distance, some another.

But, after a long history of doubt, uncertainty and conflicting contentions on the subject, certain treaties recently have been entered into which, so far as the leading maritime Powers of the world are concerned, adopt finally as a rule a width of three miles.

Such are the liquor treaties between the United States and:

Great Britain, dated January 23rd, 1924;
Germany, dated May 19th, 1924; and
The Netherlands, dated August 1st, 1924;

in each of which is contained the following clause:

"The High Contracting Parties declare that it is their firm intention to uphold the principle that three marine miles, extending from the coastline outwards, and measured from low-water mark, constitute the proper limits of territorial waters."

Similar treaties made between the United States and:

Italy, dated June 3rd, 1924;
Norway, dated May 24th, 1924;
Sweden, dated May 22nd, 1924;
Denmark, dated May 29th, 1924;

contain the following provision:

"The High Contracting Parties respectively retain their rights and claims, without prejudice by reason of this agreement, with respect to the extent of their territorial jurisdiction."

But all of these treaties agree to the exercise by the United States of the same right to pursue, visit, etc., vessels of the nationality of the other Contracting Party outside the limits of the territorial waters and within such distance from the coast of the United States as may be traversed in one hour by the vessel suspected of endeavouring to commit the offence.

In view of the so-recent declaration by the United States, Great Britain, Germany and the Netherlands of their "firm intention" to adhere to three miles from the coast as the limit of the territorial sea, the undersigned feels that it is highly inexpedient to suggest to the various States the adoption of a six-mile limit, as suggested by M. de Magalhaes, and in this M. Schücking has agreed and has modified his report accordingly.

IV.

But the treaties recently entered into by various nations with the United States, as above stated, all agree to the exercise by that country of the right of visitation, capture, pursuit, etc., "outside the limit of territorial waters", to an extent measured, not by miles, but by the speed of the foreign vessel.

Under the so-called "Hovering Acts" of the United States, above referred to, the right of visitation, seizure, etc., is exercised within a distance of *four* marine leagues from the coast.

It has been held that, under the laws of Italy, salvage services rendered by a French to a German ship within five miles of the Italian coast are governed by the law of Italy¹.

As to pilotage and towage: the Acts of Congress of the United States authorise officers of the Department of Commerce to board any vessel *within four leagues* of the coast of the United States to enforce its navigation laws. An Act of Great Britain (5 Geo. IV, C. 73) required foreign inbound vessels for Liverpool to take pilot at Pt. Lynes—much more than three miles from the coast².

Respecting fisheries: there are still-more-varied claims and exercises of right.

The Argentine in 1907 claimed rights up to ten and a-half miles from her coast³.

In point of fact, no fewer than *four* of the maritime States of Europe reject the three-mile limit for fishing protection, while a *fifth* has deviated in part from it⁴.

The inadequacy of the territorial waters jurisdiction for the protection of fisheries is shown by FULTON in Chapter V. Many treaties have been made to remedy this. Obviously the matter can only be adequately dealt with by special agreement. No delimitation of the territorial waters to a limit of three, six or even twelve miles would meet all of these requirements.

OPPENHEIM says:

"Not to be confounded with the territorial maritime belt is the zone of the open sea over which a littoral State extends the operation of its revenue and sanitary laws. The fact is that Great Britain and the United States, as well as other States, possess revenue and sanitary laws which impose certain duties not only on their own but also on such foreign vessels bound for one of their ports as are approaching, but not yet within, their territorial maritime belt. Twiss and Phillimore agree in stating that in strict law these municipal laws have no basis, since every State is by the law of nations prevented from extending its jurisdiction over the open sea, and that it is only the comity of nations which admits tacitly the operation of such municipal laws as long as foreign States do not object, and provided that no measure is taken within the maritime belt of another nation. . . . But I believe that, since municipal laws of the above kind have been in existence for more than a hundred years, and have not been opposed by other States, a *customary rule of the law of nations may be said to exist* which allows littoral States in the interest of their revenue and sanitary laws to impose certain duties on such foreign vessels bound for their ports as are approaching, although not yet within, their territorial maritime belt."⁵

In the course of his argument before the Behring Sea Arbitral Tribunal in 1893, Sir Charles RUSSELL, afterwards Lord Chief Justice of England, said:

"Take the case of the revenue laws—the Hovering Acts—upon what principle do those Acts rest? Upon the principle that no civilised State will encourage offences against the laws of another State the justice of which laws it recognises. It willingly allows a foreign State to take reasonable measures of prevention within a moderate distance even outside territorial waters; but all these offences, and all offences of the same class and character relating to revenue and to trade, are measures directed against a breach of the law contemplated to be consummated within the territory, to the prevention of an offence against the municipal law within the area to which the municipal law properly extends."

J. LUSHINGTON said, in the case of the *Annapolis*⁶:

"In revenue, quarantine and pilotage matters, the necessity of the case seems to require a more extended jurisdiction than the three-mile limit."

The exercise by States beyond the limit of their territorial waters of rights of the character above described can only be sustained by proof of recognised custom or of international convention; whereas within the territorial waters the plenary jurisdiction of the littoral State is presumed and any limitation of that right by custom or treaty must be established. For these reasons, the undersigned is opposed to the adoption of a single zone of territorial waters, extended beyond the three-mile limit, as recommended by M. de Magalhaes.

V.

The distinguished Rapporteur, M. Schücking, while concurring in these views, has included a provision in his proposed Article 2 to which the undersigned cannot agree. This article states

¹ *The Extent of the Marginal Sea*, Henry G. CROCKER, p. 598.

² LUSHINGTON, p. 295.

³ *The Sovereignty of the Sea*, Thomas W. FULTON, p. 661.

⁴ *Ibid.*, p. 664.

⁵ OPPENHEIM, *International Law*, Vol. I, p. 340.

⁶ LUSHINGTON, 295. See also KENT, *Commentaries on International Law* (Aldy edition), 1878, pp. 103-104.

that outside the territorial waters States may exercise "administrative rights" depending on usage or international convention, and that included in these are such rights as are necessary to their protection.

This clause goes far beyond anything which is commonly agreed to by States. In the first place, rights of the kind above described, which by long-established usage or convention a State may exercise beyond the limit of its territorial waters, can hardly be included in the description "administration". Secondly, while it may be true, as before remarked, that these rights are founded upon the broad principle of the defence of national interests, it cannot be conceded that a State, independently of long-established and accepted custom or treaty, has the right to exercise any power it may see fit beyond its territorial sea upon the ground that it is necessary to its protection.

VI.

Concerning the lateral limits of the territorial waters, it should be observed that, where the boundary lines of the States run over the land, these lines are described in treaties or other documents. If these lines by the treaty description terminate at the shore-line, they naturally would be prolonged across the width of the territorial sea.

Where the boundary line between States is a stream which empties into the sea, generally such a stream opens out into a bay before it reaches the sea, and the rule of division applicable to bays there applies. If it does not, the boundary line between the States is drawn down the middle of the navigable channel (LAWRENCE, p. 140; CROCKER, p. 279). Sometimes the river mouth becomes a strait. If the strait be more than six miles in width and the land on either side is owned by a different State, the general rule is that the boundary line runs through the middle of the stream. If, on the other hand, the stream be less than six miles in width, the principle of *thalweg* would ordinarily apply, although the rule is not uniform (see HALL, pp. 195-6; LAWRENCE, 140; CROCKER, 281). If the shores of a strait on both sides are owned by one nation but the strait connects waters the opposite banks of which are owned by different Powers, the strait constitutes a maritime highway which may not be closed by the proprietor State (RAYNEVAL, *Institutions du Droit de la Nature*, I, p. 298), e.g., the Baltic, the Dardanelles. As to the *embouchures* of a river, their banks seldom run parallel to the end, cutting a right angle to the coast. Usually a river spreads at its mouth into a bay or delta in which sometimes there is one, sometimes several, navigable channels into the sea. As to bays, the rule is well settled that the width of the territorial sea is measured seaward from a straight line drawn across the bay in the part nearest the entrance at the first point where the width does not exceed twelve marine miles (Convention of October 20th, 1818, between Great Britain and the United States: FULTON, pp. 628-9, Rules, Institute Int. Law., Article 3).

There appears to be an absence of authority for the principle of *thalweg extérieur* invoked by M. de Magalhaes.

VII.

As to bays: the case of the *Grange* involved the assertion of the jurisdiction of the United States over the Delaware Bay in a question of violation of neutrality. This was largely based upon historical grounds—besides the fact that the United States owned both sides of the bay and the adjacent coast (CROCKER, p. 632-6). The same considerations were asserted respecting Chesapeake Bay in the case of the *Alleghanean* (MOORE'S Digest, Sub-Arts.V. 4, p. 4332; CROCKER, p. 667). In that case the court used the following language:

"The configuration of Chesapeake Bay, the fact that its headlands are well marked and but twelve miles apart, that it and its tributaries are wholly within our own territory, that the boundary lines of adjacent States wholly encompass it; that from the earliest history of the country it has been claimed to be territorial waters, and that the claim has never been questioned; that it cannot become the pathway from one nation to another..."

Therefore the United States had plenary sovereignty over the bay.

In my opinion, the clause which M. de Magalhaes suggests, added to the first paragraph of M. Schücking's Article 4, would make general a rule which finds support only in special cases and would meet with great opposition.

Subject to the foregoing observations, the undersigned concurs in the revised recommendations suggested by M. Schücking without the modifications recommended by M. de Magalhaes.

Geneva, January 28th, 1926.

(Signed) George W. WICKERSHAM.

IV. DRAFT CONVENTION AMENDED BY M. SCHÜCKING IN CONSEQUENCE OF
THE DISCUSSION IN THE COMMITTEE OF EXPERTS.

[Translation.]

ARTICLE 1.

The character and extent of the rights of the riparian State.

The State possesses sovereign rights over the zone which washes its coast, in so far as, under general international law, the rights of common user of the international community or the special rights of any State do not interfere with such sovereign rights.

Such sovereign rights shall include rights over the air above the said sea and the soil and sub-soil beneath it.

ARTICLE 2.

Extent of the rights of the riparian State.

The zone of the coastal sea shall extend for three marine miles (60 to the degree of latitude) from low-water mark along the whole of the coast. Beyond the zone of sovereignty, States may exercise administrative rights on the ground either of custom or of vital necessity. There are included the rights of jurisdiction necessary for their protection. Outside the zone of sovereignty no right of exclusive economic enjoyment may be exercised.

Exclusive rights to fisheries continue to be governed by existing practice and conventions.

ARTICLE 3.

International Waters Office.

(Suppressed.)

ARTICLE 4.

Bays.

In the case of bays which are bordered by the territory of a single State, the territorial sea shall follow the sinuosities of the coast, except that it shall be measured from a straight line drawn across the bay at the part nearest to the opening towards the sea where the distance between the two shores of the bay is ten marine miles, unless a greater distance has been established by continuous and immemorial usage. The waters of such bays are to be assimilated to internal waters.

In the case of bays which are bordered by the territory of two or more States, the territorial sea shall follow the sinuosities of the coast.

ARTICLE 5.

Islands.

If there are natural islands, not continuously submerged, situated off a coast, the inner zone of the sea shall be measured from these islands, except in the event of their being so far distant from the mainland that they would not come within the zone of the territorial sea if such zone were measured from the mainland. In such case, the island shall have a special territorial sea for itself.

In the case of archipelagos, the constituent islands are considered as forming a whole and the width of the territorial sea shall be measured from the islands most distant from the centre of the archipelago.

ARTICLE 6.

Straits.

The regime of straits at present subject to special conventions is reserved. In straits of which both shores belong to the same State, the sea shall be territorial, even if the distance between the shores exceeds ten miles, provided that that distance is not exceeded at either entrance to the strait.

Straits not exceeding ten miles in width whose shores belong to different States shall form part of the territorial sea as far as the middle line.

ARTICLE 7.

Pacific passage.

All vessels without distinction shall have the right of pacific passage through the territorial sea. In the case of submarine vessels, this right shall be subject to the condition of passage on the surface. The right of passage includes the right of sojourn in so far as the latter may be necessary for navigation. For the sojourn of warships, see Article 12.

The right of free passage includes the right of passage for persons and goods independently of the right of access to the foreign mainland.

ARTICLE 8.

Coasting trade.

(Suppressed.)

ARTICLE 9.

Jurisdiction.

Vessels of foreign nationalities passing through territorial waters shall not thereby become subject to the civil jurisdiction of the riparian State.

Further, crimes and offences committed on board a foreign vessel passing through territorial waters by persons on board such vessels against persons or things also on board shall, as such, be exempt from the jurisdiction of the riparian State.

Offences, the consequences of which are not confined to the vessel or the persons belonging to it, are subject to the criminal jurisdiction of the riparian State in so far as they constitute offences against its established law and its tribunals have competence to deal with them. As offences the consequences of which are not confined to the vessel or the persons belonging to it, shall be considered all offences which disturb the peace or public order in the territorial sea.

ARTICLE 10.

Regulations.

Within its territorial waters, the riparian State shall have full powers of legislation and administration in all domains of public activity, subject to the restrictions imposed by the present Convention, and may employ all measures of constraint necessary to ensure respect for its jurisdiction so as to permit it to deal with offences.

The riparian State shall have the right to continue on the high seas the pursuit of a vessel commenced within its territorial waters and to arrest and bring before its Courts a vessel which has committed an offence within its territorial waters. If, however, the vessel is captured on the high seas, the State whose flag it flies shall be notified immediately. The pursuit shall be interrupted as soon as the vessel enters the territorial waters of its own country or of a third Power. The right of pursuit is extinguished as soon as the vessel has entered a port of its own country or of a third Power.

Within the territorial waters no dues of any kind may be levied, except dues intended solely to defray expenses of supervision and administration. Such dues or charges shall be levied under conditions of equality. Ships which have only entered territorial waters under pressure of *force majeure*, or because they are in distress, shall be exempt from such dues and charges.

ARTICLE 11.

Riches of the sea, the bottom and the subsoil.

In virtue of its sovereign rights over the territorial sea, the riparian State shall exercise for itself and for its nationals the sole right of taking possession of the riches of the sea, the bottom and the subsoil.

As regards fishery rights, reference is made to Article 2, paragraph 2.

ARTICLE 12.

Warships.

The exercise by warships of the right of free passage may be subjected by the riparian State to special regulations. Foreign warships when admitted to territorial waters must observe the local laws and regulations, particularly those relating to navigation, anchoring and health control. If a serious and continued offence is committed, the commander of the vessel shall receive a semi-official warning in courteous terms and, if this is without effect, he may be requested, and, if necessary, compelled, to put to sea. The same dispositions shall apply if the local authorities consider that the presence of the vessel threatens the safety of the State. Except in cases of extreme urgency, however, these stringent measures shall only be taken upon the instructions of the central Government of the country.

In the case of minor offences, the diplomatic channel shall be used.

ARTICLE 13.

Jurisdiction over foreign merchant vessels in maritime ports.

In maritime ports, foreign merchant vessels shall be subject without restriction to the civil and non-contentious jurisdiction of the riparian State.

The criminal jurisdiction of the riparian State shall be restricted to the punishment of offences committed on board which are not directed against a member of the crew or against passengers and their property. Its criminal jurisdiction shall further be restricted to cases in which the captain of the vessel has asked the port authorities for assistance and cases in which the peace or public order in the port has been disturbed.

ARTICLE 14.

Settlement of disputes.

(Suppressed.)

[Translation.]

NOTES ON THE AMENDED DRAFT CONVENTION.

As regards Articles 1 and 2.

The use of the phrase "the State shall have an *unlimited right* of dominion" in the original text is due to a mistake in translation. The text should read "the State possesses sovereign rights". The article deals with the character and extent of the rights of the riparian State. The choice has to be made between two methods. The first method takes as its basis the idea of a dominion of the riparian State over the territorial sea, such dominion having to be restricted by the existence in favour of other States of certain rights of common enjoyment. The other theory maintains that the sea is free and recognises to the riparian State only certain restricted rights within the domain of the so-called territorial sea. Careful examination of the problem shows that the solution given to this question of principle is not a matter of indifference from the practical point of view. If the riparian State is admitted to possess a right of dominion, one must admit that it has the legal right to extend its dominion in new directions. My colleague on the Sub-Committee, Mr. Wickersham, proposed the expression "the State possesses sovereign rights". M. de Magalhaes, on the other hand, preferred the following definition: "the State has a right of dominion". This difference appears to be rather one of form than one of substance.

Having regard to the present state of the law, fixed limits for the territorial sea can only be found if certain preliminary assumptions are accepted:

1. The necessity of excluding fishery rights. After discussion with Mr. Wickersham, I convinced myself that exclusive rights of fishing as governed by existing practice and conventions ought to be reserved for subsequent special treatment. The notes contained in M. de Magalhaes' observations confirmed me in this view. My colleague has shown the close connection which exists between the geographical condition of the littoral waters and the extension of the fisheries. It is for this reason that a general uniform regulation of all fishery rights could not be applied to territorial waters. Clearly also it would be necessary to preserve all those rights which are essential for the conservation of fishery rights, for example the right to police fisheries. Undoubtedly such a solution is open to criticism, since one simultaneously lays down fixed boundaries and maintains rights outside such boundaries, but the difficulties which arise appear incapable of any other solution.

2. States are in the habit of asserting special rights outside any fixed boundaries to meet various needs which arise unexpectedly. One could, therefore, hardly hope that they would be satisfied with boundaries laid down once and for all. It would even be impossible to secure recognition for such boundaries by taking as the basis for the general sphere of dominion the furthest limit up to which to-day any State exercises some particular right. Hence follows the necessity of allowing two zones, one fixed and the other constituting a zone within which would be recognised only such rights of the riparian State as have hitherto been exercised therein for purely administrative ends. The second boundary proposed in the report would not be laid down once and for all on the side of the high sea; on the contrary it should be elastic so as to take account of possible essential requirements of States. Furthermore, to escape the danger of a tendency of States to establish for themselves a second zone analogous in legal character to the first zone, riparian States ought in such second zone to be limited to the exercise of definite rights, namely, rights of an administrative character. As Mr. Wickersham pointed out to me, however, such administrative rights ought only to be named in the Convention by way of examples, and there should be a general clause in the Convention giving the fullest possibility for the recognition of administrative rights. By permitting no more than the exercise of administrative rights within the second zone, one would exclude rights of economic enjoyment, excepting always fishery rights which are in no way dealt with in the draft. I thought that I was offering a guarantee against arbitrary claims to exercise rights in the second zone by proposing the establishment of an International Waters Office. The members of the Sub-Committee, however, regarded this proposal as a mere suggestion and elaborate discussion of it will not be required.

If the principles indicated above are accepted, namely, the establishment of two zones and the exclusion of fishery rights, we may return to the question of the boundaries to be fixed for the first zone. Even then this question presents some difficulty. Since the treaties recently concluded between the large States, particularly the United States and Great Britain, contain an express acceptance of the limit of three marine miles, I feel obliged to abandon my first proposal of a limit of six miles and return to the three-mile limit. If, notwithstanding the creation of a second zone and the exclusion of fishery rights, those States which hitherto have exercised rights outside the three-mile limit, do not accept that limit, it will still be possible to conclude a Convention on the basis of the three-mile limit, States possessing historical rights over a more extensive zone being permitted to make a reservation on the subject.

As regards Article 3.

After discussion with various members of the Committee, I convinced myself that the moment had not yet come to propose the establishment of an International Waters Office. My colleagues on the Sub-Committee felt, however, that this proposal might be taken into account as a simple suggestion.

As regards Article 4. — Bays.

My original draft contemplated a distance of twelve marine miles between the two sides of a bay, the width of the territorial sea being fixed at six miles. If a width of three miles is taken for the latter, a distance of ten miles may be accepted as regards bays and is justified by the history of the question (for details, see my report, page 39 of the present document). The third paragraph of the original text of the article must be struck out, being closely connected with the establishment of the International Waters Office. For the same reason it is no longer possible to take account of M. de Magalhaes' observations in favour of recognising in the future to the State concerned a right to assure its defence and neutrality, its navigation services and its marine police. In my colleagues' view, the question would be one of admitting new bays which would be assimilated to internal bays. I should have no objection if the International Waters Office were to be created, but without such an office the right asked for by M. de Magalhaes would be, to some extent, dangerous.

As regards Article 9.

The restrictions on jurisdiction here proposed could be the more easily included in a general convention if effect were given to a suggestion made by Mr. Wickersham in the Sub-Committee by which the following provision would be added to paragraph 3:

"As offences the consequences of which are not confined to the vessel or the persons belonging to it, shall be considered all offences which disturb the peace or public order in the territorial sea."

(Signed) SCHÜCKING.

QUESTIONNAIRE No. 3.

DIPLOMATIC PRIVILEGES AND IMMUNITIES.

The Committee is acting under the following terms of reference¹:

- (1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment;
- (2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received; and
- (3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Committee has decided to include the question of diplomatic privileges and immunities in its list.

The Committee reached this decision on the basis of a report submitted to it by a Sub-Committee consisting of M. DIENA and M. MASTNY. It is, of course, understood that the Committee has not at the present stage felt itself called upon to pronounce either for or against all the various concrete proposals made in this report.

The particular questions falling within the general subject of diplomatic privileges and immunities which the Committee considers might advantageously be dealt with in a general convention are set out below.

The Committee has the honour to request the various Governments to inform it whether they agree with the Committee that these questions, or some of them, could advantageously be considered at the present moment with the view to the conclusion of a general convention, which, if necessary, could be completed by particular agreements between groups or pairs of States. According to its terms of reference, the Committee will report on the various points to the Council of the League after it has been able to consider the replies of the Governments.

It is expressly understood that the basis to be adopted in examining and answering the various questions raised herein should be the material considerations which make the existence of diplo-

¹ See Assembly resolution of September 22nd, 1924.

matic privileges and immunities useful and desirable. The Committee does not consider that the conception of *ex-territoriality*, whether regarded as a fiction or given a literal interpretation, furnishes a satisfactory basis for practical conclusions. In its opinion, the one solid basis for dealing with the subject is the necessity of permitting free and unhampered exercise of the diplomatic function and of maintaining the dignity of the diplomatic representative and the State which he represents and the respect properly due to secular traditions.

A. PRIVILEGES AND IMMUNITIES OF DIPLOMATS IN THE TRADITIONAL SENSE OF THE TERM AND OF PERSONS BELONGING TO A LEGATION.

I. *Extent of these Privileges and Immunities considered under the following Heads.*

1. Inviolability attaching to:

- (a) The persons themselves;
- (b) The official premises of the legation, including the archives;
- (c) The private residence of the persons in question;
- (d) Correspondence;
- (e) Goods serving for the personal use of the diplomat.

2. Immunity from civil, administrative or fiscal jurisdiction, with all the limitations and exceptions consistent with the object of the immunity.

3. Immunity from criminal jurisdiction.

4. Fiscal immunities (including Customs).

Note 1. — The above are merely heads for discussion. It is not suggested that every question falling under them should necessarily be regulated by a general convention. This reservation applies in particular to the question of fiscal immunities, in regard to which it may be desirable to leave details to be the subject of bilateral agreements but may at the same time be possible, as well as desirable, to lay down some general principles by way of a plurilateral or universal convention.

Note 2. — Under the head of inviolability should be discussed the question of the existence and, in the affirmative, of the extent of the right to afford asylum to persons threatened with criminal proceedings.

Note 3. — In connection with immunity, it would seem desirable to consider whether and to what extent immunity involves exemption from the operation of social legislation and, in particular, legislation concerning social insurance.

Note 4. — In connection with immunity from jurisdiction, it would be desirable to consider what should be the position of the privileged person as regards giving evidence before the courts.

II. *Persons entitled to Privileges and Immunities.*

It seems not to be disputed that among such persons must be included the chiefs of embassies and legations and the official staff employed exclusively in diplomatic work, and that the privileges and immunities extend to members of the families of such persons living with them. But there are other questions connected with this head which should be examined and settled:

1. First, the question arises whether, in order to avoid abuses or uncertainty, it should be a condition of possessing privileges that the persons in question should be included in a list delivered to the Foreign Office of the country concerned. In close connection with this point is the question whether and on what grounds (for example, on the ground of the palpably exaggerated number of officials included in the list) the Government would be entitled to refuse or to accept it the list with or without modification.

2. To what extent may official agents of a foreign State who are not employed in diplomatic work in the proper sense of the term acquire diplomatic privileges and immunities by being included among the personnel of the legation? Under this head falls the case of particular categories of attachés, such as certain commercial attachés, attachés for social questions and others.

3. What is the position of the servants of a diplomatic agent and of the servants of a legation, *i.e.*, its clerks, domestic staff and other employees?

4. In what cases and to what extent may diplomatic privileges and immunities be refused to a person, who would otherwise be granted them: (a) when he is a national of the country concerned; or (b) when, being already domiciled in the country, he occupies a special position intermediate between foreigners and nationals?

5. In regard to some of the above-mentioned categories, it will be necessary to examine the limits of the privileges (if any) which should be enjoyed.

III. *Duration of Diplomatic Privileges and Immunities as regards: (1) The Privileged Person;
(2) Premises and Archives.*

Note 1. — Under the above point (2), it is intended to raise the question of the treatment to be accorded to privileged premises and archives which have ceased to be occupied or to be in the charge of a diplomatic agent; as may, for example, happen in the case of the decease of a diplomatic agent or when a State ceases to recognise and to receive representatives from the Government of a State which has established a legation in its territory and the legation premises and archives are left without any person entitled to take charge and be responsible for them.

Note 2. — In the case of the decease of the diplomatic agent, a similar question may arise as to the members of his family and his servants.

IV. *Position of a Diplomatic Agent within and, more particularly, in Transit through, the Territory of a State to which he is not Accredited.*

B. **IN WHAT SENSE AND TO WHAT EXTENT ARE DIPLOMATIC PRIVILEGES AND IMMUNITIES ENJOYABLE BY PERSONS OTHER THAN THOSE DEALT WITH UNDER "A" ABOVE ?**

Under this head it would be proposed to discuss, taking so far as necessary the same subdivisions as under "A", the position of:

- (a) Representatives of the Members of the League and officials of the League when engaged on the business of the League;
- (b) The Judges and staff of the Permanent Court of International Justice;
- (c) Permanent representatives specially attached to the League of Nations by various States;
- (d) Members of international bureaux and commissions not invested by treaty with diplomatic privileges and immunities.

Note — In the opinion of the Committee, it is not certain that an absolute identity of privileges and immunities should be established between diplomats proper and the categories just mentioned. It seems possible that the difference of circumstances ought to lead to some difference in the measures to be adopted.

The Committee will be grateful to receive suggestions from Governments as to any topics omitted above which are thought to be suitable for consideration with a view to the conclusion of a general international agreement.

In order to be able to continue its work without delay, the Committee will be grateful to be put in possession of the replies of the Governments before October 15th, 1926.

The Sub-Committee's report is annexed.

Geneva, January 29th, 1926.

(Signed) HJ. L. HAMMARSKJÖLD,
Chairman of the Committee of Experts.

(Signed) VAN HAMEL,
Director of the Legal Section of the
Secretariat.

Annex to Questionnaire No. 3.

REPORT OF THE SUB-COMMITTEE.

M. DIENA, Rapporteur.

M. MASTNY.

What are the questions relating to diplomatic privileges and immunities which are suitable for treaty regulation and what provisions might be recommended on this subject?

I. REPORT BY M. DIENA.

[Translation.]

The Committee of Experts for the Progressive Codification of International Law, having decided that this question should be included in its preliminary investigations, adopted the following resolution at its meeting at Geneva on April 8th, 1925:

"The Committee instructs a Sub-Committee to ascertain what are the questions relating to diplomatic privileges and immunities which are suitable for treaty regulation and what provisions might be recommended on this subject."

Having had the honour to be appointed Rapporteur of the Sub-Committee for Question (c), I thought it my duty, after commencing my investigations, to get into touch with His Excellency Dr. Mastny, who is also a member of this Sub-Committee, in order to discuss with him the manner in which I ought to carry out my task.

Dr. Mastny was good enough to reply in a long letter containing numerous remarks and suggestions of the greatest value.

As the first result of this exchange of views, we agreed in recognising that the whole question of diplomatic privileges and immunities was suitable for treaty regulation. There are, in fact, certain fundamental principles concerning this question which are generally admitted and although, as regards certain particular points, there is often considerable divergence between the laws and the legal practice of the various countries, these differences can be overcome by an international agreement arrived at either collectively or as the result of a series of bilateral agreements. Furthermore, if by means of an international agreement it were possible to effect progress in the positive law on this subject, in accordance with the aims of the most distinguished and best qualified students, that would at any rate remove many doubts and divergences which *for the moment* make it impossible to regard the internal regulations observed in the different countries with regard to diplomatic prerogatives as forming an altogether uniform legal system.

As regards the method to be adopted in our work, we agreed in recognising that it was necessary: (1) To determine as exactly as possible the existing law, taking into account international customary law and, where necessary, conventional law, as well as the municipal law created by the legislature and the Courts in the various countries; (2) to ascertain which points or, rather, questions are disputed as regards either legal doctrine or practice; (3) to indicate the solutions of these questions favoured in one or other country, and which of these would be the most reasonable solution; and (4) to indicate possible and desirable alterations and reforms to be introduced into the existing rules—paying due and even critical attention throughout both to the draft prepared on this question by the Institute of International Law at Cambridge in 1895 and to the rules contained in the project for the codification of American international law laid down on March 2nd, 1925, by the American Institute of International Law.

The Committee's resolutions would justify the Sub-Committee entrusted with Question (c) in preparing a preliminary draft international convention to be submitted to Governments. However, we decided, after serious consideration, that it would be premature at present to formulate definite provisions; such provisions should be reserved for a later stage.

It is certainly preferable to begin by setting out principles both *de jure condito* and *de jure condendo*. Future discussion by the Committee will tell us whether it is possible to do more at the present juncture. Further, we shall receive indications from the nature of the reception which our proposals or suggestions meet with from Governments, particularly as to the possibility of an international agreement.

The first problem to be decided regarding existing positive law may be subdivided into two questions: (1) What are the existing diplomatic prerogatives? (2) To what persons do they apply?

It is expedient to postpone consideration of this last question until we deal with questions 2 and 3 above.

As regards the first point, it should first be mentioned that, according to ancient and familiar doctrine, diplomatic agents should enjoy ex-territorial rights. The Institute of International Law recognises this principle, for its draft contains a chapter several articles of which deal with this very question of the ex-territorial rights of diplomatic agents. The American draft decides the question in exactly the opposite sense, Article 23 mentioning ex-territoriality only to state most explicitly that "the private residence of the agent and that of the legation shall not enjoy the so-called privilege of ex-territoriality".

In my opinion, this latter solution is the one that should be adopted. At the same time it is not necessary to say so explicitly, since there is no need to make a statement concerning a thing that does not exist.

It is perfectly clear that ex-territoriality is a fiction which has no foundation either in law or in fact, and no effort of legal construction will ever succeed in proving that the person and the legation buildings of a diplomatic agent situated in the capital of a State X are on territory which is foreign from the point of view of the State in question. There are sound practical as well as theoretical reasons for abandoning the term "ex-territoriality", for the mere employment of this unfortunate expression is liable to lead to errors and to legal consequences which are absolutely inadmissible.

Thus, if an individual entered a legation building and committed a crime there, the theory of ex-territoriality would require the local authorities to regard this crime as an offence committed on foreign territory, which would be an obvious error.

Moreover, even the Institute of International Law, after affirming the validity of legal acts officially executed by a diplomatic agent with reference to his own nationals according to the law of the country which he represents and notwithstanding any provisions to the contrary in the *lex loci*, admits in Article 8 of its draft an exception to this principle, "(1) if the acts concern a person who does not belong to the country which the Minister represents; (2) if they are to be effective in the country where the mission is stationed, and are such that they could not be validly performed outside the country or in any other manner".

These exceptions are perfectly justified, but in themselves they would appear to be destructive of the principle to which they are supposed to be an exception¹.

I was glad to learn that Dr. Mastny is substantially in agreement with my views on this matter. Nevertheless, in deference to tradition, Dr. Mastny would like to preserve the term ex-territoriality, with a limited meaning, and to continue to speak of "diplomatic ex-territoriality", while recognising that the expression is not to be taken literally.

As we are not concerned in this report with legal doctrine only, I have no objection to keeping the old term if there is a strong desire to do so; but in this case it would be necessary to do what the English so often do in the drafting of their laws, whose practical character we all recognise and appreciate. It is well known that English laws frequently contain a definition which is not of a general character, but whose sole object is to explain the sense in which a certain expression is used in a particular law.

Next, in order to specify the prerogatives of diplomatic agents, it is of course necessary first of all to make mention of the *inviolability* which attaches more particularly to their person, their official and private residence and their correspondence and personal effects for the duration of their official mission in the country to which they are accredited.

As this is a generally recognised rule, there should be no difficulty in concluding an agreement with a view to confirming this principle by means of a treaty clause. Even in this case, however, some doubt may arise as to what exceptions may be allowed to this principle. The American project does not touch upon this point; the Institute of International Law in Article 6 of its draft enumerates the three following exceptions: "Inviolability may not be invoked: (1) in the case of lawful defence on the part of individuals against acts committed by persons who enjoy the privilege; (2) in case of risks run by the said persons, voluntarily or unnecessarily; (3) in case of reprehensible acts committed by them, compelling the State to which the Minister is accredited to take defensive or precautionary measures; but, except in cases of extreme necessity, this State must confine itself to making the facts known to the Government of the said Minister, to requesting the punishment or the recall of the guilty official, and, if necessary, to surrounding his house to prevent illegal communications or public expressions of opinion".

It should be noted that these provisions, particularly Nos. 1 and 2, are in accordance with existing international usage. There may, however, be some difference of opinion as to the application of No. 3, particularly as regards the measures which the territorial authorities may take in cases of extreme urgency.

There is some connection between the point dealt with in No. 3 of Article 6 of the Institute draft and the question of the alleged right of individuals pursued for offences against the local law to take refuge in the legation building. If a diplomatic agent gives shelter in the legation building to persons who are regarded by the local authorities as criminals, these authorities will obviously consider the act of the diplomatic agent to be *reprehensible*. They may accordingly

¹ Article 23 of the American draft, after excluding the so-called privilege of ex-territoriality, adds: "However, legal acts executed in the places mentioned by diplomatic agents in the exercise of their functions shall be subject, as to form, to the legislative provisions of the country which they represent". It may be observed that, if this provision was intended to furnish the draft with a conventional law text, it can be approved, at least in principle, and with certain reservations. But if the provision was intended to proclaim a legal rule arising out of principles of law which are also binding upon the local authorities, quite apart from existing conventions, such a statement would, in my opinion, be without any legal justification at all, particularly as regards the validity of acts of marriage.

take the defensive or precautionary measures referred to in No. 3 of Article 6 in the Institute's draft.

There is no need for us to pronounce upon the question whether, as is affirmed in Article 22 of the American draft, the diplomatic agent is obliged to surrender to the local authority any individual pursued by that authority for crime or misdemeanour, or whether he may continue to protect him and, if necessary, help him to escape. All that is not connected, at any rate directly, with diplomatic prerogatives.

As regards immunity from taxation, it must be admitted that these privileges are not suitable for any detailed regulation which could be adopted in the form of a collective treaty. These privileges, which are not strictly necessary for the exercise of diplomatic functions, and which are granted to members of foreign missions simply for reasons of international courtesy, vary greatly in the different countries. Accordingly, it is only possible for States to conclude detailed agreements in this matter by means of bilateral conventions based on reciprocity. At the same time, it is not necessary to exclude the possibility of a collective agreement, but this should constitute the minimum; *i.e.*, it might be possible to obtain agreement to the adoption of certain universally accepted rules. We might take as the basis of this agreement Articles 9 and 11 of the regulations of the Institute of International Law, the former of which says: "The Minister's residence is exempt from military quarterings and from the taxes which are substituted therefor"; while Article 11 stipulates: "A public Minister abroad, the functionaries officially connected with his mission and the members of their families living with them shall be exempt from paying: (1) direct personal taxes and sumptuary taxes; (2) general taxes on wealth, either on the principal or on the income; (3) war-taxes; (4) Customs duties on articles for their personal use. Each Government shall have the right to indicate what proofs are required in order to secure these exemptions from taxes".

We may also take into consideration Article 24¹ of the American draft, the wording of which, however, is not so satisfactory as that of the Institute regulation given above.

* * *

The most difficult point in the matter under consideration is that relating to immunity from jurisdiction. In criminal cases this immunity is now absolute, according to generally recognised custom, during the exercise of diplomatic functions (the question of the persons to whom this immunity applies is one which we shall discuss later).

It should therefore be quite easy to affirm this principle in a convention (except as regards the measures which the territorial Power may take in defence of its security), a point upon which some doubt may arise when it is necessary to determine the details and the limits of these measures. Article 13 of the Institute's draft adds: "With regard to crimes, the persons mentioned in the preceding article shall remain subject to their national criminal law, as if the crimes had been committed in their own country".

The idea underlying this article may be approved, but the wording is far from satisfactory. It would have been better to say that these persons remain subject to their national *jurisdiction*. In any case, the words "as if the crimes had been committed in their own country" should have been omitted. If the State to which they belong preferred to treat acts constituting an infringement of the national criminal laws committed by officials in the diplomatic service, during the exercise of their functions in a foreign country, as offences committed in a foreign country, such State would be free to do so and no rule of international law would impose upon it an obligation to do otherwise.

From this point of view the formula adopted by the American draft is very much better, at any rate as regards criminal cases. Article 25 is as follows: "Diplomatic agents shall be exempt from the civil or *criminal* jurisdiction of the nation to which they are accredited. They cannot be prosecuted in civil or *criminal* matters except in the Courts of their own countries".

We now come to immunity from jurisdiction in civil and commercial matters.

It is first of all necessary to mention that, *in principle*, international usage recognises this immunity of diplomatic agents without distinguishing between acts performed by them in the exercise of their functions and those which they perform in a private capacity.

Nevertheless, Italian jurisprudence contains two judgments by the Rome Supreme Court of Cassation—one dated April 20th, 1915 (*Rivista di diritto internazionale*, 1915, page 217; *Foro italiano*, 1915, I, 1330); the other dated December 9th, 1921, and published on January 31st, 1922 (*Rivista di diritto internazionale*, 1924, page 173; *Foro italiano*, 1922, I, 334)—pronounced when this Supreme Court was not yet the only final Court of Cassation in the Kingdom—which affirmed the principle that the immunity of diplomatic agents from jurisdiction in civil questions only extends to acts performed in the exercise of their official functions, and accordingly does not apply to obligations contracted by them in their private capacity. These judgments of the Courts have been strongly criticised, however, even in Italy, from the point of view of international law as it exists to-day, and it cannot be said that in Italy the law is definitely settled in this sense.

Be that as it may, it is universally admitted that exceptions should be made to the principle of immunity from jurisdiction in civil and commercial matters. Nevertheless, when it comes to specifying these exceptions, we find considerable difference of opinion both in the doctrine and in the rulings of the Courts of the different countries.

¹ This article includes exemption from land taxes on the legation building among exemptions affecting the person of the diplomatic agent.

We have therefore now to deal with controversial questions, with the solutions most frequently found for them in practice, and also with those solutions which seem to us to be the most reasonable.

For the sake of brevity, we will discuss these two kinds of solution together.

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As regards the exceptions to the principle of immunity in civil and commercial matters, it will be well to pay attention to Article 16 of the Institute's draft and to Article 27 of the American project. The former is as follows: "Legal immunity may not be invoked: (1) in case of proceedings instituted as a result of engagements contracted by the exempt person, not in his official capacity, but in the exercise of a profession carried on by him in the country concurrently with his diplomatic duties; (2) with regard to realty actions, including possessory actions relating to property, real or personal, which is in the country".

The latter article is expressed as follows: "A diplomatic agent shall not be exempt from local jurisdiction even during the exercise of his functions: (1) for real actions, including possessory actions, relative to immovable property situated in the territory where the agent is accredited, and which is neither the house he occupies nor that of the legation; (2) for actions connected with his capacity as heir or legatee of an estate settled on the territory of the country to which the diplomatic agent is accredited; (3) for actions resulting from contracts executed by the diplomatic agent which do not refer to the seat or furnishings of the legation, if it has been expressly stipulated that the obligation must be fulfilled in the country where the agent is accredited; (4) in case of waiver of diplomatic immunity, which, however, cannot occur without the consent of the Government which the agent represents".

If we now enquire whether these texts are or are not in conformity with generally recognised custom and, if so, in what respects, we must admit that the exception most generally agreed to is that relating to real actions, including possessory actions, regarding immovable property owned in a private capacity.

On the other hand, there are those who consider that the exception may be extended to any matter referring to immovable property owned in a private capacity, so that it would be permissible to take action against a diplomatic agent in regard to immovable property, even if it were not a real action. As for actions of the latter kind, the Institute draft considers them permissible whether they relate to immovable or movable property, while the American draft only sanctions real actions relating to immovable property. I have been unable to find a sufficient number of legal precedents to say whether general practice in this matter tends in the one direction more than in the other.

The most reasonable solution, however, would be to make no distinction with regard to real actions between those relating to movable property and those relating to immovable property. The nature of the subject-matter of the action in no way affects its legal character.

Thus, in regard to the question whether a person belonging to a foreign legation and engaged in some occupation in the country, more particularly that of trader, may claim the prerogative of immunity with regard to obligations contracted in the pursuit of this occupation, legal doctrine, according to the Institute draft, pronounces on the whole, and rightly too, in the negative. Nothing would justify the extension to professional activities of a privilege which can only attach to the exercise of diplomatic duties.

In Great Britain, however, case-law, by its interpretation and application of the celebrated Diplomatic Privileges Act of 1708 (7 Anne, cap. 12), does not furnish in this respect a sure and definite rule. DICEY ("A Digest of the Law of England with Reference to the Conflicts of Laws", 2nd edition, pages 200 and 201), when mentioning the commercial activities of a diplomatic agent as an exception to the general rule of immunity, places a query against the rule thus set out (see also SATOW, "A Guide to Diplomatic Practice", 1917, 189 *et seq.*).

As regards the exception contained in Article 27, No. 3, of the American draft relating to actions resulting from contracts entered into by the diplomatic agent which do not refer to the seat or furnishings of the legation and which have to be executed in the country to which he is accredited, this seems perfectly justified, since the prerogative in this matter is not in the least necessary in order to guarantee the free and dignified exercise of diplomatic duties.

Nevertheless, it must be recognised that this exception is not admitted by the jurisprudence of certain countries, particularly France. The Tribunal de la Seine, for example, on July 27th, 1889, passed a judgment which became final which ordered a Belgian Counsellor of Legation in Paris to pay a certain sum of money for the rent of an apartment, but this judgment was quashed by the French Cour de Cassation on January 19th, 1891, *in the interests of the law* (DALLOZ, "Jurisprudence générale", 1891, I, 9).

If the diplomatic agent voluntarily submits to local jurisdiction, it is generally held that the prerogative of immunity no longer exists. But whereas according to some authorities this rule should be accepted unconditionally, others declare that it is necessary for the diplomatic agent to have obtained from his Government permission to waive his prerogative.

In my opinion, the first solution is the one to be commended, especially when the diplomatic agent in question is head of a mission. It is his function to represent his Government and to be its mouthpiece, so that the local authorities must presume that acts performed by him which are *even indirectly* related to his duties are in conformity with the wishes of the

Government of the country which he represents. As regards diplomatic agents of lower rank, the local authorities would have every reason to suppose that, in waiving their prerogatives, they did so with their chief's permission, especially as these questions of authorisation really only concern the relations between officials of the same country. The Courts, however, particularly in France, often decide to the contrary; but even in France it is impossible to say that the law is absolutely well established on this point (see DESPAGNET, "Cours de Droit international public", 4th edition, revised and enlarged by DE BOECK, Paris, 1910, No. 243, note on page 340).

Even if the diplomatic agent, who as plaintiff submits voluntarily to local jurisdiction, is furnished with the express authorisation of his Government, there still remain certain doubtful and controversial points. It may happen that the defendant, not content with merely questioning the exception, makes a counter-claim (*demande reconventionnelle*). In that case, seeing that the diplomatic agent himself has submitted to local jurisdiction, it would appear to be reasonable to consider the ordinary law applicable. Several writers have expressed this opinion (compare, among others, PRADIER-FODÉRE, "Traité de Droit international public", Vol. III, Paris 1887, No. 1446; ULLMANN, "Völkerrecht", Tübingen 1908, pages 186 and 187). Others, however, have favoured the contrary solution (e.g., compare BLUNTSCHLI, "Le Droit international codifié", in Lardy's French translation, 2nd edition, note on No. 140, bottom of page 123; DICEY, *op. cit.*, 2nd edition, page 199).

English law is uncertain on this question (see DICEY; *op. cit.*, passage quoted).

Exemption from the duty of giving evidence in court would not appear, in accordance with the usage generally adopted, to present any great difficulties in practice. However, if we compare Article 17 of the Institute draft¹ with Article 28 of the Washington draft², we find differences which possibly extend beyond differences of drafting, for, whereas the Institute draft affirms the duty of the diplomatic agent to give evidence, although in the customary privileged forms, the American draft is content to state that, if the evidence is necessary, it must be requested in writing and through the diplomatic channel, without adding anything as to the duty of the agent to give it.

On this point the Institute draft takes better account of the interests of justice, but possibly the Washington draft is more in conformity with actual practice.

With regard to the duration of diplomatic prerogatives, it may unhesitatingly be claimed that inviolability lasts (according to what is stated in Article 5 of the Institute draft) for the whole period during which the Minister or diplomatic official remains in his official capacity in the country to which he has been sent. Article 29 of the American draft is expressed differently, namely, as follows: "The inviolability of the diplomatic agent and his exemption from local jurisdiction shall begin from the moment he crosses the frontier of the nation where he must exercise his functions; they shall terminate the moment he leaves the said territory".

In the first place, it may be objected that, according to general opinion, the official capacity of the diplomatic agent is only proved by the presentation of credentials, whereas, at the moment when he crosses the frontier of the State to which he is sent, no credentials have been presented. Further, as regards the duration and termination of the privilege of immunity from local jurisdiction, it cannot be accepted absolutely and as a general truth that the prerogative should cease with the departure of the diplomatic agent. Article 14 of the Institute draft makes a very judicious distinction and one so well founded in law that it may be regarded as a rule of existing positive law. This article declares that immunity survives the official's functions in respect of actions relating to the exercise of these functions. As regards other actions, immunity may only be claimed for as long as these functions are being exercised".

Article 26 of the Washington draft says the same thing, but appears to be in contradiction with Article 29 of the same draft as quoted above.

It may also happen, however, that the diplomatic agent has contracted an obligation in his private capacity *prior* to entering on his duties, and that the other contracting party claims before the Courts the fulfilment of that obligation in the country to which the diplomatic agent is sent, *while* he is still exercising his functions. The case arose in France in respect of a Persian who, while in France, had signed a bill of exchange as surety. The holder of the bill of exchange, who had not received payment, summoned the surety in the French Courts at a time when the latter had been appointed Persian diplomatic agent in Paris and was actually exercising his functions. The Paris Court of Appeal, by a final judgment of May 7th, 1914, which confirmed a judgment given by the Tribunal de la Seine, ordered the Persian diplomatist to pay the sum claimed. The Supreme Court of France, however — on this occasion also *in the interests of the law* — quashed the judgment of the Paris Court by a judgment dated August 3rd, 1921 (CLUNET, *Journal de Droit international*, 1921, page 922; SIVEY, *Recueil général de Jurisprudence*, 1921, Part I, page 121).

It must be admitted that the opinion given by the French Cour de Cassation is perfectly logical, if we accept the principle that, during the exercise of his duties, the diplomatic agent is protected from all legal actions, even in respect of acts performed in his private capacity.

Further, very delicate questions arise with regard to the legal situation of diplomatic agents when in the territory of a third country. Clearly they cannot claim all the privileges which belong to them in the country to which they are sent. On the other hand, they ought to have

¹ This article is as follows: "Persons enjoying immunity from jurisdiction may refuse to appear as witnesses before the national Courts on condition that they give their evidence, if required to do so through the diplomatic channel, to a magistrate of the country appointed for this purpose, and this evidence may be given even on the premises of the mission".

² Article 28 of the Washington draft is as follows: "The diplomatic agent may refuse to appear as a witness before the Courts of the country to which he is accredited. In case the evidence should be necessary, it must be requested in writing and through the diplomatic channel".

certain prerogatives sufficient to ensure that they will not be prevented from reaching the country to which they are sent. Dr. Mastny drew my attention to the fact that, when journeying to the country of their mission, they can avoid all difficulties in third countries by travelling as "couriers". Dr. Mastny would like to see European countries adopt the system which is recommended for the United States of America in Article 29, paragraph 2, of the Washington draft, as follows: "The diplomatic agent who, in going to take possession of his post or in returning therefrom, crosses the territory of an American Republic or is *accidentally there during the exercise of his functions* shall enjoy in that territory the personal immunity and immunity from jurisdiction referred to in the preceding articles". But what is the exact meaning of the words "accidentally there during the exercise of his functions"? Do they mean that, in order to enjoy his prerogatives, the agent must actually be in course of exercising his functions? Or is it sufficient that at that time he should be the holder of a diplomatic post, even if on leave? Whatever the answer, it is impossible to say that the ruling arising out of the Washington draft as just quoted corresponds exactly to existing law as interpreted by international custom.

Until a reform is effected by treaty arrangements we consider that, according to existing international law, diplomatic agents are only entitled to claim their prerogatives in third countries while they are journeying to the country of their mission or returning therefrom. This opinion is expressed in the Italian law of May 13th, 1871 (Article 11, last paragraph), relating to the guarantees enjoyed by the Holy See for diplomatic agents appointed by the Pope and required to exercise their duties in a foreign country.

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We come finally to the question as to the persons to whom diplomatic privileges extend. We may first note that these prerogatives are generally recognised as attaching not only to the head but to the whole *official* staff of the diplomatic mission. There is also practically complete agreement that they apply to members of the family of the diplomatic agent living with him. The latter regulation is adopted without any restriction in Article 30 of the American draft¹. The Institute draft also adopts it explicitly as regards immunity from taxation (Article 11) and immunity from jurisdiction (Article 12), but, with regard to the privilege of inviolability, this draft (Articles 2-6) does not mention the members of the family of the diplomatic agent, although in Article 7 it recognises the prerogative of ex-territoriality as applied to their residence.

I am of opinion that, in practice, diplomatic immunities are usually extended to members of the families of diplomatic agents who live with them.

In this matter, as is well known, the point most often discussed and most open to question is that which refers to *unofficial* personnel. In the case of these persons, there is no question of applying all the prerogatives without distinction but only certain of them. Queen Anne's famous Statute of 1708 mentions, among persons in the suite of a diplomatic agent to whom is extended the privilege of immunity from local jurisdiction, "servants and domestic servants" and, according to DICEY (quoted above), English law interprets these words to mean that that privilege extends to anyone belonging to the suite of a diplomatic agent without distinction of nationality.

Italian legal practice gives a totally contrary decision. A judgment by the Rome Court of Cassation given on November 7th, 1881 (*Rivista di Diritto internazionale*, 1908, page 350), adopted the ruling that the prerogative of immunity from territorial jurisdiction cannot be applied to personnel which has neither the character nor the duties of diplomatic agents (compare also French Court of Cassation, October 13th, 1865; DALLOZ, February 1866, I, 233; VINCENT and PÉNAUD, *Dictionnaire de Droit international privé*, 5th diplomatic agent, page 80, No. 101).

Finally, there is a middle solution which was explicitly adopted in Article 19 of the German *Gerichtsordnungsgesetz* of 1898, recognising in the Reich the prerogative of immunity from jurisdiction as regards not only official personnel (*Geschäftspersonal*) but also persons in the service of a foreign diplomatic agent, *provided that they are not of German nationality*.

The last solution may be regarded as commonest in practice. It was also adopted in the Washington draft, Article 30 of which concludes by saying that "exemption from local jurisdiction extends likewise to their servants; but if the latter belong to the country where the mission resides, they shall not enjoy such privilege except when they are in the legation building".

¹ This article states: "The inviolability of diplomatic agents, the exemption from taxes and jurisdiction, as well as the other immunities which they enjoy and to which the preceding articles relate, also extend to all those who form part of the official personnel of the diplomatic mission, and to the members of their families who live with them"

Even the Institute draft (Article 2, No. 3) contains a regulation¹ which at least in form bears a certain resemblance to the Washington rule. It must be observed, however, that the Institute draft confers no prerogative of immunity from jurisdiction upon unofficial personnel, of whatever nationality, but only recognises the prerogative of inviolability.

Putting aside for the moment all considerations as to the intrinsic worth of the regulations adopted on this point in these drafts, we must note that in neither case is the wording very happy. The fact that a person in the service of a diplomatic agent is in the legation building cannot give rise to any personal privilege. He will certainly be inviolable as long as he remains in the building, but the same applies to anyone in a legation building, owing to the inviolability of the legation itself. It is therefore not easy to understand exactly what is meant by the Washington regulation whereby a legation servant belonging to the country in which the mission resides shall enjoy exemption from local jurisdiction when he is in the legation building. Does it mean that, so long as he remains in the legation, he cannot be arrested or have a writ served directly on him by a public official of the country? If this is so, we can only repeat what we said on the Cambridge draft. Or was it intended to mean that, for as long as the servant remains in the legation building, no proceedings can be begun against him by the local authorities? If the latter interpretation were accepted, it would create a disguised and absolutely unjustified right of asylum.

It is unnecessary to say that these remarks are not made in any hypercritical spirit, but are intended solely to prepare the material for laying down principles which are in accordance with the requirements of scientific doctrine and of practice.

On this point we should very much simplify matters if we admitted that diplomatic prerogatives extend only to heads of a mission, members of their families living with them and persons belonging to the official staff. Such a regulation would be justified by the fact that there is no legal reason (tradition alone is not enough) for extending prerogatives which were created for diplomats by reason of their functions to persons who have no diplomatic standing. There would be the further great advantage of precision. It is perfectly easy to distinguish official from unofficial personnel, since only the former is accredited to the Ministry of Foreign Affairs of the country.

* * *

I have suggested accordingly—and in principle Dr. Mastny is *de jure condendo* favourable—a reform which we think it would be desirable to introduce into the practice followed in most countries with regard to the persons to whom diplomatic privileges should be extended.

But there are other suggestions to be made on this question.

As regards the prerogative of inviolability (apart from the question of the persons to whom it should apply, a point to which we need not revert), I have no reform of any real importance to suggest. It is only necessary to give the most exact definition possible to the existing state of affairs, particularly in order to remove doubts which may arise in determining the exceptional cases in which the diplomatic agent cannot claim this prerogative. In doing this, it would be well to consider Article 6 of the draft by the Institute of International Law.

With regard to immunity from taxation, I can, even *de jure constituendo*, only refer to what I have already said in the foregoing pages.

The most important point in which I consider that a reform would be not only useful but necessary is that which relates to immunity from local jurisdiction. As regards immunity in penal matters, things could be left substantially as they are, subject to framing rules with the utmost possible precision. It must be admitted that, if a diplomatic agent could be harassed with proceedings of a penal nature² instituted against him, for whatever reason, in a criminal court, his independence, his freedom of action and peace of mind, as well as his dignity, might be impaired.

As regards immunity from jurisdiction in civil and commercial questions, the dignity, prestige and independence of the diplomatic agent can be sufficiently safeguarded if immunity is granted for acts performed by him in the exercise of his duties, but not for those performed in his private capacity.

Dr. Mastny is not absolutely opposed to this proposal *in theory*, but he thinks that it would be open to many objections in practice. It would carry me too far to attempt any detailed reply to Dr. Mastny in this report, and I will content myself with the following remarks. When reforms are to be made, we should not be put off by the consideration that a different system has hitherto been followed. There is no really compelling reason for adopting the same system in criminal and civil matters. I have already shown that the exclusion of immunity in criminal questions would involve consequences incomparably more serious than in civil and commercial questions.

¹ Article 2: "The privilege of inviolability extends (1).....; (2).....; (3) to all persons belonging to his unofficial staff, subject to the proviso that, if they are nationals of the country in which the mission resides, they shall only enjoy the privilege within the mission building."

² It would be a different thing if the diplomatic agent were summoned to appear before a local court in virtue of his civil responsibility.

In constitutional countries members of Parliament enjoy special prerogatives as regards penal justice, but no one has ever suggested that they should enjoy the same prerogatives with regard to judicial proceedings taken against them in their civil or commercial relations. It is sometimes easy to determine straightaway whether a diplomatic agent has acted in his official rather than in his private capacity. In any case, it would be for the plaintiff who brings an action in civil law against a diplomatic agent to prove that the defendant was acting in his private capacity. We could still follow ancient custom as regards the form in which a diplomatic agent should be summoned to appear before the local courts, and it could be forbidden to serve a summons not only at the legation but also on him in person (*in persona propria*). And if judgment were given against a diplomatic agent it could be made impossible for measures of execution to be enforced within the legation or even at the private residence of the agent.

If we were to examine the historical development of diplomatic prerogatives, we should find that, with the advance of civilisation, these prerogatives tend to contract rather than to expand.

Speaking, as I am, to experts, I need not remind them that in times past diplomatic agents claimed the privilege of inviolability not only as regards their persons, their property and the seat of the legation, but also for the whole quarter in which they resided. To-day, however, there is not only no question of an alleged right of *quarter*, but not even of a right of inviolability in respect of the whole of the building in which the legation is situated, should it be confined to a single set of rooms in a palace or house (as happens in the case of legations belonging to the less-wealthy countries).

We have already mentioned how many questions there are in positive international law which are still not accurately and definitely settled, especially in the matter of immunity from local jurisdiction in civil and commercial questions. If the reform here recommended were to be carried through, most of these controversial questions would disappear, with great advantage to the progress of law and the maintenance of friendly relations.

In this report there has nowhere been any question of the prerogatives belonging to officials of the League of Nations. We were unable to deal with this very important matter (regarding which there is already a draft by the Institute of International Law, approved at the Vienna meeting of 1924) without going outside our terms of reference.

This subject is worthy of a special convention, in which account will have to be taken of the very remarkable differences between *definitely* diplomatic functions and those of officials of the League of Nations.

If a general international agreement is not shortly concluded on this matter, and if all the privileges belonging to diplomatic agents are consequently to continue to be granted to officials of the League of Nations (or at any rate to some of them), there will be all the more reason for generally limiting the prerogative of immunity from local jurisdiction in civil and commercial matters to acts performed by diplomatic agents in the exercise of their functions.

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Before concluding this long report, I must point out that Dr. Mastny in his friendly reply did not confine himself to discussing the proposal put to him, but also made a proposal himself which constitutes an entirely original contribution and which accordingly deserves to be examined and discussed with the greatest care and thoroughness. Substantially, he proposes the adoption of *conciliation procedure and arbitral jurisdiction for all acts*, whether official or private, performed by a diplomatic agent. For this purpose, a special court would be set up in each capital to deal with these questions, and it would contain representatives of the diplomatic corps and of the local authorities. I do not desire to add further details lest I should misinterpret the ideas of the author of this proposal. I therefore leave it to him to explain his ideas to the Committee with the necessary detail.

Nevertheless, I fear that a reform of this kind would satisfy neither Governments nor individuals. The former would probably not consent to submit questions concerning acts performed by the diplomatic agent in the exercise of his duties to a jurisdiction of this sort, in which the local element would be in a majority and to which part of the diplomatic element would be chosen by chance. On the other hand, individuals would not willingly submit to a special jurisdiction of this kind, since it would not furnish them with all the guarantees which they enjoy in an ordinary court.

(Signed) Giulio DIENNA,
Rapporteur of the Sub-Committee.

II. LETTER FROM M. MASTNY TO M. DIENA.

Lomnice n. Popelku,
August 20th, 1925.

[Translation.]

Dear Professor,

After studying the question of diplomatic prerogatives in greater detail, I am in a position to communicate to you a few ideas which have occurred to me in the course of this examination. To begin with, I agree with you that the *entire* question of diplomatic privileges and immunities is suitable for treaty regulation, and I believe that such regulation would meet a general and long-felt need. Account should be taken of the draft regulation on diplomatic immunities adopted by the Institute of International Law at Cambridge (August 13th, 1895) and of the recent "codification" undertaken by the Pan-American Union (Project No. 22 of March 2nd, 1925).

According to the wording of Question (c), which comes within the competence of our Sub-Committee, the report should not confine itself *strictly to codification*, but should at the same time indicate "what provisions could be recommended" (page 49 of the Minutes).

Thus the terms of the question do not even exclude the preparation of a preliminary draft (page 47 of the Minutes).

Personally, I feel more inclined to decide in principle in favour of a report which, *without proposing a positive draft convention*, would determine: (1) the law as it stands at present (existing custom, positive provisions of international law, national legislation); (2) case-law on the subject; (3) present-day doctrine (controversial points); (4) suggested solutions of controversial questions by interpretation; and (5) possible and desirable alterations and even reforms to take account of the new post-war conditions affecting the relations of the different countries. The work should be performed throughout with a critical eye to existing drafts (those of Cambridge and Washington) and the report should also indicate the scope of the reforms proposed.

In my opinion, a preliminary draft would only be appropriate as regards undisputed and purely legal questions which do not aim at any reform and, not least important, which would not affect the prestige of States, a factor which often plays a decisive part in the matter under consideration (compare the liberal interpretation given by the Courts). With regard to questions which are not entirely free from controversy, I am of opinion that only *the third part* of the resolution of September 22nd, 1924, would admit of treaty provisions in draft form.

As regards the subject-matter of the report, it was decided that the Sub-Committee would not be required to deal with consular privileges, but I think it would be very useful, in order to show the differences in theory, to touch on this question, if only superficially, and also on the immunities of heads of States.

I take it that the Sub-Committee's instructions are limited to diplomatic privileges and that it is therefore not called upon to deal with the *duties* (obligations) of diplomatic agents (see the Pan-American project) nor with the right of legations in general. In the event, however, of framing a positive draft, it would be very useful to determine more or less in detail the duties of public Ministers and especially their obligations in regard to local laws — and this would at the same time to some extent define the limits of their privileges.

It now remains to determine whether our investigation should extend to details of the classification of permanent diplomatic agents, to ceremonial rights, if and in so far as they still exist, to certain honorary prerogatives sanctified by custom (precedence, representative character, the right of dealing directly with the head of the State, etc.). I think that this question might be touched on, but without entering into details, because in the first place it has lost much of its former importance and, secondly, because it relates not to a right but to etiquette prescribed by usage in the country where the diplomatic agent resides. There is, however, one question frequently discussed in respect of diplomatic agents of the second class, and that is the question of the exceptional prerogatives which "ambassadors" (and nuncios) enjoy with regard to other classes nowadays, when the principles formerly observed (royal honours) in the creation of embassies appear to have been abandoned.

On the question of *what diplomatic prerogatives are at present recognised*, legal doctrine is, as far as I know, unanimous, although these prerogatives are differently classified and opinions differ as to their extent.

Current terminology is unfortunately confusing. Prerogatives, privileges, immunities and ex-territoriality are all employed without any exact meaning being given to them. Ex-territoriality in particular is only too apt to lead to confusion.

I much regret that I have been unable as yet to consult your *Principi de Diritto internazionale*, which I have been expecting from Rome for the last fortnight, and which will give me the details of your theory of ex-territoriality. In the meantime I am against abandoning this term (as is done in Article 23 of the Washington draft) and I incline rather to the restrictive definition given by Strisower: "The removal of certain persons or certain portions of territory from the legal authority of the country in respect of matters to which, according to general principles, such persons and such portions of territory ought on the contrary to be subject".

I agree with those jurists who hold that the fiction "that certain persons or things *are situated* outside the State" is a fallacious figure of speech in permanent contradiction to the fact that

"these persons and these things cannot escape from the sovereignty of the State"; but this opinion does not prevent me from favouring the retention, though only as a metaphor, of the expression "ex-territoriality", which has existed for centuries, "*diplomatic ex-territoriality*" including no more than certain exemptions from the authority and power of the State enjoyed by the diplomatic residence.

I admit that in principle no exemption (privilege) can be other than limited and that from a legal point of view a State cannot be called upon to renounce its sovereignty.

Ex-territoriality in the limited meaning of the word refers only to the legal exceptions recognised in any particular State, and these must always be interpreted in a restrictive sense. I am of opinion that ex-territoriality in this limited sense becomes a purely theoretical matter and that no exception could be taken to it even by those theoretical opponents who would restrict the grounds for granting diplomatic prerogatives to the "free exercise of official functions". It is obvious that there is no need to employ this term in practice, and that it is even preferable not to use it, in order to avoid misunderstandings or false interpretations.

In my opinion all prerogatives are based upon:

- (1) Ancient tradition;
- (2) The dignity and prestige of the State on the one side, and courtesy on the other;
- (3) Independence (the free exercise of functions).

Theoretically, the last consideration should be decisive in interpreting doubtful cases. In practice, however, this is not so; hitherto prestige (and courtesy) have always prevailed over doctrine.

Bearing this in mind and considering the practical object of the work in hand, I am unable to subscribe either to the doctrine which refuses all protection in circumstances not connected with official dealings and which accepts only the principle of "free exercise", or to the theory which interprets all claims in favour of the privileged persons.

I consider that we must always keep in mind the three principles quoted above and attempt to find the happy mean (neither MONTESQUIEU nor LAURENT). This middle course should be followed, not only in interpreting existing law but in proposing reforms, and I am glad to see from your letter that you realise the part played by prestige.

We must remember that this principle of prestige will continually supply certain correctives to the increasingly restrictive tendencies of the present day, tendencies which are, indeed, perfectly natural when we consider the development of modern democracy in the international life of civilised States.

As regards the *individual prerogatives* in detail, I venture to submit for your consideration a few ideas in the nature of marginal notes which I have made during my study of the question.

(a) *Inviolability*, which is generally admitted and which is universally recognised in theory and hallowed by custom, is to the best of my knowledge a matter beyond dispute, as also is the question of where it ceases. It is difficult, however, to determine satisfactorily the cases in which inviolability could not be claimed. The Cambridge draft goes further than the Washington draft (Article 15), which has failed to mention that "there are cases when.....", but, on the other hand, it expressly mentioned the obligations of diplomatic agents towards local laws (Articles 5 and 16).

The provisions of Article 4 in the Cambridge draft (and part of Article 30 of the Washington draft) are quite in accordance with practice and, *de lege lata*, just, but *de lege ferenda* I should be inclined to adopt the suggestion you have made to me, namely, that *inviolability and all other privileges* should be limited in principle to persons belonging to the *official staff*, appointed by the Government and (I will add) included in the list presented to the Ministry of Foreign Affairs by the head of the mission (the practice in Great Britain). This, of course, involves a change, since national laws and custom usually regard inviolability as extending also to unofficial personnel.

A proposal for reform along these lines would not be free from objections, in the first place as regards exemption from direct personal taxation, and also in respect of the private secretaries of heads of missions and their chauffeurs in cases when an offence may lead to the arrest or imprisonment of the latter.

As regards *the beginning and end* of prerogatives, I prefer the Cambridge (Article 15) to the Washington (Article 29) text, since it also covers the case of an agent who has stayed in a country before being accredited to it.

I would remark in parenthesis that jurists often speak of the "delivery of passports"; in practice, passports are no longer presented.

The question as to what measures a Government may apply in the case of an abuse of his inviolability by a privileged person is a disputed one and, in my opinion, difficult if not impossible to settle, since it will always be a *questio facti*. It would be impossible to enumerate these measures. The attitude of the Government will depend upon the gravity of the case, its nature, the relations between the two States, etc.

The position of the public Minister (diplomatic agent) in regard to third Powers is a moot point, although in principle his right to "safety and courtesy" is generally admitted.

In practice, this question does not ordinarily raise any serious difficulty, since the diplomat who is passing through the territory of a third State can avoid any inconveniences by travelling as a "courier".

Article 29 of the Pan-American draft proposes that inviolability should continue for as long as the agent is exercising his official functions in the various American countries.

Could not a similar provision be considered in the case of European countries?

It is clear that diplomatic agents visiting the territory of third Powers either on official duty or privately cannot claim all (or the same) privileges that are granted to them in the country to which they are accredited, but official journeys by representatives of States (Ministers of Foreign Affairs, diplomatic agents in the strict sense of the term, officials of the League of Nations and other international officials) have for some time been so frequent and general that a settlement of this question would seem eminently desirable, and it would be well to systematise the different kinds of international representation created among States since the world war.

What, for example, is the position of an Italian official of the Secretariat of the League of Nations during a session of the Council at Rome or in Paris?

(See also Articles 15 and 14 of the Pan-American draft. Do international officials in the strict sense of the term enjoy more extensive privileges than diplomatic agents pure and simple? Is the international character of diplomatic agents inferior?)

(b) It is generally admitted that immunity from taxation is not absolute, but depends upon traditional legal usage in the different countries, on reciprocity, etc. There are, however, certain typical exemptions which are never disputed in practice and of which mention is made in the Pan-American draft (Article 24), as well as in the Cambridge draft (Articles 7-11).

If we wished to examine this question in detail, we should have to study the laws of the different countries, in order to fix by a process of elimination the absolute minimum for purposes of codification.

Exemption from Customs duties is nothing more than a usage dictated solely by considerations of international courtesy. Some States are generous in the matter, others less so.

This question and the question of exemption from Customs examination have caused and still continue to cause practical difficulties, but I quite agree with you that it is a matter for individual arrangements between the States in question and that in practice everything depends upon good-will, reciprocity and the tact of the privileged persons.

In my opinion the English instructions (see SATOW, "Diplomatic Practice", Vol. I, page 286) are most reasonable and calculated to satisfy the most exacting claims. Exemption is restricted to heads of missions.

If, however, it came to regulating the question by treaty, it would be also necessary to settle questions of detail (diplomatic parcels, account, etc.). There is no doubt about the point that the privileges can only extend to articles for private use.

As regards particularly the question of Customs examination, I consider it would be necessary to be content with a statement by the privileged person as soon as he has proved his diplomatic standing, this being a privilege connected with inviolability.

(c) *Immunities of the residence.* There is no occasion to appeal to "ex-territoriality" in order to explain this privilege (I may refer to my notes on the theory of ex-territoriality). The principle of the free exercise of functions combined with the "dignity and prestige" of the represented State sufficiently explain the theoretical grounds for this immunity. It would be really difficult to define in detail the circumstances which may lead to the termination or suspension of this immunity. Writers are divided in their opinion, and personally, I consider that the report should merely set out the present position in relation to theory and practice.

As regards the *right of asylum*, I am quite willing to subscribe to Article 22 of the Pan-American draft, but the question still remains without any doubt exceedingly difficult when we are dealing with political refugees in countries which have not yet attained that degree of civilisation which we are justified in expecting in normal international life.

The question is a political one, and in the Cambridge draft it was thought better to give no opinion. Experience, even of quite recent date, would justify treaty regulation and, if not the complete abolition, in any case a restriction of the right of asylum, together with explicit provisions in regard to procedure.

Clearly the abolition of the right of asylum cannot dispose of the question of the admissibility of *entrance into the diplomatic residence*.

I am in favour of compulsory resort to the diplomatic channel, except in cases of extreme urgency or of danger within the building.

(d) *Immunity from criminal (and police) jurisdiction.* I consider that Articles 6, 12, 13, 15 and 16 of the Cambridge draft faithfully reflect existing custom as sanctioned by the national legislation and the case-law of most countries.

As regards legal doctrine, there are serious differences of opinion as to the extent of this immunity, as to the measures of precaution and security to be taken by the Government in respect of a privileged person who has abused his immunity, and there are even differences in regard to the justification for this immunity. EMERSON'S ideas, and also LAURENT'S, brilliant and attractive as they are, presuppose conditions of the highest civilisation in all countries and a standard of absolute justice which even in our days are not yet attained.

(e) Exemption from civil jurisdiction is doubtless the most delicate and most troublesome question of all. May I be allowed first of all to make a personal observation? In theory I feel strongly the need of a reasonable restriction of this privilege, whereas in my capacity as diplomat it would be my duty to defend prerogatives in their entirety. However, I do not think I am betraying the cause of professional prestige if, in theory, I accept the suggested reforms which you explained in your letter and which won my fullest sympathy as soon as I read them. Exemption from civil jurisdiction certainly raises great difficulties, and whenever a case occurs in practice — happily this is seldom — it is a cause of embarrassment, not only to Ministers for Foreign

Affairs (who would no doubt all subscribe to the famous Memorandum of M. D'AIGUILLON), but often also to diplomatic agents themselves in view of the difference of opinion as to their power to waive their exemption without the consent of their Government (see Article 27, No. 4, of the Washington draft), and in view of their professional duty to uphold the principle of exemption, even in cases where they would prefer to appear before the local Courts in order to have actions wrongly brought against them dealt with promptly. In theory the matter most often referred to is that of debts contracted by diplomatic agents; but it must not be forgotten that there are a large number of other obligations in civil law in respect of which proceedings can be taken before the Courts and on which it may in practice be exceedingly difficult for a foreign tribunal to pronounce judgment, especially when proper verification necessitates the hearing of witnesses, or even a post-mortem examination.

The tendency of theory to restrict exemption from civil jurisdiction to acts performed in the course of an official mission is not, in my opinion, in any way damaging to the prestige of the represented State, nor derogatory to professional dignity, but I think all the same that I ought to draw your attention to the danger underlying the following objections:

(1) Existing national laws are for the most part inclined to favour absolute exemption (excluding, of course, generally admitted exceptions, such as real actions, trading, etc.). This is especially the case with English law (7 Anne, c. 12, paras. 3-6, April 21st, 1709), French law (Decree of the 13th Ventôse, Year 2) and the United States statute corresponding to the English statute.

(2) The principle of complete immunity seems to have been hitherto the rule of the French and English Courts (Judgments of the Cour de Paris, dated July 12th, 1867, and January 21st, 1875, of the Cour de Lyon, dated December 11th, 1883; Case of Magdalena Steam Navy Company v. Martin, etc.).

(3) Most jurists favour complete immunity. Some of those who uphold this view, however, admit that liberal interpretation and practice often unduly extend the limits of this privilege and that due caution should be observed.

(4) The Cambridge draft (Articles 12-16) and the Washington draft (Articles 25-27) decided in favour of immunity (but see paragraph 3 of Article 27).

(5) As this immunity is one of the immediate consequences of *inviolability* there is no need to distinguish between official and unofficial persons.

(6) Analogy with exemption from criminal jurisdiction (the full extent of which is not disputed) calls for uniform regulation (see the Cambridge draft).

(7) In practice it is often very difficult to distinguish the capacity in which a privileged person has acted, and sometimes it is even impossible to give an opinion upon the case before the details have come to light through judicial proceedings.

(8) The principle of the *prestige of States* demands exceptional protection, particularly in those cases in which the Courts would have to discuss *delicate private affairs* (family matters; publicity of the procedure; publication in the newspapers, etc.).

(9) Jurists opposed to immunity are assuming ideal *conditions* of civilisation, a degree of protection which is not yet everywhere attained in our times, since there are still divergences of opinion even on fundamental social ideas and the general principles of civil law (ownership). Take West and East! We cannot be blind to quite-recent experiences (China, Russia).

(10) Material progress allowing direct communication between States (by telephone, telegraph) makes it possible for any matter to be promptly settled through the diplomatic channel.

From a practical point of view, all these objections seem to me to be rather serious, and I am not sure how they could be disposed of.

Most probably the American members of the Codification Committee will be opposed to proposals of reform which would prejudice the codification initiated in America.

So long as there is reason to expect that the Washington draft will be accepted by American legislation, it is clear that any reform at variance with the principles adopted in America would still further increase the already existing differences of opinion between the American and European schools of thought. This would be contrary to the main object, which is to effect a codification that will remove divergences and to attempt the unification of ideas by eliminating differences. We have therefore an additional reason for proceeding cautiously.

In practice, then, our report should be confined to explaining the present state of affairs, which, however, does not prevent us from emphasising all the points in favour of the modification of existing law or from replying to objections that have been raised. The decision will rest with Governments. In my investigation into immunity from civil jurisdiction it occurred to me to seek a compromise which would at least partly satisfy the tendency to insist on national legislation (in cases not connected with official duties). I can only indicate in rough outline one of the suggestions which might be examined with a view to reconciling opposing views.

In essentials the idea is as follows:

- (a) To confirm immunity as the general principle;
- (b) To admit an exception in the case of all acts and circumstances not of an official character;
- (c) To introduce a *conciliation* procedure and *arbitral* jurisdiction for all acts (both official and private).

Machinery: Establishment of an independent tribunal at the Ministry for Foreign Affairs:

- (1) President: the doyen of the Diplomatic Corps; (2) members: an expert in the person of a professor of international law at the local university; (3) a professor of

civil law; (4) another member of the diplomatic corps (chosen by lot); (5) a Civil Court judge (member of the Supreme Court of the country).

This body would have *competence* in all cases of civil proceedings against a diplomatic agent, assuming that the plaintiff does not prefer the jurisdiction of the defendant's country.

Procedure in three stages:

- I. The Court would have to decide upon the character of the case (official or unofficial);
- II. Conciliation procedure:
If the conciliation procedure failed, it would be necessary to distinguish between:
 - (a) Official case: file to be sent to the Ministry for Foreign Affairs for diplomatic action (plaintiff retains the right to apply to the Courts of the defendant's country);
 - (b) Cases having no connection with official functions; in these cases resort would be had to:
- III. *Arbitration*. — If arbitration were made compulsory or if the parties submitted to it voluntarily, there would be nothing abnormal in the procedure, and the Court could decide the case *in merito*. If, however, conciliation procedure were still to be observed even as regards the third stage, the Court would only have to give its *opinion in merito*:
 - (a) If the opinion were not accepted by the plaintiff, he could still apply to the Courts in the defendant's country;
 - (b) Refusal by the diplomatic agent would be interpreted as willingness to submit to the national Courts of the country in which he resides.

As I said, I am merely outlining my first idea, which would of course have to be developed; but arbitral jurisdiction, which is so popular nowadays, necessarily suggests itself as one of the means which can be employed.

(See also, for example, the Statute of the Austrian "Oberhofmarschallamt", the competence of which was limited to cases of voluntary submission by persons enjoying the privilege of ex-territoriality.)

I do not think it necessary to deal with the other exceptions to exemption (real action, etc.), although a critical examination of the wording of the Cambridge and Washington drafts on this matter would serve a useful purpose in connection with this problem.

(f) *Exemption from the duty of giving evidence* presents no difficulties (Cambridge, Article 17; Washington, Article 28).

(g) *The right of jurisdiction* as regards the personnel of the mission and *voluntary jurisdiction*. Theoretically, some order would need to be brought into the chaos of divergent opinions. I do not think that it is necessary to go into details in this report: it would suffice to note in quite general terms the principles and the theoretical interpretation, without touching upon the question of ex-territoriality.

(h) *The right to the exercise of religion*. Is this still a practical question now that freedom of worship is generally recognised in all civilised countries? (Article 10 of Cambridge draft). Moreover, the immunity of the building offers sufficient protection.

As regards the question of who the privileged persons are, I entirely share the opinion expressed in your letter (although opposed to practice), namely, that the privileges of diplomatic agents should be limited to official personnel and, as regards members of the family, to the wife and relatives in the direct line living with the privileged person.

With regard to extraordinary representatives, officials of the League of Nations, commissioners, couriers, etc., I will refer to what I have already said above (see also the Washington draft, Article 2 and Article 15).

These are the ideas which I think it my duty to put before you, with the request that you will regard them as mere marginal notes.

I shall be very happy if, within the modest limits of my capacity, I have been able to be of use to you, for it was with that sincere desire that this letter was written.

(Signed) Dr. A. MASTNY.

QUESTIONNAIRE No. 4.

RESPONSIBILITY OF STATES FOR DAMAGE DONE IN THEIR TERRITORIES TO THE PERSON OR PROPERTY OF FOREIGNERS.

The Committee is acting under the following terms of reference¹:

- (1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment;

¹ See the Assembly Resolution adopted September 22nd, 1924.

(2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received; and

(3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Committee has decided to include in its list the following subject:

"Whether and, if so, in what cases a State may be held responsible for damage done in its territory to the person or property of foreigners."

On this subject the Committee has the honour to communicate to the Governments a report presented to it by a Sub-Committee¹, consisting of M. GUERRERO, Rapporteur, and Mr. WANG CHUNG-HUI².

The nature of the general question and of the particular questions involved in it appears from this report. The report contains a statement of one theory as to the principles governing State responsibility in the matters considered and of the particular solutions derived from these principles. The Committee considers that this statement indicates the questions to be resolved for the purpose of regulating the matter by international agreement. All these questions are subordinate to the larger question, namely:

"Whether and in what cases a State is responsible for damage suffered by foreigners within the territories under its jurisdiction and to what extent the conclusions of the Sub-Committee should be accepted and embodied in a convention between States."

It is understood that, in submitting the present subject to the Governments, the Committee does not pronounce either for or against the general principles of responsibility set out in the report or the solutions for particular problems which are suggested on the basis of these principles. At the present stage of its work it is not for the Committee to put forward conclusions of this nature. Its sole, or at least its principal, task at present is to direct attention to certain subjects of international law the regulation of which by international agreement may be considered to be desirable and realisable.

In doing this, the Committee should doubtless not confine itself to generalities but ought to put forward the proposed questions with sufficient detail to facilitate a decision as to the desirability and possibility of their solution. The necessary details are to be found in the conclusions of M. Guerrero's report³.

In the same spirit, the Committee begs to refer to M. Guerrero's report for the details when it submits to the Governments the following question, which is closely related to the main question brought to their attention above.

"Whether and, if so, in what terms it would be possible to frame an international convention whereby facts which might involve the responsibility of States could be established, and prohibiting in such cases recourse to measures of coercion until all possible means of pacific settlement have been exhausted".

In order to be able to continue its work without delay, the Committee will be grateful to be put in possession of the replies of the Governments before October 15th, 1926.

The Sub-Committee's report is annexed.

Geneva, January 29th, 1926.

(Signed)

Hj. L. HAMMARSKJÖLD,
Chairman of the Committee of Experts.

VAN HAMEL,
Director of the Legal Section of the Secretariat.

¹ M. De Visser was also appointed on this Sub-Committee but he was unfortunately prevented from taking any part in the preparation of the report.

² Mr. Wang Chung-Hui signed the original text of the Sub-Committee's report. Having unfortunately not been able to attend the session of the Committee of Experts, he is not responsible for the actual text as annexed to the present document, this text containing certain amendments made by the Rapporteur in consequence of the discussion in the Committee.

³ See page 103.

Annex to Questionnaire No. 4.

REPORT OF THE SUB-COMMITTEE.

M. GUERRERO, Rapporteur.

Mr. WANG CHUNG-HUI.¹

1. *Whether and, if so, in what cases a State may be held responsible for damage done in its territory to the person or property of foreigners.*

2. *Whether and, if so, in what terms it would be possible to frame an international convention whereby facts which might involve the responsibility of States could be established, and prohibiting in such cases recourse to measures of coercion until all possible means of pacific settlement have been exhausted.*

[Translation.]

Before considering the question of the international responsibility of States for damage done to foreigners, we think it will be advisable to examine not only the genesis of international law but the history of its growth, which is totally unlike that of national law.

Our inclination to do so is strengthened by the fact that the question itself—in the form in which it is stated—might be regarded as a contradiction in terms, because it refers in the same breath to international responsibility, which can only arise out of the violation of an international duty, and damage caused to individuals, which is exclusively a question of domestic law.

In making this preliminary survey, we shall rely on the data provided by legal researches which have been successfully conducted within the last few years, principally by the German and Italian schools.

I.

For many years the juridical nature of international relations was denied by a number of authorities, but now the contrary view is almost universally accepted and is assuming definite shape as a legal doctrine.

The modern conception, however, is by no means founded on an idea substituted for that of *jus naturale*. It is the outcome of a logical sequence of scientific investigations; the result of a careful study of the various stages of the evolution of international law.

The absolute need of social intercourse created a need for law, that is to say, a set of standards to which the whole community had to conform. Indeed, it is impossible to conceive of any community, however small, without means of compelling its members to conform to its rules. These rules are determined by the nature of the relations between individuals, and by an equitable adjustment of the services they render. The compelling force which binds together the various individual interests of a community becomes a rule of law as soon as it engenders rights and duties.

In relations between States, rules are the result of the will to create a social order governed by laws applicable to all.

So long as every State led an isolated existence, there could be no co-ordination of mutual relations. It was not until States realised that they had interests in common that they organised themselves into an international community. In so doing, however, they did not sacrifice their individuality. They merely combined their several wills in one common will and thus created law. This law is superior to all others, because it is the sum total of the wills of all nations, and the will of each nation is itself superior to the will of the individual.

International law, thus established with all its juridical standards, dominates the will of individual States and governs the relations of the whole family of peoples in a manner so undoubtedly binding that no State can disregard it. The authority of each State is subordinate to the higher authority of the international community. The binding character of international law is founded on the free consent of States thereto—the consent of all States and not merely the consent of some. In other words, the unilateral will of one State or the collective will of a number of States is not sufficient to create legal rules binding on the whole community of States.

Therein lies the fundamental difference between national law and international law. The will of the individual State is all-powerful in the creation of the former, but it cannot create the latter. Only as a manifestation of the collective will of all States can international law assume a tangible, positive and objective form.

In endeavouring, therefore, to ascertain the existence of an international responsibility—a point which we shall discuss later—we must not look to find the duties from which it derives outside the boundaries of that international law which has been formed by the wills of separate States coalescing in one single will.

¹ See note 2 on preceding page.

The common will to establish some given rule as a legal international norm is expressed by formal or tacit agreement between the nations. Such agreement may or may not be in writing; but in either case, if it is carried out in practice, it is none the less the expression of a will which is destined to govern the mutual relations of the States. Whether it be termed a treaty or an international usage, whether it be founded on a *Versinbarung* between States—as the German school would call it—or on international custom, the agreement is equally positive and binding. It is a manifestation of a common will and it embodies all the elements which characterise international legal rules. The force and authority of this will is equally valid, however it may be expressed: so much so, indeed, that the translation of a rule of customary law into written law neither modifies its nature nor increases its value; for instance, the violation of the immunity of diplomatic agents is not rendered one whit more or less serious by the fact that such immunity has or has not been formally recognised in a treaty.

It is none the less obvious that all treaties and usages must be regarded as sources of positive law, but no treaty or custom between two States can be held to be a source of law if it is in opposition to the will of the other States which form part of the community of peoples.

In our report, therefore, we shall constantly make use of this criterion of a collective will as evidence of the existence or non-existence of international responsibility. We shall thus avoid the old pitfall which has so often proved fatal to others who, after wandering far from the domain of international law, have sought to regain their foothold by grasping at ideas and notions which belong to quite a different sphere.

As we have shown, the body of law established by the will of international society is the only law which can govern the mutual relations of States, in other words, the rights and duties which States have accorded to or imposed upon themselves in their relations *inter se*. The violation of any of these rights involves the international responsibility of the offending State. Consequently, the injured State is alone entitled to complain. Under this system, States alone possess international rights and duties.

Individuals do not come within its scope. They move on a lower plane, where their lives are regulated in accordance with standards set up by a single will—the will of the State. In their own sphere individuals possess rights and duties and can accordingly incur responsibility, or, correlatively, invoke the responsibility of the State to which they belong. This body of rules, which governs the rights, duties and responsibilities of a State and of the individuals under its jurisdiction, constitutes domestic law, which is different in every respect and circumstance from international law.

According to the above definitions, therefore, the individual is not a subject of international law, and the violation of a rule of international law does not involve the individual in any responsibility.

Similarly, as international law imposes duties on States, only the individual is incapable of committing an offence against that law.

Any other interpretation would be tantamount to reverting to universal relations under the *jus naturale*, which is contrary to the system of positive international law.

Consequently in the present state of international law, as it ought to be defined, we can no longer admit the expressions which are still commonly used—of “international rights and duties of individuals” or “offences committed by individuals against the law of nations”—which are to be found in several treaties and legislations. The State is no more capable of violating the international rights of a foreigner—for the foreigner possesses no international rights—than the individual is capable of disregarding international obligations.

The error in question is due to an inexcusable confusion between national law and international law; between the law which governs the relations of the individual to the State and that which governs the relations of the State to other States. It would amount to regarding individuals as subjects whereas they are only objects.

This erroneous interpretation is often met with in international practice when claims are made for damage done to foreigners. The State which makes the claim, instead of doing so on its own behalf, comes forward as mandatory of the person who has suffered the damage.

The true rule should be that the individual may invoke the responsibility, under domestic law, of the State in which he resides; but that international responsibility may only be invoked by States.

II.

After thus briefly examining the foundations of international law and one of the differences between domestic responsibility and international responsibility, it will be easier for us to deal with the first part of the question raised in I.

First Question.

WHETHER A STATE MAY BE HELD RESPONSIBLE FOR DAMAGE DONE IN ITS TERRITORY TO THE PERSON OR PROPERTY OF FOREIGNERS.

The responsibility which we have to determine is international responsibility, *i.e.*, responsibility resulting from the violation of international law. We have seen that international law is the

outcome of a collective will. We shall next seek to ascertain the circumstances in which such a collective will has been formed as regards the reciprocal rights and duties of States in the matter of the protection of nationals abroad.

This will, which is the creative force of international law, was first manifested when the international community came into being. States then realised that they had common interests which could only be harmonised by the rational organisation of inter-State relations. The community once formed, new States are admitted to it by an act of high importance, and the community, which has already observed the pre-natal growth of the new State, examines its legal capacity, and is only ready to grant recognition if the new State can in return offer satisfactory guarantees. For its part, the new member, by the very fact of its recognition, is committed to the observation of its international duties.

To discover these duties, and their correlative rights, we must go back to one of the two sources of international law: treaties, or customary law. Doctrine only merits relative consideration as a means—sometimes a satisfactory means—of throwing further light on juridical rules and rendering their formation easier. Doctrine as a creative source of law has even less force than the unilateral will of States. It has no power to determine what is the unanimous will of nations. It may, however, become law by its incorporation in international practice; but in that case the source of such law is custom and not doctrine.

As regards the protection of foreigners, customary law lays down certain rules which clearly express the definite will of States regarding the rights which they agree to accord to foreigners, the manner in which foreigners are to be treated, the method of determining the State which is responsible for their protection, and the means of ensuring such protection.

It will be of interest to examine these rules because we shall have to revert to them every time we seek to establish the constitutive elements of an international responsibility. We shall summarise the rules, briefly, in order to remain within the limits of our task.

1. *Rights.* — Some rights are not rights created by States for the benefit of their nationals or of foreigners; namely, the right to life, the right to liberty and the right to own property. The community has simply recognised the existence of these rights and States have mutually undertaken to ensure the possibility of enjoying them.

This undertaking is so nearly universal that many authors have been unable to resist the temptation to regard these rights as international rights of the individual. But in so doing they have committed the fundamental error of attributing to the individual a character which he does not possess—they have made him a subject of international rights and duties.

In speaking of rights, therefore, we mean that these individual rights ought to be recognised by all nations. In fact, wherever a man goes he takes his rights with him, and wherever he is it is the will of all States that these rights should be safeguarded. Before these rights, nationality sinks into the background, because they belong to the man as a human being, and are not, accordingly, subordinate to the will of the State.

This, however, is not equivalent to stating that the undertaking to safeguard these rights constitutes an absolute guarantee against any action to the prejudice of such rights, or that the State is responsible for any infringement of such rights. Their recognition simply implies the duty of surrounding the individual, whether he be a national or a foreigner, with adequate means for defending them.

2. *Treatment.* — Here also the will of the community of peoples is clearly defined. It accepts the above-mentioned rights as being the minimum which a State should accord to foreigners in its territory, but it does not thereby recognise the right to claim for the foreigner more favourable treatment than is accorded to nationals. The maximum that may be claimed for a foreigner is civil equality with nationals. This does not mean that a State is obliged to accord such treatment to foreigners unless that obligation has been embodied in a treaty. We thereby infer that a State goes beyond the dictates of its duty when it offers foreigners a treatment similar to that accorded to its nationals. In any case, a State owes nothing more than that to foreigners, and any pretension to the contrary would be inadmissible and unjust both morally and juridically.

3. *The Protector State.* — Nothing can be more logical than the desire of States to have it laid down that protection must be afforded exclusively by the State in the territory of which the foreigner happens to be.

This is easy to explain. Protection involves certain positive acts that can only be performed by the State possessing the sovereignty. Any duality of sovereignty would be inconceivable, for one sovereignty would exclude the other. The will of the States, in this matter, may be adequately expressed as follows: No trespassing on the sovereignty of another, and no renunciation, in however small a degree, of this essential prerogative.

Dual protection would, moreover, constitute a twofold and unjust inequality — first, from the point of view of the nationals of the State in which the foreigner resides, who are only protected by their own State; and secondly, from the point of view of the foreigner's co-nationals, who remain in the home country. A person leaving his country, and thus depriving it of his personal effort, would possess the privilege of being protected both by the State of origin and the State of adoption.

4. *Methods of affording Protection.* — As to methods, the will of the international community has not been expressed in positive terms. Its duty is to protect foreigners, but not to determine the methods to be employed.

In other words, every State is free to select its own ways and means of affording protection. The reason for this is obvious. The affording of protection is an element of national law, a field in which the will of the State is the supreme arbiter. It admits of no intermediary.

Nevertheless, the general means employed are almost everywhere the same: the laws and organs of the State. There is no other way of ensuring the observance of a duty involving a series of acts which are themselves subject to decrees of the State.

The State, however, remains free to organise its internal existence as it thinks best. What is required of the State is the fulfilment of the international duty: how it does so matters little.

But, although the State is perfectly free to select what methods it prefers for the protection of foreigners within its territory, it is not free to restrict its responsibility to cases of violation of the arrangements which it has made. Responsibility may be incurred by failure to adopt methods which should have been adopted or by the inadequacy of the methods actually adopted.

The above considerations will help us to formulate an answer to the first question asked. States are bound to conform to definite rules of conduct in respect of foreign nationals within their territory. If these rules are violated, and if, in certain circumstances, damage is thereby caused to such foreigners, the State in question may be held responsible to the State of which the foreigners are nationals.

We say "in certain circumstances", because damage does not *per se* imply international responsibility. For international responsibility to exist, the damage must be the result of a violation, by the State itself, of some international rule. Such violation may be positive or negative. It is positive when the State commits an unlawful act, contrary to international law; if, for instance, by a national law, it declares property owned by foreigners in its territory to be State property, without granting any compensation. It is negative when the State omits to fulfil a positive duty; for instance, when it fails to provide a judicial organ before which foreigners may defend their rights.

In both cases, the State has failed to fulfil an obligation which it voluntarily and freely assumed as a member of the international community—the obligation to accord to the individual certain rights, including the means of defending these rights. The State of which that individual is a national is wronged, in the first case by an act contrary to international law, and in the second case by an omission to fulfil an international duty. The responsibility is, therefore, international, because the act, or the omission, is to be laid at the door of the State itself.

Nevertheless, in order to establish international responsibility beyond doubt, care should be taken to ascertain that an international right does exist, and that it is not merely a case of some damage—no matter what—having been suffered by a foreigner.

The same act may, according to circumstances, be contrary to international law, or quite unconnected with international law. For instance, if a State were bound by treaty to grant to the nationals of another State treatment as favourable as that which its domestic legislation accorded to its own nationals, any infringement of this rule would involve the international responsibility of the former State. An illegal act would be imputable to that State. But, if no such treaty obligations had been incurred, no responsibility could be invoked, because the other source of international law—customary law—does not impose this obligation.

When we speak of an illegal act committed by the State, we mean an act done by the organs through which the State performs its functions and which enable it to fulfil its international duties.

Every one of these organs, whether it be legislative, administrative or judicial, can commit an illegal act, contrary to the rights of another State, imputable to the State to which the organs belong, and consequently involving that State's responsibility.

Should any act or omission, in the circumstances mentioned above, cause damage to foreigners, international responsibility would arise, not by reason of the damage suffered, but because of an infraction of international obligations which the State was bound to fulfil. In the case now under consideration the obligation arises from the fact that States are bound to afford protection to foreigners under their jurisdiction.

We say "under their jurisdiction", and by this we mean that protection must be afforded in all territories over which the State exercises its sovereignty, though it cannot be afforded outside these limits. Consequently, a State is bound to fulfil this obligation in its colonies and protectorates, but is not bound to do so in any part of its colonies or territories which may, temporarily or finally, have ceased to be subject to its sovereignty.

In the latter case, the duty of protection would devolve on the State occupying such territory.

In composite States, the infraction of an international rule by one of the component States of the federation involves the responsibility of the central power, which represents the State in its international relations. The central power may not advance the argument that the component State is autonomous; it cannot, any more than a centralised State, plead the independence and autonomy of authorities of a member State in order to avoid responsibility for, say, some legislative act. An argument of this kind, which might be admissible in domestic law, is inadmissible in international law, because, as regards relations between States, the community of nations only recognises the authorities which represent a State in external affairs.

As regards composite States, the question has been satisfactorily settled in Article 4 of the Regulations adopted by the Institute of International Law at its session of September 10th, 1900, where it is laid down that "the government of a federal State composed of a certain number of small States, which it represents from an international point of view, may not plead, in order to avoid the responsibility resting upon it, the fact that the constitution of the federal State does not give it the right to control the member States, nor the right to exact from them the discharge of their obligations".

III.

Second Part of the First Question.

IN WHAT CASES A STATE MAY BE HELD RESPONSIBLE FOR DAMAGE DONE IN ITS TERRITORY TO THE PERSON OR PROPERTY OF FOREIGNERS.

The foregoing considerations will be of great help to us in determining the limits of international responsibility in individual cases, without having recourse to obsolete ideas or conceptions based on analogies derived from domestic law.

It is particularly important, in the codification of international law, to steer resolutely clear of all conceptions which would tend to augment the responsibility of States by incorporating in international law principles drawn from dissimilar and even contrary sources.

Such tendencies have prejudiced the cause of international law and have increased rather than reduced the number of international disputes. We must be careful to avoid all exaggeration, as this might constitute a lasting and serious menace to friendly international relations. We must always consider the inter-State will, the only force that can create international law, and must refuse to admit responsibility whenever international opinion is divided or doubtful.

This will certainly be a prudent attitude to adopt, all the more so because States, as at present organised, possess in themselves the necessary means for rendering the protection of foreigners effective.

It is in the light of these observations that we shall now proceed to consider the various circumstances which may cause damage to foreigners and which may or may not involve international responsibility.

Political Crimes committed against Foreigners in the Territory of a State.

Political crime is the most serious case which can arise, since international law requires a higher form of protection for the foreigner who represents his State officially.

This crime, however, would not in itself constitute a violation of international law. Men, whether they are public officials or not, will always be exposed to the risk of injury and damage. It was obviously not the intention of the international community that the representative character of an individual should render him immune from ordinary misadventure.

Nevertheless, States have undertaken to exercise greater vigilance over these persons than they do over private individuals. They are also bound to take special steps to forestall any assault against the persons of foreign representatives and to display particular energy in pursuing the criminals and ensuring the proper course of justice.

Only if a State neglects these duties, or fails to act with all due diligence and sincerity, will its conduct involve an international responsibility.

This question has already been examined and skilfully settled by a special Committee of Jurists appointed by the Council of the League of Nations on September 28th, 1924.

The question was defined as follows:

"In what circumstances and to what extent is the responsibility of a State involved by the commission of a political crime in its territory?"

The reply of the Committee of Jurists was:

"The responsibility of a State is only involved by the commission in its territory of a political crime against the persons of foreigners if the State has neglected to take all reasonable measures for the prevention of the crime and the pursuit, arrest and bringing to justice of the criminal.

"The recognised public character of a foreigner and the circumstances in which he is present in its territory entail upon the State a corresponding duty of special vigilance on his behalf."

This method of defining the international duty of a State and determining the limits of its responsibility is entirely in keeping with the criterion which we suggested in Part I of this report. It has never been the intention of States themselves to guarantee the inviolability of individual rights or to assume responsibilities which belong to others. They have simply undertaken to make such domestic arrangements as will ensure that foreigners shall find in their territory the relative security afforded by good internal organisation and the existence of appropriate organs for the repression and judgment of crime.

This limitation of the obligation, and of the consequent responsibility, should impel the State which has suffered as a result of the crime to adopt an extremely prudent attitude towards the State in which the crime was committed or attempted. Responsibility cannot be established until a full enquiry has been conducted into the facts of the case. Therefore, as regards political crimes committed against strangers, we propose the adoption of the text which was given above.

Illegal Acts of Officials.

We have said that officials, to whatever branch of the national administration they may belong, are organs of the State and their acts are consequently to be regarded as acts of the State.

It is indeed through its officials that the State exercises protection. The obligation to provide officials has not been contracted in so definite a form as we have stated it, since international law has created the duty without laying down rules for its application. But, since the State is an abstract entity, it must, in order to find expression, provide itself with organs wherewith to exercise its powers.

Again, though it is perfectly true that the State is not bound to possess any specified organ, it is none the less under an obligation to set up all the organs which it requires to fulfil its international duties.

The first question which now arises is whether all acts of officials should be regarded as acts of the State. Our answer is in the negative, and we draw a distinction between acts accomplished by officials within the limits of their competence and acts which go beyond these limits.

The former are truly acts of the State and, if they are contrary to international law and adversely affect the rights of another State, they must certainly involve the responsibility of the State to which they can definitely and indisputably be ascribed. If, in these circumstances, a foreigner suffers damage, it is for the State to make compensation for such damage.

The reason for this is clear. When the official acts within the limits of his competence, he is obeying a command of the State. If such command infringes a rule of international law, the State must be responsible, since the infringement must arise from the command being wrongful, either as going beyond the rights of the State or as failing to satisfy a duty owed by the State.

In either case, the act of the official, though lawful from the point of view of domestic law, is an illegal act on the part of the State.

In order, however, for the responsibility of a State to be really involved because a foreigner had suffered damage through the fault of an official, and for the State of which the foreigner is a national to be entitled to consider itself wronged and to claim reparation, certain conditions must be fulfilled. These conditions are as follows: (1) the act accomplished by the official within the scope of his official powers must be contrary to an international duty; (2) the duty violated must be a legal and not merely a moral duty; (3) the right invoked by the injured State the violation of which has involved the damage must be a positive right created by treaty between the two States or by customary law duly recognised as emanating from the collective will of States; and (4) the damage must not be the result of an act accomplished by the official in defending the rights of the State.

When these basic conditions have been fulfilled, the international responsibility becomes clearly established and the State cannot plead the inadequacy of its laws. It has, indeed, incurred responsibility precisely because it has not foreseen the need of adequate legislation to enable it to fulfil its international duties. That is the main reason for the publication of treaties. By their publication treaties become laws which officials are bound to know and observe.

If the act of the official is accomplished outside the scope of his competence, that is to say, if he has exceeded his powers, we are then confronted with an act which, juridically speaking, is not an act of the State. It may be illegal, but, from the point of view of international law, the offence cannot be imputed to the State.

Those who seek to render States responsible for such acts are obliged to fall back on theories which are often ingenious but which have no place in international law. We may quote, for instance, the theory of *culpa in eligendo* or *in custodiendo*. This theory, like all the other faulty theories, is based on a *presumptio juris et de jure*, which cannot be applied in international law.

Moreover, is any State so perfectly organised that it can be certain of never making an error in choosing its officials or supervising their acts? Can it even be stated that a man will always conscientiously fulfil his duties and be incapable of ever committing a wrongful act?

Some persons assert that the existence of this responsibility is supported by the numerous precedents to be found in the past history of international claims. It would be extremely dangerous to attribute any value to these precedents. Positive international law cannot derive its strength from sources which are so exiguous and so conflicting.

A practice which is based on the use of force cannot be described as international practice in the sense admitted by international law. On the contrary, for the sake of the law's prestige, we should be careful to include in customary law only that which undeniably represents the definite will of all States composing the international community.

It would be inconceivable that States should, in their anxiety to protect foreigners, go so far as to guarantee these foreigners against all abuse of power on the part of the authorities and substitute international responsibility for individual responsibility.

Just as the act of the official, accomplished within the limit of his competence, is, from the point of view of international law, an act of the State, because it constitutes an application of the national law—no matter whether such law be perfect or faulty—so an irregularity on the part of an official is an individual act, which is not willed by the State and may even be the result of malice on the part of the official.

Although such cases should not be regarded as coming within the scope of international law, the State is nevertheless bound to proceed in such a way as to obviate their occurrence as far as possible, and to enable the foreigner who has been wronged to take action against the offender.

We shall therefore place these cases in a higher category than unlawful acts committed by individuals who are not officials. Acts of private persons and acts of officials who exceed their powers are alike private acts, but we consider that the vigilance exercised by the State should be more strict in the latter case.

Thus, with regard to acts of officials, international responsibility arises if a Government, being informed that an official is about to commit an unlawful act against a national of a foreign State, does not take timely steps to prevent it; or if, when the act has been committed, the Government does not hasten to visit the official in question with condign punishment under the national legislation; or, again, if it fails to give effect to the proceedings which the injured foreigner is entitled to bring in conformity with the State's legislation.

Apart from these circumstances, a State cannot be held responsible under international law.

Acts of Private Persons.

It is in this connection, more especially, that a mass of theory has been evolved with a view to proving that a State is internationally responsible for the acts of individuals subject to its jurisdiction. None of these theories will bear careful scrutiny.

In the first place, an attempt has been made to resuscitate a mediæval conception under which the body politic was held to be responsible for the acts of its members. This conception, which may have been of some service when all power was concentrated in the hands of sovereigns, would be utterly inapt in the present position of the relations between the State and the individuals under its jurisdiction.

Grotius took a step in the right direction by opposing to this theory the Roman conception of *culpa*, but his view was still far from meeting the requirements of international law and defining the true function of modern States in their international relations.

At the present time, the postulate that the State is not responsible for the acts of others has become a basic legal rule: indeed, if it were not so, the very foundations of the community would be shaken.

The sovereigns, who were formerly identified with the State, are no longer absolute masters of everything within their territory. The individual as well as the sovereign has a sphere of action proper to himself. He has full liberty of action and is responsible for his acts. The relation of one State to other States is the same as that of the individual to the State in which he resides. If one private person, be he national or foreigner, causes injury or wrong to another private person, be he national or foreigner, his act, being unlawful from the point of view of domestic law, entitles the injured party to take legal action in conformity with the law of the country.

We do not think it necessary to dwell at any length on this subject, as its importance, from the point of view of international law, is slight. Should any doubt arise concerning wrongs due to the acts of private persons, it will be sufficient to refer to our definition of the violation of international law and the nature and limits of the responsibility of States in their mutual relations.

Acts performed in the Exercise of Judicial Functions.

If there is one general principle concerning which there can be no discussion, it is respect for the majesty of the law. As between self-respecting States, there can be no greater insult than to question the good faith of municipal magistrates in their administration of justice.

There are certain other principles as unquestioned and as widely observed as the above. For instance, the principle that all interference or claim to interfere with the regular course of justice in another State is tantamount to an attack on that State's internal sovereignty.

Here we have certain legal standards, as categorical as they are precise, created by the will of all countries as rules of conduct to be observed in all circumstances of the life of the international community.

As regards the duty of affording judicial protection to foreigners, it is sufficient that they should be granted a legal status, which they can assert through appropriate laws and independent tribunals to which they are allowed access on the same footing as nationals. Neither more nor less.

The decisions of these tribunals must always be regarded as being in conformity with the law. None but a judge of the country is entitled to interpret that country's law. Even if he makes a mistake his judgment must be accepted; the dignity of justice and the character of modern States demand this.

The opinion that a State is not responsible for a judicial error committed by its tribunals is so firmly implanted in the minds of nations that legal publicists in all countries have criticised—and often very harshly criticised—the arbitral award under which De Martens declared the Netherlands to be responsible for the judicial error committed by its courts in the case of the Australian vessel *Costa Rica Packet*.

This is equivalent to stating that the community of nations admits no appeal against judicial errors other than that which the *lex loci* itself may afford to foreigners as well as nationals, and that, if no provision is made for appeal, both parties must acquiesce and cannot claim to invoke any responsibility at all on the part of the State in which the case was heard.

The same principle must apply to sentences which have been termed "*unjust*" or "*manifestly unjust*".

Nothing could be more dangerous than to admit the possibility of rehearing, elsewhere than in the courts of the country, a judicial decision alleged to be contrary to justice. An opening would thus be afforded for abuses of every kind, for the most serious violations of internal sovereignty and for countless international conflicts.

As States are at present organised, each being bound to respect the institutions of the others, any endeavour to create, at a given moment, a special court having power to overrule the national judicature would be unthinkable.

Unless we are ready to upset the one true basis of international law—the collective will of States—we will not entertain the supposition that States, when they entered the community,

ever contemplated an abridgment of the dignity and authority of their own courts of law. That, however, would be the final result of rehearing a case where no provision for appeal existed under the legislation of the State concerned; and yet the advocates of the theory of international responsibility, in connection with judicial decisions vitiated by *manifest or flagrant injustice*, would inevitably be led to provide for some such re-hearing.

Where would they find a *super-judge* competent to determine the existence of such injustice? And, supposing that they could discover such a personality, what would become of the principle of the equality of States, a principle on which the international community is based, and which cannot be disregarded without shaking the whole edifice to its foundations?

Moreover, to admit the possibility of international proceedings being brought in another country, in opposition to the original *lex loci*, would be contrary to the international rule under which nationals of a foreign State cannot claim more favourable treatment than nationals. This would, however, be the result if foreigners had an international appeal open to them in addition to the remedies offered by the national law.

We should not continue this reasoning any further had not a number of modern legal publicists unfortunately come forward in favour of this view of international responsibility. We must therefore persist in our argument, and we shall substantiate our contention—that no international recourse is admissible against municipal judgments—by quoting certain cases. These cases demonstrate the repugnance with which requests for intervention on these lines have almost invariably been received.

In 1885, when the Government of the United States of America received a request of this kind, the Secretary of State, Mr. Bayard, sent a letter to the American Minister in Mexico in which he said: "This Department is not a tribunal for the rehearing of decisions of foreign courts, and we have always laid down that errors of law and even of fact, committed by these tribunals, do not afford a motive for any intervention on our part".

Another American Secretary of State, Mr. Marcy, adopted a similar line in writing to the United States Minister in Chile, Mr. Starkéatter: "Irregularities committed in the case of an American citizen in Chile, unless they amount to a *refusal of justice*, afford no grounds for intervention by the United States."

When Great Britain and Portugal submitted to arbitration the question of the alleged *manifest injustice* of a decision given by the Corte de Relação, the arbitration tribunal stated: "While we unhesitatingly admit that the decision was erroneous, we cannot agree that it was manifestly unjust. It would be manifestly unjust to hold the Portuguese Government to account for faults imputable to the courts of that country. According to the Portuguese constitution, these courts are absolutely independent of the Government and therefore the Government can exert no influence over their decisions. The British Government cannot disregard this fact without at the same time disregarding the whole existence of Portugal as a civilised State, and that is obviously not the intention of the British Government."

As these views were expressed in cases in which the party concerned happened to be a small State, we can well imagine the reception which a great Power would accord to a claim to hold it responsible for an unjust decision given by its magistrates.

In every State the independence of the judicature and respect for the law are recognised as such fundamental principles that even when the courts are called upon to apply the rules of private international law, which, as a result of an international treaty, fall within the scope of the State's own laws, they are not made subject in doing so to the supervision of their Government (resolution of the Institute of International Law at its session at The Hague in 1875).

Another theory which is quite as inadmissible is that international responsibility is incurred through abnormal delay in the administration of justice.

No State can claim to possess courts so efficient that they never exceed the time-limit laid down in the laws of procedure. The larger the State, the greater the number of cases brought before its judges, and consequently the greater the difficulty of avoiding delays, sometimes quite-considerable delays.

If we agree that the State is responsible neither for judicial errors nor for the manifest injustice of judicial decisions, nor for abnormal delay in the administration of justice, are we to infer from this that the State has no responsibilities in regard to the manner in which it dispenses justice? Certainly not. Its international responsibility may become seriously involved.

We have already shown that the State owes protection to the nationals of foreign States within its territory, and must accord such protection by granting foreigners the necessary means for defending their rights. But these means can only be such as are made available by the laws and courts of the country and by the authorities responsible for public order and security.

In the case in question the State would not be fulfilling its duty towards other States if it did not allow foreigners to have access to its courts on the same terms as its own nationals, or if these courts refused to proceed with an action brought by a foreigner in defence of the rights which are granted to him and through the means of recourse which are provided under the domestic laws.

Such responsibility would arise as the result of a *denial of justice*.

In saying "on the same terms as its own nationals", we desired to emphasise the necessity of equality as regards access to the means of recourse open to all persons under the same jurisdiction. Thus, if the nationals of a State are allowed to appeal from the decision of a court of first instance, the same privilege must be accorded to foreigners when their recognised rights are in dispute.

The decision of a judicial authority, in accordance with the *lex loci*, that a petition submitted by a foreigner cannot be entertained should not, however, be regarded as a *denial of justice*.

The State has fulfilled its duty by the very fact that the local tribunal has been able to give a decision regarding this request.

Denial of justice is therefore a refusal to grant foreigners free access to the courts instituted in a State for the discharge of its judicial functions, or the failure to grant free access, in a particular case, to a foreigner who seeks to defend his rights, although, in the circumstances, nationals of the State would be entitled to such access.

In conclusion, therefore, we infer that a State, in so far as it is bound to afford judicial protection, incurs international responsibility only if it has been guilty of a *denial of justice*, as defined above.

Damage caused to Foreigners in Cases of Riot and Civil War.

This problem has long been a source of disputes of every kind, and discussions which have not yet led to the enunciation of any definite rule. This is not due to the absence of international juridical standards by which the problem might be solved, but rather to a habit, which certain exponents of international law have acquired, of straying into fields where no enquiry on the lines of international law can be usefully carried out, and then evolving a series of quite unwarrantable conclusions, by means of analogies which are incompatible with that law.

Some authorities, in their desire to attain these results, have not hesitated to delve into the remote past, and to explore both the individualist and collective conceptions of law.

When these theories have crumbled away in the light of careful research, other theories have been advanced to replace them—new indeed, but equally futile.

The latest of these were expounded during the discussion of the regulations drawn up at Neuchâtel by the Institute of International Law, namely, the theories of *expropriation* and *State risk (risque étatis)*.

We will examine these theories briefly, but will not of course approach the question from the same standpoint as their authors. Our sole concern is to discover rules of international law capable of being codified; we cannot therefore allow ourselves to wander deliberately further and further away from international law in the search for some basis of international responsibility.

Brusa has done so, and has openly avowed it. In his report to the Institute of International Law he states that foreign diplomatic intervention should be limited to cases in which justice is not accorded to a foreigner who has suffered damage in time of riot or revolution, or in which the Government has violated the law of nations, in particular (he observes) by violating a treaty under which foreign residents are exempted from forced loans and contributions.

"In this case," adds Brusa, "in addition to the correlative duty of affording compensation for the services rendered and returning the property received, the State has, it would seem, at the same time actually incurred responsibility towards the foreign State under the law of nations, and has thus afforded ground for direct diplomatic intervention."

Unless we are mistaken, the logical outcome of Brusa's idea is that:

1. The obligation to compensate for damage arises from the fact that the State has received services;
2. The responsibility of the State only becomes of an international character when the State violates the law of nations by the *denial of justice* or the violation of a treaty.

This would prove that the "responsibility" arising out of Brusa's arguments is purely civil.

In correlation with his theory of compensation for benefits received by the State (and as if he purposely desired to break away from international law), he advances simultaneously his other theory of *expropriation* in civil matters.

What would become of international law if rules deriving from private law were thus transferred to its sphere on the sole ground of some sort of analogy? And is there really any such analogy between the relations of States *inter se* and the relations between a State and individuals; between the international community and the national community? In the first place, there can be no juridical analogy between two bodies of law which are different as to their source, their content and their validity. International law and private law have been created, and are moved, by two separate forces, which have absolutely no kinship with one another. For the first, although it is superior, the concurrence of many wills is required; the latter is subject to no such limitative necessity.

According to this principle, therefore, international law must keep itself pure from any infiltration of domestic law.

Neither in the theories of Brusa, nor in the application of the idea of *risk (risque)* proposed by Fauchille on the same occasion, do we perceive any principles of private law which could be converted into principles of international law. It is therefore juridically impossible to draw any conclusions therefrom, even of a provisional nature.

In short, it is idle to assert that the elements required to establish international responsibility can be found in civil law or in the ideas applicable to civil law.

Apart from the fundamental difficulty which we have pointed out, these two theories are open to other criticisms. The theory of *expropriation*, for instance, ceases to be accurate when it places all loss that a foreigner may suffer in the case of revolution on the same footing as the loss of property for reasons of public utility. In the latter case we have a rendering of services which constitutes an undoubted title to compensation, however the question may have arisen; whereas, in other acts which may involve loss, we do not perceive a similar rendering of material services.

The theory of *State risk* (*risque d'Etat*) tends to introduce into international law economic conceptions which are out of place in international relations. The arguments by which it has been sought to bring these conceptions into the sphere of international law neither enhance their value nor justify their admission. "Foreigners", said Fauchille, "who come to take up their residence in a country constitute, like nationals, a source of gain for the State in which they reside: their industry and their sojourn in the territory bring profit to the State. Is it not logical and just that, in return, the State should be bound to give compensation for loss which these persons—be they nationals or foreigners—may have suffered at the hands of other nationals or other foreigners?"

Would it not be more logical to reverse the argument and say: Foreigners do not leave their homeland in order to be of profit to the State in which they take up their residence. On the contrary, they come to the country with the definite intention of availing themselves of its wealth, its hospitality and its institutions, hoping to carve out for themselves a better position than that which they have left behind them. Their change of residence being voluntary, they must accept all the risks of chance happenings and unforeseen events.

In this survey we should also reject all theories which base the responsibility of the State, in case of riot or revolution, on a *presumptio juris et de jure* or an *obligatio ex delicto*.

International law itself provides the basis for the solution of this question.

A riot is an act committed by private individuals, and not by the State. No loss occasioned to foreigners by a riot involves international responsibility unless the State has neglected to fulfil its duties of exercising vigilance, repressing disorder and providing judicial protection.

Damage caused by revolution may be the result of acts committed by either of the opposing parties. If the acts are committed by the lawful authorities, whose concern it is to restore order, the State is not responsible for the fact that, in exercising its supreme right and duty, it has caused damage to foreigners, since the interests of the community, of which foreigners as well as nationals form part, are higher than any private interests. The State, by taking steps to restore the well-being of the community, has simply acted as an entity which is bound, both from a national and an international standpoint, to maintain order and security. The former duty arises under the constitution, and the latter under the obligation which the State has contracted to ensure normal conditions of life for foreigners, and these conditions can only be secured if order and peace prevail. Although the claim of absolute irresponsibility may just conceivably be open to question when a State is exercising a right, it cannot possibly be questioned when the State is simultaneously exercising a right and discharging an international duty.

We do not share the opinion of those who deny that revolution is a case of *vis major*. In general, neither wars nor revolutions are desired by the State—the latter, indeed, even less so than the former. They almost invariably occur because some blind force, against which the public authorities are powerless, has been set in motion. No State is immune from the evil. Revolution bursts upon a country with all the brutal force of some convulsion of nature. Foreigners as well as nationals have to partake of the consequences and share in the good or evil fortune which these undesired and unforeseen events may bring.

If it could be sustained that the protective rôle of a State renders it indisputably liable to grant compensation for all losses suffered by foreigners, we could not overlook the question of compensation for losses caused to foreigners by strikes. In this case the responsibility of the State would be even more directly involved, since, in almost all countries, the State recognises the right to strike, or at any rate tolerates strikes. It should not be forgotten that in the intensive modern life of great cities a strike may cause greater loss to foreigners and nationals than that occasioned by minor revolutions, which have often formed a pretext for inordinate claims.

Loss occasioned by the acts of rebels or revolutionaries comes within the category of acts done by private individuals and therefore not imputable to the State. In this connection we should remember the rule that the duty of protection is confined to the territory over which the State exercises its sovereignty.

A State cannot be held responsible for occurrences in a territory no longer under its authority or control, when a case of *vis major* prevents it from fulfilling its duties as protector.

Let us now refer to customary law in order to ascertain whether there is any rule which may be regarded as an expression of inter-State will in the matter of losses suffered by foreigners in civil wars.

Customary law demonstrates with mathematical exactitude that States, wherever situated, have on all occasions absolutely rejected all international responsibility for such losses.

Powerful States have invariably asserted this rejection of responsibility in terms so clear and precise that no doubt can exist as to their very definite views on the subject. Weaker States, when they have not been able to resist external pressure, have indeed paid indemnities, but always subject to the reservation that they were not bound at law to pay them, and were simply doing so as an *act of grace*.

We will quote a few instances of States which, on various occasions, have pleaded the non-existence of international responsibility: Belgium, in 1830 and 1834; France, in 1830, 1848 and 1871; Russia, in 1850; Austria, in 1865; the United States of America during the War of Secession and in 1851, when a number of Spaniards were victims of the populace of New Orleans; and also all the States of Latin America.

Treaties concluded between certain European States, and between several of the American States, which contain provisions disclaiming responsibility in case of damage occasioned by revolt and civil war, have often been the subject of criticism. We think that these criticisms ought rather to be levelled against the nations which, in defiance of all international rules, have sought to impose on other States a responsibility which the latter could never really have incurred.

The States of Latin American have acted wisely in endeavouring to secure protection for their legitimate rights by means of treaty provisions.

It should be noted, moreover, that these treaties are careful not to exclude responsibility arising from a *denial of justice*.

In short, if international law is to be codified—as it certainly should be—in accordance with the will of States, as manifested either by treaties or by international practice, we must conclude that the State is not responsible for loss suffered by foreigners in cases of riot or revolution.

We do not, however, include in this category loss of property sustained by foreigners through the action of the State as a result of requisition, expropriation, confiscation, spoliation or on any other arbitrary proceedings. Whether in peace, in war or in time of revolution, the State should be foremost in respecting and protecting the property of foreigners.

We have said that property, with life and liberty, forms part of the fundamental rights of the individual and that these rights must be recognised and protected wherever the individual happens to be. A state of war or revolution would in no way justify the violation of any of these rights, and a State failing in the duty, which it has contracted with regard to the international community, to afford safety and protection would also incur international responsibility.

The State is therefore bound to grant compensation for the property of foreigners which it has appropriated in time of revolution.

As regards the property of foreigners seized by revolutionaries or rebels — an act which, as we have pointed out, falls within the category of acts committed by private individuals—the State must provide such foreigners with all facilities for prosecuting the offenders and recovering possession of their property. If, on the contrary, the State were to deprive these foreigners of all means of action, by passing a law of amnesty, its international responsibility would be involved and it would be answerable for any damage which the revolutionaries or rebels might have caused to the foreigners in question.

V.

Second Question.

WHETHER AND, IF SO, IN WHAT TERMS IT WILL BE POSSIBLE TO FRAME AN INTERNATIONAL CONVENTION WHEREBY FACTS WHICH MIGHT INVOLVE THE RESPONSIBILITY OF STATES COULD BE ESTABLISHED, AND PROHIBITING IN SUCH CASES RECOURSE TO MEASURES OF COERCION UNTIL ALL POSSIBLE MEANS OF PACIFIC SETTLEMENT HAVE BEEN EXHAUSTED.

We have shown that international responsibility does not arise by reason of any loss which foreigners may sustain but by reason of a failure to act, or the commission of an act, contrary to international law and imputable to the State. Although in some cases responsibility clearly results from the existence or non-existence of a fact, it is often — we might say almost always — necessary to conduct a careful enquiry into the facts in order to ascertain whether they really give rise to a question of international law and whether the State has incurred responsibility.

At present, the best international method for conducting such enquiries is that of international commissions of enquiry.

Let us summarise the advantages of these commissions:

1. The time which elapses between the committing of the acts and the constitution of the commissions undoubtedly helps to abate the excitement and passions aroused;
2. The nationality of the persons appointed to conduct the enquiry, their standing and the moral responsibility which rests upon them afford a guarantee of the impartiality of their investigations;
3. Since the conclusions of these commissions do not take the form of an arbitral award, the conflict may be eliminated by the mere acceptance of these conclusions, without any judgment, which might wound the susceptibilities of the responsible State, having been pronounced;
4. Should the conclusions produce no immediate result, the dispute may still be settled by other pacific methods.

In most cases the enquiry may be expected to end the dispute without creating any abiding bitterness between the two States concerned. Neither party has reason to regard itself as victor or vanquished; neither has had to bow to the peremptory dictates of a judicial sentence. The commission merely submits its report and the parties concerned are free to draw their conclusions therefrom and to order their actions accordingly.

We should not forget the immense service which was rendered to the cause of peace by this method of conciliation in the Dogger Bank affair between Russia and Great Britain. Never has a question of damage caused to foreigners brought two great Powers so near to the brink of war as in 1904, when the Russian fleet on its way to the Far East bombarded a British fishing fleet on the Dogger Bank.

War was only avoided by having recourse to one of the international commissions of enquiry provided for in the Hague Convention of 1899.

The first result of this procedure was to allay the justifiable indignation which had been aroused in England and which was gathering volume as the discussion between the Russian and British Governments continued.

The commission was composed of five members, one being chosen by the Government of each of the nations concerned, two others by the French and American Governments, and the fifth by these four members sitting together. Four months later it submitted a report, stating,

amongst other conclusions, that the British fishing fleet had not committed any hostile act and that as there was no torpedo-craft among the trawlers or in the vicinity, the Russian Admiral Rojestvensky had not been justified in opening fire.

In view of this very conclusive statement, the Russian Government, without further procedure or action, paid the British Government an indemnity for the victims and the incident was definitely closed.

Treaties, with a compulsory clause, concerning international commissions of enquiry, have already been concluded between several States, in particular between France and the United States, between the United States and a number of Latin-American States, between the Central American Republics and between Argentina, Brazil and Chile.

Consequently, we propose that an international convention should be drawn up under which the signatory States would bind themselves to entrust to international commissions of enquiry the investigation of the facts which may have given rise to an incident, involving international responsibility, where it has been impossible to settle such incident by ordinary methods.

Whenever a dispute should arise the parties concerned would be entitled to demand the appointment of a commission of enquiry.

The Permanent Court of International Justice might be chosen to act as an intermediary organ between the States parties to the dispute. On receiving a request, the Court would invite each of the States concerned to appoint a commissioner and would at the same time request two Governments, selected by itself, to appoint two other commissioners each. The Court would fix the date and place at which the four members should meet to elect the fifth commissioner—who would be Chairman of the Commission—and to begin the enquiry.

The procedure to be followed and the powers of the commission might also be defined in this Convention.

Further, and most important of all, there would be a clause by which the States would undertake not to commit any act of violence either before or after the formation of the commission of enquiry, and to provide the latter body with all necessary facilities for carrying out its task.

The commission should also have the power to order measures for safeguarding the rights of each of the parties concerned until the commission has submitted its report.

The report and all decisions and conclusions of the commission would have to be agreed to and drawn up by a majority vote.

The report should merely establish the facts, without taking the form of an award, leaving the parties free to act as they think best on the conclusions of the commission of enquiry. As a corollary to the undertaking concerning the appointment of commissions of enquiry, States should also bind themselves, in the same convention, to submit to the arbitration of the Permanent Court of International Justice any dispute not definitely closed by the report of the commission of enquiry.

The convention might also—and this would be even more advantageous—lay down that permanent commissioners should be appointed for a fixed period from lists of names which each contracting State would send to the Permanent Court of International Justice. When a case arose an international commission of enquiry would be immediately formed consisting of five commissioners, one appointed by each of the States concerned in the dispute, two other commissioners of other nationalities elected by the Court, and finally a fifth commissioner appointed by the four others.

Should a dispute arise, whatever the nature or form of that dispute might be, States would undertake to abstain from all coercive measures.

This method of acting as judge in one's own cause has indeed become incompatible with the organisation of modern international society. To resort to coercion would be tantamount to returning to primitive times when reparation was exacted by force.

The shock caused to the conscience of the world whenever coercive measures are employed in peace-time is sufficient to prove that the case of violence is no longer admitted in the present state of modern civilisation.

The international community as represented at Geneva in 1924 condemned acts of force and violence and placed them on a level with the crime of aggression in the Protocol on Arbitration, Security and Disarmament, which it drew up and which, when all is said and done, will remain the finest effort ever made in human history to ensure world peace. The official comment on Article 10, which determines the aggressor, reads as follows: "The text refers to resort to war, but it was understood during the discussion that, while mention was made of the most serious and striking instance, it was in accordance with the spirit of the Protocol that acts of violence and force, which possibly may not constitute an actual state of war, should nevertheless be taken into consideration by the Council". This official comment was unanimously approved by the 1924 Assembly.

VI.

*Conclusions*¹.

The conclusions we are about to draw are the logical outcome of the principles by which we have consistently been guided in preparing this report—and which we hold to be the only possible basis for the elaboration of rules likely to secure the approval of all States.

¹ As reproduced here, the conclusions of the report contain amendments made by M. Guerrero as a result of the discussion in the Committee of Experts.

Were we to depart from these guiding rules, were we to seek to codify principles regarding which the collective will is uncertain or actually divided, our endeavours would be useless; indeed, we should be encouraging the establishment of a series of continental systems and codifications of law—which already exist in outline—the sole result being to create unending sources of disagreement.

We should not lose sight of the fact that the object of our task is to establish rules which may be embodied in international conventions, and that these conventions, to be effective, require the consent of all, or nearly all, the countries of the world.

These are our conclusions:

1. Since international responsibility can only arise out of a wrongful act, contrary to international law, committed by one State against another State, damage caused to a foreigner cannot involve international responsibility unless the State in which he resides has itself violated a duty contracted by treaty with the State of which the foreigner is a national, or a duty recognised by customary law in a clear and definite form.

2. The responsibility of a State is only involved by the commission in its territory of a political crime against the persons of foreigners if the State has neglected to take all reasonable measures for the prevention of the crime and the pursuit, arrest and bringing to justice of the criminal.

The recognised public character of a foreigner and the circumstances in which he is present in its territory entail upon the State a corresponding duty of special vigilance on his behalf.

3. A State is responsible for damage incurred by a foreigner attributable to an act contrary to international law or to the omission of an act which the State was bound under international law to perform and inflicted by an official within the limits of his competence, subject always to the following conditions:

(a) If the right which has been infringed and which is recognised as belonging to the State of which the injured foreigner is a national is a positive right established by a treaty between the two States or by the customary law;

(b) If the injury suffered does not arise from an act performed by the official for the defence of the rights of the State, except in the case of the existence of contrary treaty stipulations;

The State on whose behalf the official has acted cannot escape responsibility by pleading the inadequacy of its law.

4. The State is not responsible for damage suffered by a foreigner, as a result of acts contrary to international law, if such damage is caused by an official acting outside his competence as defined by the national laws, except in the following cases:

(a) If the Government, having been informed that an official is preparing to commit an illegal act against a foreigner, does not take timely steps to prevent such act;

(b) If, when the act has been committed, the Government does not with all due speed take such disciplinary measures and inflict such penalties on the said official as the laws of the country provide;

(c) If there are no means of legal recourse available to the foreigner against the offending official, or if the municipal courts fail to proceed with the action brought by the injured foreigner under the national laws.

5. Losses occasioned to foreigners by the acts of private individuals, whether they be nationals or strangers, do not involve the responsibility of the State.

6. The duty of the State as regards legal protection must be held to have been fulfilled if it has allowed foreigners access to the national courts and freedom to institute the necessary proceedings whenever they need to defend their rights.

It therefore follows:

(a) That a State has fulfilled its international duty as soon as the judicial authorities have given their decision, even if those authorities merely state that the petition, suit or appeal lodged by the foreigner is not admissible;

(b) That a judicial decision, whatever it may be, and even if vitiated by error or injustice, does not involve the international responsibility of the State.

7. On the other hand, however, a State is responsible for damage caused to foreigners when it is guilty of a *denial of justice*.

Denial of justice consists in refusing to allow foreigners easy access to the courts to defend those rights which the national law accords them. A refusal of the competent judge to exercise jurisdiction also constitutes a *denial of justice*.

8. Damage suffered by foreigners in case of riot, revolution or civil war does not involve international responsibility for the State. In case of riot, however, the State would be responsible if the riot was directed against foreigners, as such, and the State failed to perform its duties of surveillance and repression.

9. The category of damage referred to in the preceding paragraph does not include property belonging to strangers which has been seized or confiscated in time of war or revolution, either by

the lawful Government or by the revolutionaries. In the first case the State is responsible, and in the second the State must place at the disposal of foreigners all necessary legal means to enable them to obtain effective compensation for the loss suffered and to enable them to take action against the offenders.

The State would become directly responsible for such damage if, by a general or individual amnesty, it deprived foreigners of the possibility of obtaining compensation.

10. All that has been said in regard to centralised States applies equally to federal States. Consequently, any international responsibility which may be incurred by one of the member States of a federation devolves upon the federal Government, which represents the federation from the international point of view; the federal Government may not plead that, under the constitution, the member States are independent or autonomous.

11. Any dispute which may arise between two States regarding damage suffered by foreigners within the territory of one of the States must be submitted to an international commission of enquiry appointed to examine the facts.

If the report of the commissioners adopted by a majority vote does not result in the incident being closed, the parties concerned must submit the dispute to decision by arbitration or some other means of pacific settlement.

12. States must formally undertake not to resort in the future to any measure of coercion until all the above-mentioned means have been exhausted.

(Signed) Gustavo GUERRERO,
Rapporteur.

QUESTIONNAIRE No. 5.

**PROCEDURE OF INTERNATIONAL CONFERENCES
AND PROCEDURE FOR THE CONCLUSION
AND DRAFTING OF TREATIES.**

The Committee has the following terms of reference¹:

- (1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment;
- (2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received; and
- (3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Committee has decided to include in its list the following subject:

“Whether it is possible to formulate rules to be recommended for the procedure of international conferences and the conclusion and drafting of treaties, and what such rules should be.

On this subject the Committee has the honour to communicate to the Governments a report presented to it by a Sub-Committee consisting of M. MASTNY, as Rapporteur, and M. RUNDSTEIN. The report comprises a report presented by M. Mastny and observations thereon by M. Rundstein.

The nature of the general question and of the particular questions involved therein appears from the report. There is no question of attempting to reach by way of international agreement a body of rules which would be binding obligatorily upon the various States. The object of the suggested investigation is more modest. It would be sought to put at the disposal of the States concerned rules which could be modified as they chose in each concrete case but whose existence might save them much discussion, doubt and delay.

It is in this spirit that the Committee ventures to submit, with the report, two attached lists² indicating possible subjects for regulation, lists modified in some respects by the Rapporteur in consequence of the discussion in the Committee but continuing, in the view both of the Committee and of the Rapporteur, to have the character of questionnaires. It is also understood that, at the present stage of its work, the Committee does not pronounce either for or against the opinions expressed on various points in the report.

The Committee has felt that it should not limit itself to raising the general question. It has wished, by referring to the report and to the lists, to call attention to a number of details with a view to facilitating the decision as to whether regulation by international agreement is desirable and realisable.

In order to be able to continue its work without delay, the Committee will be glad to be put in possession of the replies of the Governments before October 15th, 1926.

The Sub-Committee's report is annexed.

Geneva, January 29th, 1926.

(Signed) HJ. L. HAMMARSKJÖLD,
Chairman of the Committee of Experts.

VAN HAMEL,
Director of the Legal Section of the Secretariat.

¹ See Assembly Resolution of September 22nd, 1924.

² See pages 114 and 115.

Annex to Questionnaire No. 5.

REPORT OF THE SUB-COMMITTEE.

M. MASTNY, Rapporteur.

M. RUNDSTEIN.

Whether it is possible to formulate rules to be recommended for the procedure of international conferences and the conclusion and drafting of treaties, and what such rules should be.

I. REPORT SUBMITTED BY M. MASTNY.

[Translation.]

At its first session held at Geneva (meeting of April 8th, 1925), the Committee of Experts for the Progressive Codification of International Law adopted, among others, the following resolution:

"(g) The Committee appoints a Sub-Committee to examine the possibility of formulating rules to be recommended for the procedure of international conferences and the conclusion and drafting of treaties, and what such rules should be."

The undersigned, having had the honour to be appointed Rapporteur of the Sub-Committee, got into touch with M. Rundstein, the other member of the Sub-Committee, and explained to him his general ideas on the subject and on the method of work the Sub-Committee should adopt.

After an exchange of views, the two members of the Sub-Committee have come to the conclusion that the matter indicated in the resolution is suitable, subject to certain reservations, for regulation by convention, *i.e.*, for codification in the broad sense of the term accepted by the Committee of Experts at its first session.

The desire to formulate certain rules applicable to the procedure of international conferences has often been observed in practice and has also found expression in theoretical writings (see, for example, L. OPPENHEIM, *Die Zukunft des Völkerrechtes*, Leipzig, 1911, page 23).

The writers on international law who deal with the special questions connected with the negotiation of treaties in most cases confine themselves to explaining in greater or less detail the ordinary organisation and procedure of conferences, and draw attention to disputed points, or give an historical account of past congresses and conferences (see P. PRADIER-FODÉRE, *Cours de droit diplomatique*, 1899, Vol. II, pages 297 *et seq.*; E. SATOW, *A Guide to Diplomatic Practice* 1922, Vol. II; and R. GILADY-GRUBER, *Internationale Staatenkongresse und Konferenzen*, 1919).

Ludwig BITTNER, in his excellent book *Die Lehre von den völkerrechtlichen Vertragsurkunden*, dealing with the form in which treaties are negotiated and concluded, expresses doubts as to the possibility of systematically regulating procedure owing to the many different kinds of international conferences (political conferences, conferences for legislation by way of conventions, administrative conferences, etc.) and the endless combinations of the different types which, in his opinion, preclude any possibility of uniform regulation (BITTNER, page 104).

While admitting the difficulty of the problem, the Rapporteur is unable to accept this view in its entirety; he is convinced of the possibility of drawing up certain rules both for the procedure and the organisation of international conferences, provided that these rules are sufficiently general to allow States and their representatives the requisite freedom in settling the details in each case according to circumstances and with due regard to the special requirements which may arise in practice.

The success of such rules would depend on the method employed in establishing them.

As it stands, the text of Resolution (g) would authorise the Sub-Committee to submit a preliminary draft of such regulations forthwith.

An attempt to settle the problem in this way at the outset would seem, however, to be premature, in the first place for purely formal reasons.

The resolution adopted by the Assembly of the League of Nations on September 22nd, 1924, which set up the Committee of Experts on International Law, provides for the execution of the work of codification in three stages.

In the first stage the Committee has merely to prepare "a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment".

In the Rapporteur's opinion, it is only during the third stage that the final results of the work should be submitted, after the replies of the Governments and learned societies have been studied and discussed.

This view was also expressed in the resolution of the Committee of Experts (meeting of April 8th, 1925) which, in entrusting the Sub-Committees with the study of certain questions, observed that "the Committee has not at present gone beyond the preliminary examination of the fields to be investigated with a view to later elaboration of detailed proposals".

But, apart from these purely formal reasons, there are others which necessitate caution and justify the Sub-Committee in confining its report to a general statement of methods and to indicating their character.

The technique of the organisation and procedure of international conferences has developed gradually since the seventeenth century (the first foundations were laid by the Congress of Westphalia and the Congress of Vienna).

The procedure of present-day conferences has been based, in the case of political conferences, on the Berlin Congress of 1878; in the case of conferences relating to the codification of law, on the two Hague Conferences of 1899 and 1907; and in the case of administrative conferences, on the conferences of the International Unions (postal, telegraphic, etc.) and their international bureaux.

As regards more especially the preparatory procedure (preliminaries, preparation of the subject, invitations and convocation, it is the London Maritime Conference of 1908-9 which serves as model.

A certain number of practices have grown up and these reappear at each conference and are handed on from one to the other.

Sometimes the rules *in concreto* are supplemented as to detail to meet special requirements which arise in practice, and sometimes the rules of procedure, particularly those of the meetings themselves, are simplified.

The process of evolution reached its culminating point in the proceedings of the Peace Conferences at Paris and in the activities of the League of Nations and its Secretariat. The latter has rendered immense services in connection with the problem with which we are dealing by working out all the details involved by the complexity of the international life of to-day.

The process of evolution has not yet ceased, however. To realise this, it is sufficient to study the history of recent conferences and to observe that the procedure, while in general following established precedent, has been modified in detail by the application of special provisions *in concreto*.

One of the objections urged against the codification of international law is that it is a serious drawback to give fixed contractual form to principles in process of evolution. The work of codification, however, is open to no such objection as far as the procedure of conferences is concerned provided that:

(a) Codification is confined to the formulation of *subsidiary* rules of procedure (in the event of States not deciding to establish special rules);

(b) Codification only gives concrete expression to principles generally recognised as forming part of the customary law.

* * *

The rules which usually govern the procedure of international conferences may be divided into two categories.

1. The first category includes a series of rules which are left to the free choice of the States and their representatives taking part in the conference.

As regards this category it is impossible to say that a custom exists in the legal sense of the term, as the rules are purely formal and can constantly be changed at the discretion of the participating States.

This category of rules is based on usage followed without "*opinio necessitatis*".

2. The second category, on the other hand, includes certain rules which from the legal point of view are merely the application of certain fundamental principles generally recognised as forming part of existing international law (customary law, "*opinio necessitatis*").

It is in particular the questions coming within this second category which, having their origin in international customary law (substantive law), are not always interpreted and applied in the same way and offer difficulties which often hamper the smooth running of international conferences.

Even a superficial discussion of the various questions in dispute from the point of view of practical application to international conferences would go far beyond the scope of a report the only purpose of which, at the present stage, is to demonstrate whether codification is possible and desirable.

Clearly, the codification of rules the terms of which depend on the previous solution of a controversial question would in principle present greater difficulties than a simple codification of customs and practices which are universally admitted and uniformly interpreted.

The utility of codification is therefore not always in proportion to its practicability.

The Rapporteur, for his part, has no hesitation, however, in pronouncing in favour of a codification extending even to controversial questions, and he believes that a codification of this kind in the wide sense of the term would render the greatest service to international relations in connection with conferences.

It is true that the subject-matter specified in Resolution (g) appears by its very nature to imply that the work of codification should be confined to questions relating purely to form. It follows that the discussion of questions of substantive law should be limited to problems which are directly connected with questions of form.

Apart from this, codification must necessarily avoid trespassing on the domain of politics, which nevertheless often has an influence on the provisions *in concreto*.

At the same time it should adopt formulas sufficiently wide to allow of any special measures being taken which may be required in particular cases.

* * *

To answer the question "what such rules should be", it is necessary first of all to decide on what basis regulation should be established.

Three solutions suggest themselves:

- (1) Regulation of procedure containing only rules common to all types of conferences;
- (2) Detailed regulation of the procedure of a certain type of conference;
- (3) Adoption in a convention of certain general principles which should be observed by States when conferences are held, irrespective of the special nature of such conferences.

Sub 1: First Type. — The Rapporteur considers that such regulations, in endeavouring to provide for every possible combination of the different types of conferences, would have to be of so general a nature that the practical utility of codification would be doubtful.

Sub 2: Second Type. — Objections may be made to detailed regulations applying to certain types of conferences.

Owing to the variety of their objects and aims, no absolute classification of international conferences has been established.

For the purposes of codification, it would perhaps be necessary to establish certain distinctions. In the first place, a distinction might be made between conferences planned and organised by the League of Nations and held under its auspices, and all conferences unconnected with the League.

A further distinction should be made between political conferences and non-political conferences (administrative, economic, social, etc.).

From the legal point of view, a distinction should be made between conferences on international conventional law (codification conferences) and special conferences (conferences settling particular relations between the contracting States).

Lastly, according to the character of the representatives, a distinction should be made between diplomatic conferences (diplomatic agents) and technical conferences (experts).

Which of these types should be considered for the purposes of codification?

As regards conferences held under the auspices of the League of Nations, the Rapporteur considers that, within the sphere of its activities, the Secretariat is the body best qualified to perform the preliminary work and to determine the procedure, while taking into account the special requirements of each particular case. Nevertheless, the practical experience gained at recent conferences shows that even the draft rules of procedure prepared with the greatest care by the Secretariat have not always been adopted *en bloc*.

As regards political conferences unconnected with the League of Nations, the Rapporteur considers that the variety of objects and aims and the complexity of the questions to be discussed, together with the varying number of States taking part and the character of the representatives in individual cases, etc., do not permit of any uniform or universal type of rules of procedure; and this opinion is borne out by practical experience.

As regards non-political conferences, it should be pointed out that certain periodical conferences (those of the international unions and others) are already provided with rules of procedure adapted to their special needs.

Lastly, the character of diplomatic and technical conferences is so different as to discourage attempts at codification of the kind with which we are now dealing.

If we accept the idea that the organisation of and the regulations for the conferences held under the auspices of the League of Nations should be left in the hands of the Secretariat, the types of conferences for which regulation would be undertaken would be very limited in number and the practical utility of regulating procedure would also be limited, especially as it is obvious that any regulations adopted would only be of a subsidiary character.

Sub 3: Third Type. — If we recognise the objections put forward in 1 and 2, there only remains the third alternative, which contemplates the adoption, by means of conventions, of certain general principles of procedure for all international conferences irrespective of their special character. Codification in this last sense should be confined:

- (a) To the generally recognised principles of substantive international law (customary law);
- (b) To the general rules as regards form consecrated by usage;
- (c) To the positive rules of conventional legislation with a view to obviating the difficulties to which disputed questions may give rise (conventional law).

* * *

In determining the scope of the codification to be undertaken, it would be well to consider the various points enumerated in the following list.

LIST OF SUBJECTS TO BE EXAMINED.

PROCEDURE OF INTERNATIONAL CONFERENCES.

General principles.
Definition of International Conferences.
Classification of International Conferences.

A. *Organisation.*

Qualifications for membership.

Independent States.
Composite States.
States not enjoying complete independence and other formations.

Right of representation.

States concerned.
Admission of third Powers.

Rights of members taking part.

System of representation.

Delegations.

Questions of competence.

(a) Plenipotentiary delegates. Principal representatives. Assistant delegates.
Substitute representatives.
Secretaries of delegations.
Experts.
Technical assistants.
Auxiliary staff.

(b) Observers.

Diplomatic privileges and immunities.

B. *Preparatory Procedure.*

Preliminary conventions.

Initiative, invitation, convocation.

Previous agreement on the subjects of the conference.

Choice of place and date.

Preparation of the subject-matter and drafting of agenda (method and form).

Proposals and preliminary drafts (priority).

Reservations.

C. *Procedure of the Conference (Rules of Procedure).*

Rank and precedence.

Language employed (translation, interpreters).

Chairmanship (provisional chairmanship).

The Bureau: its competence.

Powers of the Chairman.

Verification (exchange, deposit) of full powers.

Unlimited powers. Full powers.

Limited powers.

Authorisation.

Instructions.

Credentials of diplomatic agents.

Committees and sub-committees.

Their members.

Drafting committee.

Rapporteurs; co-rapporteurs.

Debates.

Rules to be followed during the debates.

Agenda.

Proposals. Manner, initiative, priority. Placing of new questions on the agenda.

Draft resolutions, amendments and motions.

Previous question: motion for suspension.

Voting: method and form.

Unanimity. Absolute majority. Specified majority.

Plurality of votes.

Voice in the decision.

Voice in the discussion.

Right of a minority to withdraw.

Right of protest.

Declarations. Reservations.
Minutes (records).
Intrinsic value. Form. Adoption.
Publicity. Public and private meetings.
Press report.
Final Act.
Protocol of Closure.

The extent of the codification to be undertaken would depend on which of the three methods referred to above was chosen. The first and second alternatives would involve dealing particularly with the subjects specified under B and C of the above list (Preparatory Procedure and Rules of Procedure).

From the legal point of view, such regulations would not offer very serious difficulties as far as drafting the rules in question was concerned, since this part of the subject-matter belongs to the domain of usage and of "form" and since, apart from this, the rules would have the character of strictly directive and subsidiary "model regulations", the States having full freedom to make use of them or to draw up special regulations according to the requirements of actual cases.

Codification undertaken on the third system, however, should also cover the more or less delicate questions indicated under A (Organisation). Such regulations would have to some extent an obligatory character as embodying positive rules based on the guiding principles of international customary law (concrete law), defining the limits of their application from the legal point of view, and endeavouring at the same time to provide a satisfactory solution for controversial questions coming within the competence of the organs and representatives of the various States. The drafting of rules of the latter type would require special care (particularly as regards the application of the principle of the legal equality of States).

With a view to a full investigation of the subjects enumerated above, the Rapporteur has prepared two detailed and annotated questionnaires on the subject-matter of the questions entrusted to the Sub-Committee; these questionnaires also provide an analysis of the various questions from the point of view of the proposed codification. They should be annexed to the report if the Committee of Experts decides to recommend the regulation in question to the Governments.

* * *

As regards more particularly the *second part* of the Sub-Committee's task, *i.e.*, the problem of the codification of the rules to be applied with regard to the *conclusion and drafting of treaties*, the Rapporteur wishes to point out in the first place that all the subject-matter comprised by this problem has been recently dealt with at length by Ludwig BITTNER in the work quoted above (*Die Lehre von den völkerrechtlichen Vertragsurkunden*, Berlin, 1924). The author has endeavoured to deal with the subject in all its details and to consider all the aspects of the form of treaties, without neglecting the questions of substance which are intimately connected therewith.

Among other works principally devoted to the study of the form of international treaties, reference may be made to the well-known diplomatic handbooks of Charles B. DE MARTENS, *Guide diplomatique*; P. PRADIER-FODÉRE, *Cours de droit diplomatique*; SATOW, *Diplomatic Practice*; J. W. FORSTER, *Practice of Diplomacy*, Boston, 1906; and the special study by S. B. CRANDAL, *Treaties: Their Making and Enforcement*, Washington, 1916.

Having regard to the actual text of resolution (g), the Sub-Committee should confine its attention to the subject-matter summarised in the following list:

LIST OF SUBJECTS TO BE EXAMINED.

CONCLUSION AND DRAFTING OF TREATIES.

General Ideas:

Definition of treaties.
Classification of treaties.

The following must be excluded:

General theory of the validity of treaties, the effects of treaties, their execution, sanctions, termination, prolongation, confirmation, renewal, etc.

A. *Methods of Conclusion.*

Subject-matter of treaties.
Organs of conclusion. Questions of competence.

1. Direct representation.

Supreme executive power:
Chiefs of States.
Collective constitutional organs.

2. Delegated representation.

Mandated authority:

Minister for Foreign Affairs.
Diplomatic agents.
Special delegates.

Methods of conclusion.

1. Direct (immediate) conclusion (simple juridical act).
2. Indirect (mediate) conclusion (composite juridical act).
 - A. Mandate.
 - B. Negotiation of treaties (preliminary draft).
 - C. Ratification (completion of the treaty).

B. *Forms of Conclusion* (drafting).

Nomenclature:

Treaty, Pact, Convention, Agreement, Arrangement.
Protocol, Declaration, Exchange of diplomatic notes.

1. *Mediate Conclusion.*

Diplomatic instruments.
Intrinsic conditions, extrinsic conditions, essential conditions.
Type of solemn treaty.
Preamble. Subjects, organs, object of treaty (*Narratio*).
Description of mandatories.
Their authority to negotiate:

- (a) Full powers.
- (b) Authorisation.
- (c) Instructions.

The body of the treaty (*Dispositio*).
Stipulations: general clauses; special clauses.
Principal articles, subsidiary articles, general and special articles
Separate, additional and supplementary articles.

Final part of treaty (*Corroboratio*).

Special clauses:

Ratification clause.
Clauses as to coming into force, duration, denunciation.
Clauses allowing adhesion (accession).

Place, date, number of copies.

Signature, initials, seal, alternation of order of signature in the different copies
Accessory instruments. Annexes.
Reservations.
Final Act.
Protocol of Closure.

Ratification (from the point of view of form).

Instrument of ratification.
Exchange and deposit of the instruments of ratification.
Procès-verbal of exchange of instruments of ratification.

2. *Direct Conclusion.*

Simplified formulas.
Declaration.
Protocol.
Diplomatic notes.
Interpretation.
Modification of treaties.

C. *Publication of Treaties.*

Registration (Article 18 of the Covenant of the League of Nations).

D. *Spheres of International Law and Municipal Law* (constitutional law).

Theories in dispute:

(a) Ratification.

Refusal to ratify.
Incomplete ratification.

(b) Concurrence of legislative bodies.

This list, without going into details, gives an idea of the extent of ground to be covered.

The Rapporteur on this occasion cannot do more than make certain general observations indicating the possibilities of methods which might be applied to the codification of the points in question.

The different classifications of international treaties are as numerous as the writers who have dealt with them, and vary with the individual point of view. Most of them are of little practical value.

Nevertheless, it is the duty of the Rapporteur to call the attention of the Committee to the prevailing anarchy as regards terminology (treaty, convention, pact, agreement, arrangement, protocol, declaration, etc.). Up to the present, all attempts to obtain a uniform classification based on principles which take due account of the need of co-ordinating nomenclature, form and contents, have failed. In practice, little attention is paid to the exact meaning which should be given to terms customarily used.

The choice of nomenclature and form is governed by arbitrary considerations and depends upon the nature of the relations between States, the custom of the respective chancelleries, and sometimes even upon the carelessness of those who draft diplomatic instruments.

The Rapporteur sees no need to propose that these questions, which indeed are of no legal importance, should be regulated by treaty agreement, since in his opinion the remedy lies in the regular practice of registration as provided in Article 18 of the Covenant of the League of Nations, which is bound sooner or later to lead more or less automatically to the desired standardisation of nomenclature. At the same time, a certain elasticity in terminology is both inevitable and necessary in order that States may be left the freedom they require.

* * *

The exact sphere of codification within the strict meaning of the Sub-Committee's mandate is indicated above under the headings "A" and "B" in the list of subjects (Methods of Conclusion, Forms of Conclusion).

The codification of the points contained therein may be considered from various points of view:

1. A codification relating solely to form, the scope of which is indicated above, particularly under "B" (Forms of Conclusion), would consist in establishing formulas for all existing diplomatic instruments as "prescribed models". This would result in a list of formulas generally recognised as being in "good and due form" for the purpose of concluding actual treaties.

Such a compilation would constitute a valuable official diplomatic manual, particularly if the formulas were prepared in several languages. It would be of great practical assistance in preventing faulty drafting and would make for greater precision and clearness in treaties. From a practical point of view, codification of this kind would not necessarily require conventional regulation. The Rapporteur considers that it would be sufficient if such a manual were prepared and published by the League of Nations, provided it did not contain new elements.

2. It would be different, however, if it were proposed to introduce changes in the forms which have come to be generally accepted.

What changes could or should be made?

The first aim should be to simplify existing forms.

The formulas of treaties and diplomatic instruments concluded by mediation (the typical solemn instrument, full powers, the instrument of ratification) have developed since the twelfth and thirteenth centuries under the predominating influence of the French and English Chancelleries. These formulas date back to mediæval times, long before the beginning of the constitutional life of modern States and, further, to forms of government which permitted no delegation of powers.

It follows that the tenor of some of the inherited official formulas referring to ratification is no longer in complete accord with contemporary legal ideas. It would be well to make some concession to the modern spirit, but that is not a subject which can be considered by the Committee, since it is primarily a question of internal law and therefore not a matter for international regulation. Moreover, the difficulty of any attempt at reform would be increased by the respect felt for tradition.

There are, however, other questions relating to the simplification of formulas which come within the limits of the problem before us, without encroaching upon the province of constitutional law. One of these is the introduction of a uniform style in certain special clauses in the final part of treaties, the forms for which are often defective and even inexact, being sometimes too vague and sometimes too narrow.

3. As regards the points included in the above list under "A" (Methods of Conclusion), the question of regulation assumes a different aspect (as in the case of Group A of the list drawn up for the examination of questions of procedure at international conferences).

These are, first and foremost, questions of the competence of representatives entrusted with the negotiation and conclusion of treaties.

These questions can only form the subject of international regulation in so far as security and good faith in international relations require that the limits of the powers and capacity of the representatives entrusted with the negotiation and conclusion of treaties on behalf of the State should be defined from the point of view of international law.

The Rapporteur is of opinion that conventional regulation of the questions in this group would meet with no serious obstacles, provided, however, that the aim in view was limited to a strict codification of generally recognised principles of international law and to the settlement of certain questions which are actually the subject of controversy.

* * *

The question of the importance of the publication of treaties after registration as laid down in *Article 18 of the Covenant* should logically be considered along with problems regarding the conclusion of treaties, but as this question has already been included among those to be discussed by the League of Nations, the Sub-Committee decided not to deal with it.

* * *

It follows as a logical consequence from the general character of the powers conferred upon the Committee of Experts that their codifying work must not encroach upon the sphere of internal law.

The Rapporteur has nevertheless included the problem of *ratification* and that of the *concurrency of legislative bodies* in the list of subjects to be examined, for the following reasons:

Among the questions dealt with by writers on international law these two problems are the most discussed and the most highly controversial. All theoretical attempts to explain on uniform lines the relation between the two spheres of law, in matters concerning the validity of international treaties, encounter an obstacle in the diversity of constitutional laws. The gulf created between the two spheres of law by the rapid democratisation of modern constitutions, on the one hand, and respect for the traditional forms of international law (which is a characteristic of all customary law), on the other hand, is too wide to be bridged. As a result, intercourse between nations sometimes suffers from legal uncertainty and obscurity when the conditions governing the validity of treaties are not the same in the two spheres of law.

Quite-recent practice appears to be in favour of first ensuring the internal validity of treaties, but this treatment of the question can obviously only apply to particular cases and can provide no answer to disputed points of theory.

Settlement by codification being excluded, would it not at least be possible to seek means of solving the problem in order to safeguard the legal relations between States?

The various kinds of constitutional clauses referring to these questions and the different interpretations given of them — interpretations which may in the future differ still further—make the legal position in the matter very vague. The Rapporteur thinks that legal relations between States would greatly gain both in security and clearness if Governments decided to notify such clauses to one another together with the authentic interpretation which they give to them in practice.

This idea is not entirely new and is akin to the proposal formulated by the League Secretariat in Article 10 of its memorandum of May 19th, 1920.

The Rapporteur has no doubt that such a list of the constitutional clauses of all countries, accompanied by their authentic interpretation, would greatly help in clarifying international relations.

* * *

CONCLUSION.

Sub-Committee G, having concluded its first preparatory examination of the matters with which it is instructed to deal, is of the opinion that the points specified in the terms of reference are suitable for regulation by the methods and to the extent mentioned in the report.

The Sub-Committee proposes that the subjects specified under Question (g) should be placed on the list of subjects of international law the regulation of which by international agreement would seem to be desirable and realisable.

(Signed) Dr. A. MASTNY,
Rapporteur.

S. RUNDSTEIN,
Member of the Sub-Committee.

II. REMARKS BY M. RUNDSTEIN.

[*Translation.*]

I am in general agreement with the views expressed by Dr. Mastny in his report. In particular, I think that action should take the form of suggestions to Governments; it is for the Governments to make exact and definite regulations. The consent of Governments could be obtained if the regulations to be established were regarded as *jus dispositivum* without restricting the freedom of States. In this matter, the principle of liberty must be observed.

With regard to the problem of drafting and concluding treaties I should like to draw attention to the question of executing international conventions. Regulations established by international convention require executive measures in the form of decrees or even internal laws. Otherwise they are of no value, for the administrative and judicial authorities in the different countries would have no legal grounds for putting them into execution (for example, a convention requires the contracting parties to execute judgments given by a mixed arbitral tribunal, or to modify existing laws which remain binding until they are expressly repealed). It would be perhaps desirable to recommend the introduction of a special clause whereby the contracting parties would undertake to notify the promulgation of laws or administrative regulations necessary in order to execute a convention which has come into force.

Furthermore, I consider that the following problems should be examined:

1. The question of adhesion.
2. The question of difficulties of interpretation in cases in which a convention is drawn up in more languages than one.
3. The question of converting duly ratified and internationally valid conventions into internal laws.

Geneva, January 12th, 1926.

(Signed)

S. RUNDSTEIN.

III. LISTS OF MATTERS SUSCEPTIBLE OF REGULATION.

Modified by the Rapporteur in consequence of the Discussion in the Committee of Experts.

LIST I.

Procedure of International Conferences.

A. *Organisation.*

Questions of competence.

- (a) Delegates plenipotentiary. Principal representatives.
Assistant delegates. Substitute representatives.
Secretaries of delegations.
Experts.
Technical assistants.
Auxiliary staff.

- (b) Observers.

Diplomatic privileges and immunities¹.

B. *Preparatory Procedure.*

Initiative, invitation, replies, convocation.
Previous agreement on the subjects of the conference.
Establishment of the agenda (method and form).
Proposals and drafts.
Reservations.

C. *Procedure of the Conference (Rules of Procedure).*

Order of delegations.
Language, translation, interpreters.
Provisional chairmanship. Chairmanship.
The Bureau: its composition; its powers.
Powers of the Chairman.
Exchange or deposit of powers, verification.
Full powers.
Limited powers.
Powers of diplomatic agents as such.
Committees and Sub-Committees: their composition.
Drafting Committee.
Discussion and rules of debate.
Proposals. Draft resolutions, amendments and motions.
Previous question; motion for suspension.

¹ See the special questionnaire on this matter (Questionnaire No. 3, page 75).

The right to vote:

1. Plurality of votes. Voice in the decision. Voice in the discussion.
2. Necessity for unanimity. Absolute majority. Specified majority.
3. Ballot. Method and form.

Right of a minority to withdraw.

Right of protest.

Declarations, reservations.

Minutes (records): form; approval.

Publicity. Public sittings and non-public sittings.

Final Act.

Protocol of closure.

LIST II.

Conclusion and Drafting of Treaties.

A. *Methods of Conclusion.*

Capacity to conclude treaties.

Organs for concluding treaties. Questions of competence.

B. *Forms in which Treaties may be concluded and drafted.*

Nomenclature:

Treaty. Pact. Convention. Agreement. Arrangement.

Protocol. Declaration. Exchange of diplomatic notes.

Diplomatic instruments:

Intrinsic and extrinsic conditions.

Essential conditions.

Type of solemn treaty:

Preamble. Subjects, organs, object.

Description of mandatories.

Their authority to negotiate.

The body of the treaty.

Stipulations: General clauses; special clauses.

Principal, accessory, general, particular articles.

Separate, additional, supplementary articles.

Final part of treaty.

Special clauses.

Ratification clause.

Clauses as to coming into force, duration, denunciation.

Clauses allowing adhesion or accession.

Stipulations for the communication of laws or regulations necessary for the execution of a treaty.

Place, date, number of copies, by whom copies are to be delivered.

Signature, initialling, seal, alternation of order of signature in the different copies.

Accessory instruments. Annexes.

Reservations.

Final Act.

Protocol of Closure.

The ratification.

The instrument of ratification.

Exchange, deposit of instruments of ratification.

Procès-verbal of exchange of instruments of ratification.

Simplified formulas:

Declaration.

Protocol.

Diplomatic notes.

QUESTIONNAIRE No. 6.

PIRACY.

The Committee has the following terms of reference¹:

(1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment;

(2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received; and

¹ See Assembly Resolution of September 22nd, 1924.

(3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Committee has decided to include in its list the following subject:

"Whether, and to what extent, it would be possible to establish by an international convention, appropriate provisions to secure the suppression of piracy."

On this subject the Committee has the honour to communicate to the Governments a report presented to it by a Sub-Committee consisting of M. MATSUDA as Rapporteur and M. WANG CHUNG-HUI¹.

The nature of the general question and of the particular questions involved therein appears from the report. The report contains a statement of principles to be applied and of particular solutions derived from these principles. The Committee considers that this statement indicates the questions to be resolved for the purpose of regulating the matter by international agreement. All these questions are subordinate to the larger question set out above.

It is understood that, in submitting the present subject to the Governments, the Committee does not pronounce either for or against the general principles set out in the report or the solutions suggested for various particular problems on the basis of these principles. At the present stage of its work, it is not for the Committee to put forward conclusions of this kind. Its sole, or at least its principal, task for the present consists in drawing attention to various questions of international law the regulation of which by international agreement would seem to be desirable and of realisable.

In doing this, the Committee should doubtless not confine itself to generalities but should put forward the proposed questions with sufficient detail to facilitate the decision as to the desirability and possibility of their solution. The necessary details will be found in the final conclusions of M. Matsuda's report².

In order to be able to continue its work without delay, the Committee will be glad to be put in possession of the replies of the Governments before October 15th, 1926.

The Sub-Committee's report is annexed.

Geneva, January 29th, 1926.

(Signed)

Hj. L. HAMMARSKJÖLD,
Chairman of the Committee of Experts.

VAN HAMEL,
Director of the Legal Section of the Secretariat.

Annex to the Questionnaire No. 6.

REPORT OF THE SUB-COMMITTEE.

M. MATSUDA, Rapporteur.

M. WANG CHUNG-HUI.

Whether, and to what extent, it would be possible to establish, by an international convention, appropriate provisions to secure the suppression of piracy.

[Translation.]

Authors of treaties on international law often differ as to what really constitutes this international crime. In order to avoid any confusion, a clear distinction should be drawn between piracy in the strict sense of the word and practices similar to piracy. The former comes within the scope of international law in general, the latter either under international treaty law in force between two or more States or simply under a national law. We will examine each of these aspects of the problem in turn, although the first alone is of real general importance from the international point of view.

A. PIRACY IN INTERNATIONAL LAW.

I. According to international law, piracy consists in sailing the seas for private ends without authorisation from the Government of any State with the object of committing depredations upon property or acts of violence against persons. The pirate attacks merchant ships of any and every

¹ M. Wang Chung-Hui signed the original text of the Sub-Committee's report. Having unfortunately not been able to attend the session of the Committee of Experts, he is not responsible for the actual text as annexed to the present document, this text containing certain amendments made by the Rapporteur as a result of the discussion in the Committee.

² See page 119.

nation without making any distinction except in so far as will enable him to escape punishment for his misdeeds. He is a sea-robber, pillaging by force of arms, stealing or destroying the property of others and committing outrages of all kinds upon individuals.

Piracy has as its field of operation that vast domain which is termed "the high seas". It constitutes a crime against the security of commerce on the high seas, where alone it can be committed. The same acts committed in the territorial waters of a State do not come within the scope of international law, but fall within the competence of the local sovereign power.

When pirates choose as the scene of their acts of sea-robbery a place common to all men and when they attack all nations indiscriminately, their practices become harmful to the international community of all States. They become the enemies of the human race and place themselves outside the law of peaceful people.

Certain authors take the view that desire for gain is necessarily one of the characteristics of piracy. But the motive of the acts of violence might be not the prospect of gain but hatred or a desire for vengeance. In my opinion it is preferable not to adopt the criterion of desire for gain, since it is both too restrictive and contained in the larger qualification "for private ends". It is better, in laying down a general principle, to be content with the external character of the facts without entering too far into the often delicate question of motives. Nevertheless, when the acts in question are committed from purely political motives, it is hardly possible to regard them as acts of piracy involving all the important consequences which follow upon the commission of that crime. Such a rule does not assure any absolute impunity for the political acts in question, since they remain subject to the ordinary rules of international law.

By committing an act of piracy, the pirate and his vessel *ipso facto* lose the protection of the State whose flag they are otherwise entitled to fly. Persons engaged in the commission of such crimes obviously cannot have been authorised by any civilised State to do so. In this connection we should note that the commission of the crime of piracy does not involve as a preliminary condition that the ship in question should not have the right to fly a recognised flag.

Every enterprise for the purpose of committing robbery at sea is not necessarily piratical in character. A wrecker, for instance, unlike a pirate, has a nationality, despite the fact that he is indirectly a menace to safety at sea. In like manner, a mere quarrel followed by acts of violence or depredations occurring between fishermen on the high sea ought not to be regarded as an act of piracy, since such acts do not constitute a menace to the international maritime commerce for the protection of whose security every civilised State is to some extent interested in intervening so far as its power permits.

A ship may clearly be a pirate ship even if it was not fitted out for that purpose or if it began its voyage without criminal intention. If a mutiny breaks out on board and the mutineers seize the vessel and use it to commit acts of piracy, the vessel *ipso facto* loses the original protection of its flag.

Acts of piracy can as a general rule only be committed by *private* vessels. A warship or public vessel can never, so long as it retains that character, be treated as a pirate. If such vessels commit acts of depredation or unjustifiable violence, the State whose flag they fly demands reparation from them and has to inflict suitable penalties upon the commander and crew and pay lawful damages to the victims of such acts. If the crew of a warship or other public vessel mutinies and sails the seas for its own purposes, the vessel ceases to be a public one, and the acts of violence which it commits are regarded as acts of piracy.

The case appears more difficult when there is a civil war and the regular Government's warships take the side of the rebels before the latter have been recognised as belligerents. The regular Government sometimes treats such ships as pirates, but foreign Powers ought not to do so unless these ships commit acts of violence against vessels belonging to the Powers in question. Third Powers, on the other hand, may consider such ships as pirates when they commit acts of violence and depredations upon vessels belonging to those Powers, unless the acts are inspired by purely political motives, in which case it would be exaggeratedly rigorous to treat the ships as declared enemies of the community of civilised States.

II. Before taking action against pirates, it must first be ascertained that they really are pirates. The mere fact of hoisting a flag does not prove the right to fly it; and, accordingly, if a vessel is suspected of piracy, other means have to be used to establish its nationality.

The two following principles are recognised both by law and in practice:

(1) Any warship has the right upon the high seas to stop and seize any vessel, under whatever flag it may be sailing, which has undoubtedly committed an act of piracy.

(2) If the vessel is only under suspicion, the warship is authorised to verify its true character. It must, however, use this right judiciously and with caution. The commander of the warship is responsible for any action taken. If, after inspection of the suspected vessel, the suspicion proves to have been unfounded, the captain of the suspected vessel is entitled to reparation or compensation, according to circumstances.

If, on the other hand, the suspicion of piracy is confirmed, the commander of the warship either himself proceeds to try the pirates (unless the arrest took place in the territorial waters of a third Power) or he brings them into the port of some country to be judged by a competent tribunal, and the fate of the vessel and its crew is determined by the domestic law of the country in question. The attacks of pirates are directed against the interests of maritime trade throughout the world, and pirates are therefore justiciable in every civilised country. The State which seizes the pirate vessel and arrests the crew is the obvious judge of the validity of the capture and the guilt of the

parties concerned. It should by preference be accorded the right to investigate and to pass judgment in the case, unless the internal law or some international convention otherwise decides, or unless the case is that dealt with in the following paragraph.

May a warship pursue and arrest pirates in the territorial waters of a foreign Power without thereby violating the sovereign rights of that Power? Under normal circumstances, the sovereign of the territory alone has the right, in territorial waters, to protect national and international interests; but in the case of acts intended to safeguard international relations, it would appear reasonable to assume that the Government of the territory tacitly consents if it is not in a position to continue the pursuit successfully; otherwise, if the coastal State could not take the necessary measures to carry through the pursuit in time, the result would be to facilitate the flight of the pirate and enable him to escape punishment. In such cases, however, the right to try for piracy devolves upon the State to which the territorial waters belong. It is the recognition due to its sovereignty. The right to pursue, attack and seize a pirate belongs to warships.

The effects of the capture, the consequences of the validity of the seizure, the right of recovery by the lawful owners and the reward to be given to the captors are questions which are governed by the law of the State having jurisdiction. Accordingly they are solved in a different manner by each State, either in its domestic legislation or in its special conventions. The following four conditions must as a rule be fulfilled in the exercise of the right of recovery and restitution of the goods stolen:

- (1) The owner must lodge his claim within a year after sentence of capture has been passed;
- (2) The claimant must vindicate his claim of ownership before the competent tribunals;
- (3) The costs of recovery are fixed by such tribunals;
- (4) The costs must be borne by the owner.

B. PIRACY IN TREATIES AND SPECIAL LAWS OF STATES.

In addition to piracy by the law of nations, States have occasionally, by treaty or in their internal law, established a piracy by analogy which has no claim to be universally recognised and must not be confused with true piracy; the assimilations in question can only create a sort of piracy under internal law and from the point of view of the countries which make them. The acts dealt with are of a grave nature, it is true, but they do not constitute a danger to the shipping and commerce of all nations indiscriminately. Legislators are justified in taking strong measures in such cases, but the classification of such acts as piracy is a fact which only concerns the State whose laws contain provisions to that effect. From the international point of view, the acts come within the competence only of the country in which they are punishable. No country making a capture can cite them as the basis of a claim to international competence nor can they justify actual capture by a foreign State unless there is a convention which expressly provides otherwise.

We shall now examine the salient facts and the commonest of these analogous forms of piracy. In the first place, there is privateering.

1. The immediate object of privateering is the use of violence for purposes of gain, and this gives it a certain resemblance to piracy.

Although the object of the privateersman is to take the property of others, his acts are only committed against the national enemy of the country which has given him his letters of *marque*. This circumstance gives him a legal standing as regards nationality; at the same time it places responsibility upon the nation whose flag he flies, and thereby excludes any idea of piracy. Moreover, if a vessel so commissioned infringes the rights of other nations by acts of violence or irregularities which exceed the powers it holds, it cannot on that account be regarded as a pirate unless its intention is obviously piratical. In such a case, the State which commissioned it is responsible to other countries for any illegal acts it may commit, and has the right to try and punish.

2. Vessels have also been regarded as pirates when, their own countries remaining neutral, they received a commission from a foreign belligerent State and captured vessels belonging to a Power which, while an enemy of that State, was at peace with the vessel's own country.

This, too, is not piracy according to international law, but only according to the domestic law of one or more States.

Certain writers hold that, as a result of the acts it commits, such a vessel is denationalised, and is not legitimately under the protection of any flag; such acts would thus be true acts of piracy according to international law. This view, however, is mistaken; such a vessel is not denationalised. It is covered in respect of third Powers by the commission it has received. It has a respondent answerable to third Powers, namely, the State which commissioned it and which becomes liable for its acts. Lastly, it should be borne in mind that the vessel does not attack all merchant shipping indiscriminately; it merely captures the vessels of the Power at war with the State which commissioned it. It makes war upon a certain nation. It is not an enemy of the human race. This, then, cannot be said to be a case of piracy under international law, but such a vessel can certainly be classed as a pirate by the domestic law of an individual State.

3. Then, again, the sailors forming the crew of a merchantship are generally treated as pirates if they mutiny against the commander during a voyage, murder him and the other officers and seize the ship. But this too is piracy only under the domestic law of individual States.

4. Governments struggling to quell a rebellion have an incontestable right to describe as pirates, or to announce that they will treat as pirates, rebels who sail the seas for the purpose of seizing property belonging to subjects or citizens who have remained faithful to the duly established authorities. Rebellions are entirely a matter for the domestic law of the individual State, and a Government has every right to threaten to treat rebels as pirates, however widespread the rebellion may be.

Foreign Powers, however, are not obliged to accept this description or agree to such persons being treated as pirates.

C. CONCLUSIONS.

The confusion of opinion on the subject of piracy is due to failure to draw a clear distinction between piracy in the strict sense of the word, as defined by international law, and piracy coming under the private laws and treaties of individual States. In our view, therefore, it would be preferable for the Committee to adopt a clear definition of piracy applicable to all States in virtue of international law in general. Accordingly, we have the honour to submit to the Committee the following draft.

DRAFT PROVISIONS FOR THE SUPPRESSION OF PIRACY¹.

Article 1. — Piracy occurs only on the high sea and consists in the commission for private ends of depredations upon property or acts of violence against persons.

It is not involved in the notion of piracy that the above-mentioned acts should be committed for the purpose of gain, but acts committed with a purely political object will not be regarded as constituting piracy.

Article 2. — It is not involved in the notion of piracy that the ship should not have the right to fly a recognised flag, but in committing an act of piracy the pirate loses the protection of the State whose flag the ship flies.

Article 3. — Only private ships can commit acts of piracy. Where a warship, after mutiny, cruises on its own account and commits acts of the kind mentioned in Article 1, it thereby loses its public character.

Article 4. — Where, during a civil war, warships of insurgents who are not recognised as belligerents are regarded by the regular Government as pirates, third Powers are not thereby obliged to treat them as such.

Insurgents committing acts of the kind mentioned in Article 1 must be considered as pirates, unless such acts are inspired by purely political motives.

Article 5. — If the crew of a ship has committed an act of piracy, every warship has the right to stop and capture the ship on the high sea.

On the condition that the affair shall be remitted for judgment to the competent authorities of the littoral State, a pursuit commenced on the high sea may be continued even within territorial waters unless the littoral State is in a position to continue such pursuit itself.

Article 6. — Where suspicions of piracy exist, every warship, on the responsibility of its commander, has authority to ascertain the real character of the ship in question. If after examination the suspicions are proved to be unfounded, the captain of the suspected ship will be entitled to reparation or to an indemnity, as the case may be. If, on the contrary, the suspicions of piracy are confirmed, the commander of the warship may either proceed to try the pirates, if the arrest took place on the high sea, or deliver the accused to the competent authorities.

Article 7. — Jurisdiction in piracy belongs to the State of the ship making the capture, except: (a) in the case of pursuit mentioned in Article 5, paragraph 2; (b) in the case where the domestic legislation or an international convention otherwise decides.

Article 8. — The consequences of capture, such as the validity of the prize, the right of recovery of the lawful owners, the reward of the captors, are governed by the law of the State to which jurisdiction belongs.

Geneva, January 26th, 1926.

(Signed) M. MATSUDA.

¹ As amended by M. Matsuda as the result of the discussion in the Committee of Experts.

QUESTIONNAIRE No. 7.

EXPLOITATION OF THE PRODUCTS OF THE SEA.

The Committee has the following terms of reference¹:

(1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment;

(2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received; and

(3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Committee has decided to include in its list the following subject:

“Whether it is possible to establish by way of international agreement rules regarding the exploitation of the products of the sea.”

M. Suarez was requested to examine this question with special reference to the treaties dealing with the subject.

The Committee has the honour to communicate to the Governments a report submitted to it by M. Suarez.

The practical importance of the question appears to be established by this report and is emphasised in the conclusions which are there reached. The Committee considers that the report indicates in broad outline the problems which a conference including experts of various kinds might be called upon to solve, and feels it a duty to emphasise the urgent need of action.

In order to be able to continue its work without delay, the Committee will be glad to be put in possession of the replies of the Governments before October 15th, 1926.

M. Suarez' report is annexed.

Geneva, January 29th, 1926.

(Signed) HJ. L. HAMMARSKJÖLD,
Chairman of the Committee of Experts.

VAN HAMEL,
Director of the Legal Section
of the Secretariat.

Annex to Questionnaire No. 7.

REPORT ON THE EXPLOITATION OF THE PRODUCTS OF THE SEA.

Rapporteur: M. José León SUÁREZ.

[Translated from the Spanish.]

At its private meeting on April 8th last, the Committee of which you are Chairman adopted the following resolution in paragraph (j):

“The Committee appoints a sub-committee to enquire, with reference, *inter alia*, to the treaties dealing with the subject, whether it is possible to establish by way of international agreement rules regarding the exploitation of the products of the sea.”

The Sub-Committee appointed consists only of the author of the present report.

¹ See Assembly Resolution of September 22nd, 1924.

I may recall the fact that my original proposal submitted at the meeting on April 6th read as follows:

“Should not a special technical conference be convened, to draw up immediately, without regard to the extension or maintenance of maritime jurisdiction extending to the three-mile limit, uniform regulations for the exploitation of the industries of the sea, whose wealth constitutes a food reserve for humanity, over the whole extent of the ocean bed forming part of the continental shelf, *i.e.*, the region along the coasts where the depth does not exceed 200 metres ?”

It is important to remember this text because, after studying the proposal as drafted by my distinguished colleague M. Fromageot, in which he makes reference to *existing treaties* dealing with the subject, I am bound to express the opinion that the problem, which, as I originally put it, was a simple one, has been complicated by the text adopted and that its scope has been greatly extended while no progress has been made towards its solution. Moreover, this way of putting the question has made it impossible for me to send my report earlier. Although I arrived at Buenos Aires at the end of June, or some five months ago, owing to the fact that the shipping companies organising the return service run only one steamer of the same class every month, I am still awaiting replies to the request for information regarding international maritime legislation which I sent from Europe to various legations and institutions in order to acquaint myself with all the available data. Owing to the delay in obtaining information and to the fact that correspondence between Europe and Buenos Aires takes at least a month, and owing also to all the business I had to neglect during my absence and my return to Europe to attend the January session, I have been unable to study the ten or twelve important treaties which, out of the twenty or thirty in existence, might be of value to me in carrying out the Committee's instructions.

I am familiar, however, with their general purport, and know that they can be of little value except as forming precedents for the proposal, which originally, I repeat, did not aim at laying down international regulations for hunting and fishing at sea but at convening a committee of experts, representing as far as possible all the Governments directly concerned, to draw up regulations according to the carefully considered procedure of successive discussions which the Committee has adopted and which obviates any possibility of hasty decisions.

There is therefore a difference between the principle I proposed and that adopted by the Committee. The former obviates the difficulty which is inherent in the latter. As international regulation has hitherto been of a limited and local character and has, except in two or three cases, been directed not solely to the protection of species from extinction but mainly to establish police measures and to ensure reciprocity and *commerce*, regardless of biological interests, which in this case are inseparable from *economic* and *general* interests, this regulation, though it has been of value on occasion, is no longer adequate. The result of pursuing the international regulation of hunting and fishing at sea in the restricted sense hitherto accepted has been the useful but by no means sufficient one of delaying, but not preventing, the extinction of some of the principal species. And as, if we consider the life of all the species in the animal kingdom, biological solidarity is even closer among the denizens of the ocean than among land animals, the disappearance of certain species would destroy the balance in the struggle for existence and would bring about the extinction of other species also.

The wealth constituted by the creatures of the deep is not fixed in the sense of being confined to one region or latitude but varies from year to year according to the biological, physical and chemical circumstances affecting the plankton among which they live. The majority of aquatic animals are essentially migratory, and it is this characteristic which creates the biogeographical solidarity of species, which should find its counterpart in a legal solidarity in the sphere of international law in which we are working.

This urgent necessity for international regulation of the exploitation of the biological wealth of the sea is a new phenomenon to jurists but is familiar to all those who are brought into contact with the creatures of the deep, either in the pursuit of gain or in the interests of science. *The marine species of use to man will become extinct unless their exploitation is subjected to international regulation.* It is this situation, Gentlemen, which must be considered, and not the existing treaties, which in their time were a palliative but never a cure and which to-day are no longer sufficient and even constitute a danger, either because the species in question migrate for natural reasons from places where they are protected to places where they are uneconomically exploited or because, when they are hunted to excess in certain areas, they take refuge in other waters where they are less molested, thus constituting, in practice, a monopoly in favour of certain countries.

The human race is already beginning to experience a shortage of food, and this shortage is likely to be accentuated, owing not only to the increase of population but to the growth of the average consumption of each individual. As the democratic organisation of society improves, so man increases his consumption, particularly of meat and corn. This is due not only to a physiological but to a psychological necessity — the craving to make up for past deprivation of meat, which has generally been regarded as a food reserved for the rich. Coming as I do from a country whose main export is meat and corn, I am not influenced by any immediate apprehensions or by my own material interests, for it is clear from the present tendency of the world meat market that the republics of the Plata enjoy great natural advantages, and that, as the cattle-rearing industry exhausts the reserves of production, the greater the demand the greater will be the value of the supply. I am not considering, however, the interests of the moment or of any particular country but the general interest of mankind, which before long will have to draw upon the reserves of the sea to make good the inadequacy of the food production of the land. It is our business to see that this step is not taken too late.

The exploitation of the products of the sea requires regulation the most urgently in the waters nearest the coasts, because it is in these regions, and particularly on the shoals, that the species most useful to man have their habitat. In the open sea away from the continental shelf, where the depth exceeds 200 metres, only a few species useful to man are to be found in the upper levels of the sea. Apart from the waters in the immediate vicinity of the beach, it may be said to be a natural law that the intensity and variety of marine life is inversely proportional to the depth of the water.

If we are to do work of real value to the community, therefore, we cannot (subject to the necessary exceptions) make our enquiries with reference to "the treaties dealing with the subject". In proof of this I may cite the opinion of all the experts I have consulted in various countries, including the United States, which has been the most successful in regulating these questions, and which, owing to its geographical position, is the country which least requires international co-operation to preserve its maritime wealth. These various opinions may be summed up in that of the Argentine expert M. Luciano H. Valette, who has been most helpful to me on this and other occasions. Referring to proposal (j), with which the present report deals, M. Valette, who is chief of the Fisheries Department of the Argentine Ministry of Agriculture, said:

"You cannot fail to perceive the discrepancy which exists between the actual biological facts and the principles embodied in existing international conventions and treaties, to which you are asked to subordinate your opinion and adapt your report in conformity with the resolution adopted by the Codification Committee in paragraph (j). I gather that your original proposal, which was conceived on the soundest possible lines, has been condemned; none the less I hope that, even if the European members of the Committee at Geneva fail to realise its urgency, it will triumph in the narrower but more congenial sphere of American interests."

There can be no political, economic or other objections to the recommendation that all Governments having maritime interests should hold a conference of experts to determine what species should be protected and in what districts, to decide what form this protection should take in order to prevent their extinction, and to draw up the main principles of international regulation. The United States, once they had prevented the extermination of the seal in the north-west by means of an agreement with Great Britain, Russia and Japan, which they later supplemented by uniform regulations governing hunting and fishing along the shores of the various States of the Union, appeared to be dispensed from the necessity of calling in the aid of international law. Now, however, that the sea is becoming replenished with species which were at one time almost extinct, experience is showing that the work is incomplete; for animals, happier in this than men, are ignorant of jurisdictions and national frontiers and observe not international law but internationalism; the sea for them is a single realm, like Ovid's dream of a world forming a single fatherland for humanity. The Conference of American Raw Fur Traders, which met at Washington under the auspices of the National Association of the Fur Industry on October 1924, adopted the following resolution 5 *a* based on the international and inter-State considerations I have outlined above: "We deem it essential and recommend that the laws relating to fur-bearing animals be formulated by the various legislative bodies in pursuance of a uniform policy of conservation and with as full co-operation as possible between States of a similar climatic or natural condition". The necessity for international co-operation is also stressed in the articles published in the National Association of the Fur Industry Year-Book, 1924. For instance, Mr. Henry O'Malley, Fisheries Commissioner of the United States, in his article on the Alaska Fur-Seal Industry, reaches the following conclusion: "From the foregoing it is plainly evident that the fur-seal industry is carried on by activity complex in character and broad in extent. It has features international in scope which must be handled through diplomatic channels".

In the Appendix will be found a list of the existing treaties. In order, however, to show how little value they possess, I shall go on to put forward a number of other considerations illustrating the force of my original proposal.

I shall be obliged to go into some of the technical antecedents of the sea fishing and hunting industry in order to convince my colleagues of the expediency of adopting my suggestion.

If proposal (j) as it stood were limited to *existing treaties*, it would not cover the modern whaling industry, which is rapidly exterminating the whale. To-day it is carried out with the help of a perfected form of weapon and special craft; but the great increase in its scope is due to the manner in which the animal is treated once it has been killed. The extraction of the *oil*, which previously had to be done ashore, is now done in floating factories, which accelerates the process ten- or twenty-fold and renders national control impossible, since no action can be taken in the *open sea*, and the whalers have no need to touch land to extract the principal product from their quarry. This process is carried out principally in the southern waters of South America. Here the whales, pursued and almost exterminated in the North Polar regions, have taken refuge, driven by the instinct of self-preservation and a certain degree of rudimentary intelligence which they possess. To such a pitch of perfection have the Norwegian whalers brought their trade that one of the conditions imposed by the majority of insurance policies for this class of craft is that the harpooner and some of the crew should be Norwegian.

M. Valette, to whom I had occasion to refer above, has described this process of extracting oil from whales, and it really seems impossible that the Governments interested in preserving so important a source of wealth should do nothing to prevent its extinction, which will be complete in five to ten years at the most. "This class of fishing", he says, "has reached such a point as to be a veritable butchery, which is the more deplorable when one considers the uniparous character of whales and the length of their period of gestation".

Dr. Charcot, an eye-witness of these practices in the Antarctic seas in the vicinity of the Argentine, was so impressed that he addressed a communication to the French Colonial Ministry drawing attention to the rapidity with which whales would disappear if they went on being exterminated in a manner which he qualified as barbarous. Even fifteen years ago, Dr. Charcot emphasised the *urgent necessity of an international agreement settling such important matters as the protection of young whales, the creation of reserves for adults, and the full industrial utilisation of all the parts of the captured whale.* The Paris Academy of Science also unanimously recommended that an international committee should meet to settle the problems of fishing in the open sea, such as more-thorough exploitation and the preservation of species.

These examples, only two among hundreds which might be quoted, fully demonstrate that the crying need for general international legislation has not been met by existing treaties on maritime hunting and fishing.

The absence of such legislation accelerates the disappearance of these species year by year, not so much because they are decreasing of themselves as because their destruction is becoming more intensive. The products of the fisheries are not fully utilised, and it would appear that, although all those who carry on this trade realise the harm they are doing, each is unwilling to restrict his activities for the benefit of the others, and they endeavour to kill as many whales as they can, realising that the total extinction of the species is approaching and that they must avail themselves of such opportunities as still remain.

At the British Imperial Conference in 1923, one of the speakers, alluding to this wanton destruction, proposed that the British Empire should adopt regulations. This, however, is not possible, as the fisheries are carried on in the open sea, and the Argentine and Chile, as owners of the neighbouring coasts and islands, could claim rights as least equal to those of Great Britain, while other countries which engage in whaling in the Antarctic, such as the United States, the three Scandinavian countries, the Netherlands, Russia, and various others, could easily put forward claims as well, since, with the modern system of floating tanks and rafts, there is no need of terra firma for the necessary operations, quite apart from the fact that on those uninhabited islands and coasts such operations could easily be carried out openly or secretly. The present system of control (of very doubtful legality) is quite inadequate; indeed, it defeats its own ends from the point of view of the preservation of species, the only one which in this report we need consider. It takes the form of a tax imposed by the Governor of the Falkland Islands, which belong to Great Britain, at the rate of 5s. per barrel of whale-oil of approximately 170 kilogrammes. This *fiscal* system runs counter to the economising of wealth and promotes its more rapid destruction.

The riches of the sea, and especially the immense wealth of the Antarctic region, are the patrimony of the whole human race, and our Committee is the body best qualified to suggest to the Governments what steps should be taken before it is too late.

To save this wealth, which, being to-day the uncontrolled property of all, belongs to nobody, the only thing to be done is to discard the obsolete rules of the existing treaties, which were drawn up with other objects, to take a wider view, and to base a new jurisprudence, not on the defective legislation which has failed to see justice done but on the scientific and economic considerations which, after all the necessary data has been collected, may be put forward, compared and discussed at a technical conference by the countries concerned. In this way a new jurisprudence will be created of which to-day we have no inkling, owing to the fact that the necessity which now arouses our legitimate apprehensions was never contemplated.

I have referred especially to whales; but other species of equal value are also in danger of extinction, such as the *pinnipedes* (with fin-like feet; from *pinna* and *pes*), to which belong various families popularly included under the generic term of seals, among them the fur-seals so highly prized by traders. These animals, being amphibious, require protection not only on land but in the sea. The rocks on which they live are often at a distance from the mainland and cannot be permanently occupied by man because they are constantly beaten and submerged by the waves. Only adequate legislation can protect these animals, which are almost extinct in the south, as they regularly migrate from the Antarctic Ocean to the coasts of Brazil in the latitude of Saõ Paulo. The Northern Hemisphere has been replenished with seals to a certain extent, thanks to the effective measures proposed by the United States, to which is also due the re-appearance of these valuable animals in the Pribiloff and Kurile Islands.

With the help and guidance of M. Valette, I have sketched on a map¹, which is attached to and forms an integral part of the present report, the geographical distribution of *some* of the most economically important species which should be preserved for the use of humanity. I have done this merely by way of illustration and as impartial evidence to convince my colleagues that we must accept the idea of holding a technical conference to draw up international regulations for the exploitation of certain species. I make no attempt to mention the cases of definite species but merely quote certain examples; there are many others which it would be tedious and unnecessary to enumerate here. The source of wealth which is most immediately threatened with total extinction is the whale, because its bulk prevents concealment, because its slowness of reproduction makes the replacement of casualties impossible, and because the species, being concentrated in the South Polar region after having been exterminated in the north, is attacked in these waters by fishers from every part of the world and is being exterminated with alarming rapidity. The average number of whales killed in the Antarctic every year is not less than 15,000 and sometimes as many as 20,000. No other method than international regulation can be conceived to prevent the annihilation of whales, the total remaining number of which may tentatively be put at 100,000

¹ This map is not reproduced.

or 120,000 at the most. What should be the main points of such regulation? Without any more claim to be exhaustive than in my enumeration of species, I would suggest the following: establishment (in the open sea) of *reserved zones* on the basis of what is known already or may be discovered with regard to the habitat and migrations of whales; exploitation of each zone in turn and for a limited period; uniformity of methods (without going into details of a nature to hamper industrial freedom), in order to ensure the full utilisation of the products of the chase, which to-day are squandered owing to the thirst for immediate gain at all costs; adoption of general rules regarding the ages at which whales and seals should not be killed even when found in zones and during periods not subject to prohibition.

In conjunction with the facts I have adduced, particularly with regard to the South Polar region, should be taken others concerning quite different areas, which show that isolated measures of protection or measures taken by a single country are useless, and that they must as a rule be general and international in character. Most of the whales are in the south, as they are ruthlessly hunted in the north; but as their hunters have followed them, they are now tending to return to the north or to disperse all over the world in search of the peace they will never find. A report of the Trønsberg Whaling Company, which operates in the South American latitudes of the Pacific, mentions in a memorandum for 1924 that it made a *net* profit of 2,958,120 crowns; it paid its shareholders 50 per cent on their capital, and the balance of 1,038,120 crowns went to the reserve. This net profit at present (December 1925) represents some fourteen million French francs — an enormous sum if we take into account the amount of capital invested. There is also an Argentine company which, I believe, makes similar profits, although I have not been able to obtain details.

Encouraged by these results, and knowing that the sooner it kills the whales the more it will prevent from falling into the hands of others, as they constitute a form of wealth which soon be exhausted, the Trønsberg Whaling Company ordered the construction of four additional whalers for the 1925-26 season.

On our chart of marine wealth we show the *herring* (*clupea harrengus*), whose preservation is of particular importance to Great Britain, Norway, the Netherlands, Germany, Belgium, and Denmark. It is also of some concern to Spain, Portugal, France, the United States, Iceland, etc., because when other kinds of fish become scarce or disappear (as has occurred on the coasts of Galicia) the fisherfolk return to their old habits and go to places often at a great distance from their coasts. They do not wait for the fish to come to them but go and seek it in its own haunts.

The salmon of the Atlantic lives in the seas and rivers of North-Western and Western Europe. Its migrations extend as far as the United States, between Cape Cod and Ungava Bay (this is as regards the Northern Atlantic). As regards the salmon of the Northern Pacific, the five exploited species of the genus *onchorhynchus* are found in the rivers of Asia and in those of Alaska and California. No one can foresee the migrations to which they may be subject in future, but it can be confidently anticipated that, within the vast areas indicated, their rational exploitation will be impossible without an international agreement on an economic and biological and not on a political or commercial basis.

Another typical species shown on the map is the cod (*gen. gadus*), which is found throughout the Northern Atlantic from the extreme north as far as the Bay of Biscay on the European side, and Cape Hatters on the American side, but is chiefly concentrated in the Newfoundland banks.

Another fish which is much sought after is the "caballa" (*scomber scombrus*) whose migrations extend from the Black Sea to the Canaries, Scotland, France and Norway, as far as Europe is concerned, and to the north-east of America.

The ichthyological life of the South American waters has been little studied as regards habitat and migrations, but among other species may be mentioned the hake (*cynoscion striatus*), which migrates to the waters of Brazil, Uruguay and the Argentine.

The map also shows the distribution of animals of the seal tribe, indicating the principal habitats of walruses, sea-elephants and other species belonging to this genus.

A line on the map indicates to the southward the principal area in which whales take refuge, but there are also a number in the north and in the Pacific in process of migration from one Pole to the other, as has already been explained.

Until recently, equilibrium existed between the production and consumption of the greater part of *fish*; the same cannot be said of animals which are *hunted*, whose numbers began to decrease some time ago. But the improvement of modern appliances and the constant progress of what Bergson might term our "age of machinery" has also had its effect on fishing. Thus, for example, herrings were previously fished at certain periods of the year and not at others. The fishermen waited for them to form shoals and to approach their meeting-grounds, which became the traditional fishing-zones. This practice in itself constituted a restriction; but now, with modern methods, herrings are fished *throughout the year*, and the fishers do not wait for the shoals to approach but go and look for them. If this intensive method of fishing continues, the numbers of herring, which are already falling off, cannot fail to decrease rapidly.

I have said enough with regard to the hunting of whales and seals, but it is worth mentioning that the Swiss zoologist Paul Sarazin stated, before the International Commission for the Protection of Wild Life which met at Berne in 1913, that, with the invention of floating grease- and oil-factories, which are becoming more and more numerous on the high seas and are stimulated by investments

of capital seeking a higher return than can be obtained in any other industry, the most important source of marine wealth would mathematically be exhausted within a short period.

In view of the considerations I have outlined above, I venture to submit, in my capacity of rapporteur on point (j), the following conclusions¹:

1. That it is possible, by means of adequate regulation, to secure the economical exploitation of the products of the sea.

2. That such regulation could not fail to be in the general interest; since, if the present confusion persists for a few years longer, the extinction of the principal species will be the inevitable consequence of their unrestricted exploitation.

3. That the treaties dealing with the subject apply to certain species and are for the most part regional in character. They have not always taken into account the point of greatest importance to humanity, which is to find means to prevent the disappearance of species, and not infrequently they concern measures of police or purely commercial measures, without considering the biológico-economic aspect, which is the essential aspect.

4. That the attention of all maritime Powers should be called to the urgency of establishing regulations by holding a conference including experts in applied marine zoology, persons engaged in marine industries, and jurists.

5. That, without prejudice to other matters, the general technical programme of the conference referred to in the previous paragraph might include the following:

- (a) General and local principles for the organisation of a more rational and uniform control of the exploitation of the aquatic fauna in all its aspects;
- (b) Creation of reserved zones, organisation of their exploitation in rotation, close periods and fixed ages at which killing is permitted;
- (c) Determination of the most effective method of supervising the execution of the measures adopted and for maintaining the control.

Buenos Ayres, December 8th, 1925.

José León SUÁREZ.

LIST OF INTERNATIONAL TREATIES ON THE REGULATION OF MARITIME INDUSTRIES.

1. International Convention for regulating the Police of the Northern Sea Fisheries outside Territorial Waters. The Hague, May 6th, 1882.

Declaration modifying Article 8 of the Convention of 1882. February 1st, 1889. (Great Britain, France, Germany, Denmark, Belgium, Netherlands.)

2. Convention on the Liquor Traffic among Fishermen, signed at The Hague by the same Powers. November 16th, 1887.

3. Convention between the United Kingdom, the United States, Japan and Russia for the Preservation and Protection of the Fur-Seals in the North Pacific Ocean. July 7th, 1911.

4. Treaty regarding Spitzbergen, between the United States, Great Britain, Denmark, France, Italy, Japan, Norway, Netherlands and Sweden. Paris, February 9th, 1920. (Article 2.)

5. Great Britain and Belgium. March 22nd, 1852; May 2nd, 1891; August 26th, 1891. (North Sea Fisheries.)

6. Great Britain and Denmark. June 24th, 1901. Farøe Islands and Iceland.

7. Fisheries Convention, France and Great Britain. August 2nd, 1839.

8. Declaration concerning the Obligations of Fishermen in the Seas between the Coasts of France and Great Britain. June 23rd, 1843.

¹ Printed as modified by the Rapporteur as a result of the discussion in the Committee of Experts.

9. Convention concerning Newfoundland and West and Central Africa, London, April 8th, 1904. (France and Great Britain.)
 10. Declaration by France and Great Britain: Oyster Fisheries. September 29th, 1923.
 11. Great Britain and Netherlands. Allowances to Witnesses in Fishery Cases. April 26th, 1902.
 12. Convention between France and Italy on Reservations in the Fisheries between Corsica and Sardinia. Rome, January 18th, 1908.
 13. Great Britain and Nicaragua: Turtle Fishery. May 6th, 1916.
 14. Great Britain and Sweden. July 17th, 1856 (Article 10).
 15. Great Britain and the United States:
 - (a) Convention of April 11th, 1908, respecting Fisheries in the United States and Canada, signed at Washington.
 - (b) Convention of October 20th, 1818, signed in London, regarding Fishing Disputes.
 - (c) North Atlantic Fisheries: Arbitration. January 27th, 1909.
 - (d) Treaty: Preservation of Fur-Seals, Washington, February 7th, 1911.
 - (e) Agreement: North Atlantic Fisheries. July 20th, 1912.
 - (f) Treaty with Canada for Preservation of Halibut Fishery. Washington, October 21st, 1924.
 16. Treaty: Great Britain-United States, Behring Sea Arbitration, February 29th, 1892; and Convention, February 8th, 1896.
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Annex II.

REPLIES BY GOVERNMENTS TO THE QUESTIONNAIRES Nos. 1 to 7.¹

LIST OF GOVERNMENTS HAVING REPLIED TO THE QUESTIONNAIRES.

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Cuba	147	Japan	171	Venezuela	255
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British Empire	145	India	169	Switzerland	249
Bulgaria	146	Italy	171	United States of America	160
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Cuba	148	Netherlands	181		
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¹ In order to correspond with the French edition of this document, the countries are arranged in the alphabetical order of the names in French.

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Brazil	144	Greece	168	Sweden	238
British Empire	145	India	169	Switzerland	252
Bulgaria	146	Italy	171	United States	
Cuba	148	Japan	171	of America	160
Denmark	151	Netherlands	181	Venezuela	255
Egypt	152	Norway	178		
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QUESTIONNAIRE No. 6. — PIRACY.

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Brazil	144	Greece	168	Spain	154
British Empire	145	India	169	Sweden	239
Bulgaria	146	Italy	171	Switzerland	240
Cuba	148	Japan	171	United States	
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Bulgaria	146	Italy	171	United States	
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Germany.

QUESTIONNAIRES Nos. 1 TO 7.

Letter of December 8th, 1926.

[*Translation.*]

The German Government has examined the questionnaires of the Committee of Experts for the Progressive Codification of International Law transmitted with your letter of March 22nd, 1926, with a view to determining whether the regulation of the subjects treated therein is desirable and realisable in the near future. The German Government considers that the following subjects could be so dealt with :

1. Territorial Waters;
2. Diplomatic Privileges and Immunities;
3. Responsibility of States for Damage done in their Territories to the Person or Property of Foreigners.

Questionnaire No. 2. — Territorial Waters.

In the first place, as regards the question of Territorial Waters, the German Government starts from the principle that the extent of the territorial sea should continue to be three nautical miles as at present. This is also the view expressed by the Council of the Deutsche Gesellschaft für Völkerrecht in the resolution given in Annex 1(a). The German Government further accepts the remainder of this resolution, which corresponds in all essential respects with the principles embodied in the draft convention of the Committee of Experts. The German Government accordingly considers that the draft in question provides a suitable basis for a first attempt to regulate by international agreement the question of territorial waters. Subject to a final statement of its views, the German Government desires to draw attention to the remarks on certain points of detail in the draft which are given in the attached observations.

Questionnaire No. 3. — Diplomatic Privileges and Immunities.

Before the question of Diplomatic Privileges and Immunities can be regulated, agreement must first, in the opinion of the German Government, be reached on the principle that diplomatic representatives are amenable to the laws and regulations of the State in which they reside, although at the same time no coercive measures of any kind may be taken against them which could in any way react upon their person. Subject to this reservation, regulation could be undertaken on the basis of the drafts prepared by the Institut de Droit international and the American Institute of International Law. Provisional conclusions in regard to the questions submitted by the Committee of Experts will be found in Annex 2.

Questionnaire No. 4. — Responsibility of States.

A very full report on the question of the *Responsibility of States for Damage done in their Territories to Foreigners* was submitted by M. Guerrero, a member of the Committee. This report arrives at a series of conclusions which it is suggested should be embodied in a convention dealing with this matter. These conclusions have been examined and the results are set out in the enclosed memorandum (Annex 3). As the subject is an extremely complicated one and very frequently leads in practice to differences of opinion between States, the German Government in referring to this matter considers it important to affirm explicitly that the memorandum is not intended to represent its definitive attitude to this question or to any single point in the question.

The German Government desires to make the following observations on the four remaining subjects :

As the possession of German nationality is in principle conditional on the possession of the nationality of one of the German States and as the granting of nationality comes within the competence of the individual States, the questionnaire on the international regulation of the law of *Nationality* can in Germany only be examined in co-operation with the German State Governments. The consideration of this question has accordingly not yet been completed.

As regards the *Exploitation of the Products of the Sea*, the German Government takes the view that the question of the necessity of special measures of conservation to ensure the permanent maintenance of a profitable fishing and sealing industry and prevent the extinction of the principal species of the marine fauna must be carefully considered. It may, however, be pointed out that the questions discussed in the report have been dealt with for many years now by the international associations for the exploration of the sea. In particular, the Central Committee for the International Exploration of the Sea at

Copenhagen has invariably considered these questions with a view to ascertaining whether, and if so to what extent, special protective measures are necessary in connection with the present method of exploitation. That being the case, the German Government would be glad if, in the first place, the Central Committee and the other international organisations for the exploration of the sea were given an opportunity to state their views on the subject.

There is, in the opinion of the German Government, no urgent need for at once undertaking the general international regulation of the question of *Piracy*. Nevertheless, Germany would raise no objections of principle to such regulations being attempted, should the League consider this step necessary. In that case, the German Government would reserve its right to submit its views on the various provisions in the draft of the Committee of Experts.

Finally, as regards the question of a uniform regulation of the *Procedure of International Conferences and Procedure for the Conclusion and Drafting of Treaties*, the German Government believes that it would be exceptionally difficult to regulate these matters by means of collective agreements. Conditions differ so greatly that it would appear to be desirable to retain some measure of freedom in organising international conferences. As regards the formalities connected with the conclusion and drafting of treaties, special regard must be paid to the constitutions of the contracting parties and it will hardly be possible, in view of the variety of conditions, to draw up uniform rules on the subject. Even if the difficulties of codifying these two subjects were to be overcome, it should be borne in mind that these formal questions of procedure can be deferred until those substantive questions of international law the regulation of which is called for by the present international situation have been settled. The German Government would therefore suggest that the treatment of the questions relating to the Procedure of International Conferences and Procedure for the Conclusion and Drafting of Treaties should be postponed for the time being.

(Signed) VON SCHUBERT.

ANNEX 1 (a).

RESOLUTION ADOPTED ON OCTOBER 15TH, 1926, BY THE COUNCIL OF THE DEUTSCHE GESELLSCHAFT FÜR VÖLKERRECHT WITH REGARD TO THE SETTLEMENT OF THE QUESTION OF TERRITORIAL WATERS.

The Deutsche Gesellschaft für Völkerrecht has examined the question whether the law concerning territorial waters is capable of codification. It holds that such codification is possible on the following lines :

1. The sovereignty of the riparian State extends over the territorial waters, with certain exceptions based on universally recognised international law or on treaties.
2. The territorial sea should extend for three nautical miles from the mean low-water line.
The low-water line should be marked on marine charts.
3. Rules regarding fishery rights should remain as embodied in existing agreements or as they may be defined in future agreements.
4. Vessels of all countries should have the right of free passage through territorial waters.
5. Beyond the zone of three nautical miles, administrative zones may be established in which a country may exercise Customs control and supervise shipping.

ANNEX 1 (b).

OBSERVATIONS ON THE AMENDED DRAFT CONVENTION ON TERRITORIAL WATERS.

Ad *Article 1*. — In defining the rights of riparian States in the coastal zone, care should be taken to avoid any implication, by such definition, of a possible acceptance in this zone of special obligations with regard to the protection of shipping and other matters. In so far as some restriction of sovereignty has to be allowed, in accordance with universally recognised international law or under existing treaties, it would be desirable to include in the Convention a definite list of the exceptions, and consequently to select a formula which would make it clear that the right of sovereignty is only restricted to the extent laid down in the Convention.

Ad Article 2. — In order to render the accurate limitation of these zones possible, it is proposed, in the resolution of the Council of the Deutsche Gesellschaft für Völkerrecht, that the mean low-water line should first of all be marked on the marine charts. When internal waters are traversed by the frontiers of States, the external limit of these inland waters should also be marked. This is indeed the only way to dispel, from the outset, all doubts as to the actual line of the three-nautical-mile limit and the limits of the administrative zones. The marking of State frontiers on marine charts will therefore be a matter of extreme importance. It would also be desirable to mark, parallel to the above limit, the limits of the three-nautical-mile zone and the administrative zones. When these limits have been marked on the marine charts, the latter should be published in suitable periodicals in which the changes in marine charts have usually been published hitherto (in Germany, *Die Nachrichten für Seefahrer*) and the contracting parties should place themselves under an obligation to do so.

As regards the exercise of administrative rights outside the three-nautical-mile zone, it would seem necessary, first of all, to define the grounds on which such administrative zones may be demanded, and the extent of the zones, instead of making the exercise of administrative rights depend, in a general fashion, on custom or an essential need.

The admission of administrative zones for Customs control and the supervision of shipping — without the establishment of any economic prerogatives whatever — and a strip of sea for three nautical miles measured from the external limit of the territorial waters should be sufficient to satisfy all legitimate requirements, except where more extensive rights have been expressly recognised in special treaties. Only such supervisory services as are solely intended to protect navigation, such as pilotage or buoyage services, or services for the clearing of obstacles, should be demanded by the riparian State, and they should be permitted to operate outside the administrative zone to the same extent as heretofore. It is, moreover, particularly important that a claim to administrative rights should not eventually result in hindrances to navigation and that the right of third States to lay cables freely through the administrative zones should be in no way affected.

As regards fisheries, the German Government thinks it would be desirable to state expressly that in future — apart from existing customs and conventions — fishery rights may not extend beyond the three-nautical-mile zone. If, as in paragraph 2, there is to be any reference to “exclusive rights to fisheries”, it should be understood that this does not apply to private fishery rights which cannot be dealt with in the Convention. To avoid all doubts on this subject, it would be preferable to devise a more precise form of words.

Ad Article 4. — It would seem to be simpler, in conformity with the International Law Association's draft, to lay down that the line of territorial waters follows the coastline of bays.

Ad Article 5. — The regulation for islands, including archipelagos, might, in conformity with the International Law Association's draft, merely specify that each island possesses territorial waters of its own.

Ad Article 6. — If the three-nautical-mile zone is taken as a basis, the legal status of straits should depend solely on whether their width at the entrance is over or under six nautical miles, as the case may be.

Ad Article 7. — As regards warships, it would be preferable, in place of the detailed rules set out in Article 12, to state in Article 7 itself — if indeed it be necessary — that special provisions might be laid down to govern the case of warships remaining for some time in territorial waters.

Ad Article 9. — The riparian State cannot renounce its right of criminal prosecution except in the case of offences in which no national of the riparian State has taken part or in which the general interests of the riparian State are not affected.

Ad Article 10. — The question of the extent to which definite rules in the sense of paragraph 1 are necessary must depend upon the final form which Article 1 assumes.

Whether agreement as to a right of prosecution can be established through a collective convention requires consideration. In any case, such a right could only be permitted when there existed real danger in delay.

Ad Article 12. — See Article 7.

Ad Article 13. — The question of jurisdiction over foreign merchant vessels in seaports is not, in the opinion of the German Government, so closely connected with the objects of the Convention as to call for settlement therein. It would be preferable to solve this question as it has hitherto been solved, by consular, commercial and other treaties, or if necessary by a special collective convention.

ANNEX 2.

OBSERVATIONS ON THE QUESTIONNAIRE CONCERNING DIPLOMATIC PRIVILEGES
AND IMMUNITIES.

Rejecting the so-called "fiction" theory, the Committee of Experts recommends that the sole guiding principle for the establishment of regulations concerning diplomatic privileges and immunities should be the need of assuring the free exercise of diplomatic functions, preserving the dignity of the diplomatic agent and the State he represents, and respect for immemorial traditions. These general principles may be approved, but traditional conceptions should only be included when there is absolutely no difference of opinion regarding them, and when there is no likelihood of their causing doubt as to the juridical status of the diplomatic agent.

With regard to the special points of the questionnaire, we may offer the following observations.

Ad A, I. — Extent of Privileges and Immunities.

According to German opinion, the exemption from all measures of constraint to be accorded to diplomatic agents by the State which is their host extends to their person and everything that may seem necessary for the exercise of their functions, including objects for their personal use — particularly in so far as they are not themselves the owners of these objects — official premises and their private dwellings, archives and official or private correspondence. Consequently, the legation building and the private residence of diplomatic agents are expressly exempted by the Laws of June 27th, 1868, and February 13th, 1875 (*Reichsgesetzblatt*, 1868, page 523, and 1875, page 52), from the obligation to billet and the obligation to furnish supplies in kind (see also Article 9 of the Cambridge draft).

The exemption of the diplomat from all measures of constraint would seem to exclude enforcement against him of mortgages arising by automatic operation of law, more particularly the lessor's mortgage. As this question, which is probably nowhere settled by the municipal law, has often given rise to disputes and comes ultimately before the courts which are not bound to follow instructions from the Government, it would be desirable to settle the matter expressly.

Although within the above limits exemption from all measures of constraint should be granted on the widest possible scale, the State which receives the diplomatic agent should be entitled to adopt such measures for its defence and security as may seem to be indispensable in urgent matters or questions of self-defence, to guarantee public safety or maintain public order. This principle should also be laid down explicitly in a general clause in the Convention; this clause would, of course, have to be carefully examined with a view to deciding whether and in what conditions missions should possess a right of asylum.

Exemption from the jurisdiction of the courts is, in principle, accorded to diplomatic agents under § 18 of the German Law on the Organisation of Justice (text of May 20th, 1898, *Reichsgesetzblatt*, 1898, pages 371 *et seq.*), and no distinction is drawn between official and private acts. M. Mastny's proposal for conciliation procedure and arbitral jurisdiction would hardly, we think, be realisable in practice.

The sole exceptions allowable to the privilege of exemption should be: acts connected with special, professional or commercial transactions in which the diplomatic agent may engage outside his official capacity, and actions *in rem*, including actions for obtaining possession of immovable property (see § 20 of the German Law on the Organisation of Justice, taken in conjunction with § 24 of the Rules of Civil Procedure, *Reichsgesetzblatt*, 1924, vol. 1, pages 437 *et seq.*). In such cases the Legation premises and residence of the diplomatic agent should also be subject to the *forum rei sitæ*. In matters governed by the *forum rei sitæ*, the question of execution should receive special consideration. The question of the so-called "*forum hereditatis*" might be left to be settled in special agreements between the various States.

Apart from these exceptions, a diplomatic agent's express or tacit renunciation of his immunity from jurisdiction should be recognised. Tacit renunciation mostly takes the form of instituting proceedings in the national courts or submitting to such proceedings. Counter-claims are, in conformity with a decision of the Reichsgericht (see *Decisions of the Reichsgericht*, vol. III, page 149), held to have the same effect when the counter-claim is in the nature of an answer to the claim of a privileged plaintiff. On the other hand, to regard acceptance, under a special clause in an agreement, of a particular place for performance as a tacit renunciation of exemption from the national jurisdiction would be going too far. If the question of renunciation is to be settled, it would also be desirable to include a provision defining the conditions of renunciation of his immunity by the diplomatic agent, and particularly of renunciation by the staff of the legation.

The diplomatic agent is exempted not only from civil jurisdiction but from all other jurisdiction, particularly administrative and police jurisdiction, although, of course, he is

bound to give effect to all instructions issued by the administrative and police authorities, and to take their orders into account, particularly as regards building regulations, communications and public health.

In the matter of criminal jurisdiction, it should not be possible to institute criminal proceedings against a diplomatic agent in the courts of the country to which he is accredited so long as he retains his official status; but this cannot mean that, in the eye of the law, he is not responsible for any criminal act he may commit.

Exemption from the obligation of giving evidence should be regarded as implied in the agent's exemption from jurisdiction. In settling this question, it would be desirable to take into consideration Article 28 of the American draft, though it should be made quite clear that no obligation to give evidence exists.

In the case of insult and abuse, the Public Minister and Chargé d'Affaires enjoy special protection under the Criminal Code as a special privilege (see § 104 of the German Criminal Code of May 15th, 1871, *Reichsgesetzblatt*, page 127).

As regards the obligation to submit to social legislation, particularly in regard to social insurance, it will be necessary to insist on the observance of the laws, at any rate in so far as nationals of the receiving State are concerned.

In the matter of fiscal privileges we shall be bound, in view of the variety of fiscal systems and the possibility of varied interpretations (particularly when we have to deal with the conception of direct and indirect taxation), to rely, in the future as heretofore, on the bilateral agreements of which so many are already in existence. Germany, for instance, has concluded conventions with a number of States for the purpose of equalising internal and external taxation and, above all, avoiding double taxation in the domain of direct taxes (*cf.*, the summary prepared by the Reich Ministry of Finance: "Agreements concluded for the Avoidance of Double Taxation"). Only when a greater measure of uniformity has been attained in the conceptions of international financial law can we hope to arrive at a collective agreement on fiscal privileges. In any case, it cannot be said that the regulation proposed in the Cambridge draft and the American draft dispels all doubts.

Customs privileges are based solely on an international usage which presupposes reciprocal treatment. In Germany, articles for personal use are exempt from internal taxes and dues in conformity with the Ordinance of February 6th, 1926, concerning the Freedom from Customs and the Exemption from Taxes of Articles intended for a legation (*Reichszollblatt*, page 29). This regulation is similar to the proposals contained in the American and Cambridge drafts. It would not, however, seem to be necessary, as suggested in the American scheme, to limit Customs exemption to a fixed amount.

Ad A, II. — Persons entitled to Privileges and Immunities.

In conformity with §§ 18 and 19 of the German Law on the Organisation of Justice, a distinction is drawn in Germany between the following categories:

1. Heads and members of missions accredited to the German Reich. These include all persons possessing what is usually termed the diplomatic character, *i.e.*, Ambassadors, Envoys, Ministers Resident, Chargés d'Affaires, Counsellors of Embassy and Legation, Secretaries of Legation and Attachés, including Military and Naval Attachés and other Attachés usually attached to missions — for instance, Press Attachés, Commercial Attachés, etc., whose duties are of a general nature. To this category must also be added, if necessary, legation doctors and chaplains, when the latter are appointed by the Government of the State which has sent the mission and are attached as such to the mission, provided they work entirely or mainly for the mission.

2. Auxiliary staff (*Geschäftspersonal*) of the persons mentioned in § 1. This class includes the Chancellor, the Interpreter, the Chancellery staff, the lady typists, telephone operators and domestics attached to the legation as such, door-keepers, etc., and in general all persons paid out of the official funds, either as officials or employees.

3. Private domestic staff in the service of the persons referred to *sub* 1, that is to say, private secretaries, major-domos, governesses, children's tutors, etc.

4. Members of the families of the persons enumerated *sub* 1.

The privileges extend (subject to § 104 of the German Criminal Code, to all the categories mentioned in Sections 1 to 4, apart from the fiscal and Customs privileges, which are entirely based on the principle of reciprocity and from which domestic staff is entirely excluded. Details concerning Customs privileges which are accorded even to office and chancellery staff will be found in the Ordinance concerning the Freedom from

Customs and the Exemption from Taxes of Articles intended for a Legation, together with the additional Ordinance setting out the extent of the reciprocity granted by foreign States (see the *Reichszollblatt* referred to above).

German nationals employed as domestics are in all cases excluded from the privileges. Persons in the other categories can on no account be exempted from the payment of taxes and Customs; exemption from jurisdiction is possible if the German States of which these persons are nationals waive their jurisdiction over them. In practice, however, this never occurs.

The above regulation, which is at present in force in Germany, seems to be clear and it might be used as a basis for experiments in codification. It might be possible to agree definitely to exclude nationals of the receiving State from all privileges; on the other hand, as, in many countries, the Chancellor is given a rank similar to that of members of missions, the privileges he enjoys might be extended to the members of his family.

The question of the acceptance of special attachés — for instance, social, Customs, and other attachés — might be left for settlement by the conclusion of a special agreement in each particular case between the State which sends the mission and the State which receives it. A general regulation of the question of Customs privileges would be desirable from the point of view of the legal guarantees which may be required in view of the doubts and difficulties which are perpetually arising under present conditions, because it is necessary in every case to ascertain whether the State sending the mission accords the same privileges.

Persons who, in the State which receives the mission, possess a special status midway between foreigners and nationals, and who, in this respect, have to be taken into account in the granting of privileges, are a category which does not exist in Germany.

For practical reasons it is open to doubt whether, to avoid all abuses and uncertainty, the enjoyment of privileges can be subject to the condition that the persons' names must figure in a list transmitted to the Minister for Foreign Affairs of the receiving State. In any case, the principle should be laid down that the obtaining of prerogatives and privileges depends on the consent — which, of course, will almost invariably be accorded — of the State which receives. Consequently, no privileges of any kind could be claimed for a person previously refused and again attached to a mission, or for a person who — as the appointing State has in view of the circumstances good reason to suppose — is not *persona grata*, or who has not been attached to the mission *bona fide*. In view of the above, the German Government thinks it is clear that, for special reasons, the receiving State may raise objections to the staff lists transmitted to it, and even refuse them. In practice, however, it would be impossible — and certainly undesirable — to set out in the Convention in detail the reasons on which such action might be based, although these reasons should certainly include the case of an obviously exaggerated number of persons attached to a legation.

Ad A, III. — Duration of Diplomatic Privileges and Immunities as regards:
(1) *the Privileged Person; (2) Premises and Archives.*

1. The German Government ventures to suggest that say: Articles 5 and 14 and Article 29 of the Cambridge and American drafts respectively constitute a basis on which a settlement could be reached.

Where, and to what extent, judicial proceedings can be instituted after the privileges expire for acts committed while these privileges were in force is a question which will require special consideration.

2. In the opinion of the German Government, the archives and premises of missions enjoy intrinsic immunity as they are personally used by every head of the mission in turn. It would therefore seem clear that their immunity continues even after the decease of the head of the mission or after diplomatic relations have been broken off.

Ad A, IV. — Position of a Diplomatic Agent within and, more particularly, in Transit through the Territory of a State to which he is not accredited.

Article 29 of the American draft provides for the enjoyment of diplomatic privileges in a third country across which the diplomatic agent is proceeding to take up his post, or when he is returning from his post, or during an occasional official sojourn in the country.

An explicit settlement on these lines might be accepted for reasons of international courtesy, though the problem as it affects other privileged persons will need more careful consideration. Furthermore, it will be necessary to determine what treatment should be applied if the diplomatic agent happens to be staying in a non-official capacity in the territory of a third State — for instance, if he is undergoing medical treatment.

Ad B. — In what Sense and to what Extent are Diplomatic Privileges and Immunities enjoyable by Persons other than those dealt with under A above ?

Sections (a) to (c) of this question refer to the legal position of representatives of the Members of the League and officials of the League when engaged on the business of the League, the status of the Judges and staff of the Permanent Court of International Justice and that of permanent representatives specially attached to the League of Nations by various States.

In view of the special character of these questions (including the question of the legal status of officials of the International Labour Office), the German Government is of opinion that they should form the subject of a separate agreement.

With regard to the status of members of international commissions, we might take as our starting-point the premise that, if the commission in question has been established under a formal treaty in which diplomatic rights for members of the commission are not expressly mentioned, there was no intention of granting to these members full diplomatic privileges and prerogatives. That being so, the members of the commission could only lay claim to such protection as might be necessary to enable them to carry out their task, that is to say, exemption from measures of constraint against their person, and immunity for their archives and possibly their official premises ; they would not, however, be exempted from jurisdiction.

The question, however, is connected with the position of representatives of States which are not members of a mission. The privileges to which these representatives are entitled must be decided in each particular case ; it would, however, be desirable, in this instance also, to enunciate general and definite principles.

We do not think that there is any need to grant diplomatic privileges and prerogatives to members of international bureaux.

ANNEX 3.

MEMORANDUM ON M. GUERRERO'S REPORT.

It is satisfactory to note that the Committee and M. Guerrero have not considered the entire problem of offences at international law, but have merely examined the case of damage caused to persons by acts contrary to international law. This latter question comes within a clearly defined sphere of law for which, in view of the many cases which have arisen in practice between States, it is relatively easy to distinguish the general rules of existing customary law. The desirability, however, of linking up this particular aspect of substantive international law with the procedure of pacific settlement of disputes is open to doubt. The result of such a connection would be that the international law of procedure — which it would be desirable to settle on a uniform basis — might, on the contrary, be split up into a series of contradictory provisions. We should also take into account the fact that the procedure for the pacific settlement of disputes has been considerably extended as a result of numerous bilateral treaties of arbitration. We do not think that it would be wise to interfere with a system which thus seems to be gradually growing up by making special procedural rules for particular provinces of the substantive law. With regard to Point 11, moreover, we are bound to say that Commissions of Enquiry, although they frequently constitute an excellent method of settling a dispute in a friendly manner, do not seem necessary or even desirable in all cases, because it often happens that there is no difference of opinion as to the facts but only as to the inferences to be drawn from these facts from the point of view of international law.

As regards the responsibility of States from a substantive point of view, M. Guerrero's conclusions call for the following general observations :

1. M. Guerrero rightly takes as the starting-point of his conclusions the fact that a State can only be responsible when it has committed an act in violation of existing international law. He is equally right in stating that the sources of existing international law are international treaties and customary *jus gentium*, but in so doing he does not say what the latter includes. The most difficult task of all, however, is to determine the cases in which an act causing damage to a foreigner may be regarded as an infringement of international law. It would be extremely helpful, from the point of view of the development of international law, if an attempt were made to define the principal rights of persons protected by the customary *jus gentium*, the violation of which rights would entitle one State to put forward claims against another.

2. There is no reference in the conclusions to the juridical obligations incurred as the result of damage caused to a foreigner for which a State is responsible at international law. Experience shows that this question is of considerable importance

in practical international affairs. It has been elucidated in a series of awards given by international courts of arbitration, so that it should not be difficult to discover definite general rules.

3. It is, moreover, necessary to consider whether, in all cases, States are only responsible in cases of wrongful act or omission. Certain publicists are of opinion that a State is also responsible, in certain conditions and to a certain extent, for acts which are unlawful but for which the person who caused the damage cannot be blamed.

4. Finally, in this connection, it would fall to be considered whether, notwithstanding that it has committed a violation of international law, a State may be exempted from responsibility on special grounds, such as necessity (a ground mentioned in Conclusion 3 in connection with acts of State officials) or contributory wrongdoing by the injured State.

Regarded from various standpoints, M. Guerrero's conclusions might form the subject of further comment, but we think that at the present stage such comment is unnecessary. Such detailed criticisms are therefore deferred until a later occasion.

Argentine.

QUESTIONNAIRE NO. 4. — RESPONSIBILITY OF STATES.

Letter from M. Guerrero of December 7th, 1926, addressed to the Acting Director of the Legal Section of the Secretariat.

[Translation.]

I have the honour to forward you herewith a true copy of an official communication addressed to me by His Excellency M. Federico Alvarez de Toledo, Minister of the Argentine Republic in Paris.

(Signed) J. Gustavo GUERRERO.

Letter of November 12th, 1926, from the Argentine Minister in Paris to M. Guerrero.

With reference to your book *La Responsabilidad Internacional*, which you were good enough to send me, I am pleased to inform you that the Ministry of Foreign Affairs, in acknowledging receipt of the copy, which I forwarded in due course, declares that it would view with satisfaction the regulation of this question, but suggests that the second paragraph of Article 2 should be deleted and that it should be stated in Article 11 that it will apply "only in cases in which the dispute is due to an act of violation committed by the State against which complaint is made".

(Signed) Federico ALVAREZ DE TOLEDO.

Australia.

QUESTIONNAIRES NOS. 1 TO 7.

Letter of August 16th, 1926.

I have the honour, by direction of the Prime Minister, to inform you that the Commonwealth Government considers it desirable to endeavour to secure the regulation by international agreement of all the subjects dealt with in the questionnaires which accompanied your letter, viz.:

1. Nationality;
2. Territorial Waters;
3. Diplomatic Privileges and Immunities;
4. Responsibility of States in respect of Injury caused in their Territory to the Person or Property of Foreigners;
5. Procedure of International Conferences and Procedure for the Conclusion and Drafting of Treaties;
6. Piracy;
7. Exploitation of the Products of the Sea.

To what extent agreement is realisable can only be ascertained by a conference for the purpose of formulating rules which are generally acceptable, but it would appear to the Commonwealth Government that agreement on many points, if not on all, ought to be attainable.

The Commonwealth Government is of opinion that the subjects which might be selected for immediate consideration are :

1. Nationality ;
2. Territorial Waters ; and
4. Responsibility of States in respect of Injuries to Foreigners.

(Signed) DEANE,
Secretary.

Austria.

QUESTIONNAIRES NOS. 1 TO 7.

Letter of March 1st, 1927.

[Translation.]

With reference to your circular letter O.L.25.1926.V, of March 22nd, 1926, concerning the Progressive Codification of International Law, I have the honour to transmit to you herewith the observations of the Federal Government on Questionnaires 1, 3, 4 and 5.

As Austria is not a maritime Power, the Federal Government refrains from giving any opinion on the questions dealt with in Questionnaires 2 (Territorial Waters), 6 (Piracy) and 7 (Exploitation of the Products of the Sea).

(Signed) PETER,
Secretary-General,
Department of Foreign Affairs.

Questionnaire No. 1. — Nationality.

The Federal Government agrees that it would be desirable to settle by means of a convention certain questions connected with the conflict of laws on nationality. It endorses most of the provisions contained in the preliminary Draft on this subject as drawn up by the Committee of Experts and modified by M. Rundstein following on the discussions of the Committee of Experts.

It feels bound, however, to raise certain objections with regard to Articles 3 and 4. The provisions of these articles are intended, by conferring on certain categories of individuals and subject to certain conditions the nationality of the State in which they were born, to reduce the number of stateless persons : they are not intended to settle positive cases of conflict of national laws. These provisions would place heavy obligations on States which afford a very liberal right of asylum to foreigners, by forcing such States to recognise the children of these foreigners as their nationals, if the laws of the State of origin of these foreigners refused to recognise them as nationals.

The Federal Government also ventures to state its opinion that the provision of Article 13, to the effect that the certificate of nationality provided for in this article must be confirmed by the central authorities of the State in question, is not very practical and certainly not indispensable.

Questionnaire No. 3. — Diplomatic Privileges and Immunities.

The Austrian Federal Government agrees with the Committee of Experts that all the questions set out in Report O.45.M.22.1926.V. might at present be usefully examined with a view to concluding a general Convention, which would, if necessary, be completed by special or bilateral agreements.

The Federal Government is also of opinion that the only solid ground on which the enquiry can be based is the need of securing complete freedom for the diplomatic representative in the exercise of his duties, the maintenance of his dignity and that of the State which he represents, and respect for century-old traditions.

As regards the various points on the list in the above report, the Federal Government ventures to offer the following observations :

Re *Section A, I.* — It would be particularly desirable to consider to what extent privileged persons are bound to observe the administrative regulations of the country in which they sojourn, especially Police regulations, laws of Police registration and sickness insurance for members of the domestic staff not nationals of the country which the privileged person represents. It would also be desirable to discuss the question of the application to the premises of a diplomatic mission of Police regulations regarding buildings.

Re *Section A, II.* — When the question of the categories of persons entitled to privileges and immunities comes up for discussion, the Federal Government is of opinion that it would be desirable to examine the following points :

1. The status of heads of missions who are nationals of the country in which they are accredited.
2. The status of persons holding a position in the consular departments of diplomatic missions.
3. The status of the Chancellor and Chancellery staff in a diplomatic mission.
4. The status of special delegates who, without being accredited, are sent by their Government to take part in conferences or negotiations, and particularly the position of such persons when in the territory of a third State which is not a party to the negotiations.
5. Possibly, the status of persons attached to a diplomatic mission as representatives of the State in its quality as a subject at private law.

Questionnaire No. 4. — Responsibility of States.

The Federal Government agrees that this matter calls for urgent settlement by international agreement.

It feels bound, however, to state its view that the Sub-Committee has in certain respects departed from the principles of international law as recognised in Europe. Before we can contemplate the preparation of a draft Convention, it would therefore be desirable, with a view to obtaining the accession of the greatest possible number of countries, to examine anew, and with meticulous care, the fundamental principles of the problem.

Moreover, as this matter is at present being discussed by the Institute of International Law, it would perhaps be desirable to await the results of the work of this body, which enjoys such high repute throughout the legal world.

Questionnaire No. 5. — Procedure of International Conferences.

The Federal Government shares the opinion of the Committee of Experts that the questions of international law set out in the questionnaire may be settled by international agreement, provided the future rules are conceived as a *jus dispositivum* which would not limit the independence of States.

With regard to the different points of the questionnaire, the Federal Government holds the following problems to be important :

Re *List I A.* — The privileges to be accorded to persons instructed by their Governments to take part in international conferences, or bilateral negotiations and, particularly, the position of these persons in the territory of a third State which is not a party to the negotiations (*cf.* also the observations in connection with diplomatic privileges and immunities).

Re *List II A.* — The Federal Government prefers the list drawn up by M. Mastny (direct representation and delegated representation), in view of the fact that this point in particular calls for legal interpretation.

Re *List II B.* — The list of questions under the heading "Type of Solemn Treaties" should also include under the item "Separate Articles" *additional notes*, and at the end of the list there should figure the item "Registration of Treaties at the Secretariat of the League of Nations". The Federal Government also thinks that it would be desirable to maintain the item in M. Mastny's list "Concurrence of Legislative Bodies", since it is of the highest importance that this question should be thoroughly discussed.

There are two other problems which call for solution: *incomplete ratification* and, in particular, the juridical value to be ascribed to treaties ratified subject to reservations.

The Federal Government thinks that it would be desirable, with a view to simplifying the exchange of ratifications, to consider the possibility of laying down in a general convention that heads of diplomatic missions, *chargés d'affaires ad. int.*, and high officials of the Ministry of Foreign Affairs shall be authorised, as of right and without being granted special full powers, to exchange instruments of ratification.

The question of the validity of *international agreements concluded orally* is not included in List II B. The Federal Government feels that, in view of its importance, this question should be added to the list.

A number of annexes are appended for information, namely :

A. The text of the provisions in the Austrian Federal Constitution which concern foreign relations.

B. The resolution of the Federal President dated December 31st, 1920, by which the Federal Government and the competent members of that Government are authorised to conclude certain kinds of international agreements.

C. A constituent law authorising the Federal Government to put into force provisionally the material provisions of certain international commercial agreements, the law in question to be used as a standard type.

Annexes to the Reply of the Austrian Government concerning Questionnaire No. 5.

[Translation.]

A. — TEXT OF THE PROVISIONS OF THE AUSTRIAN FEDERAL CONSTITUTION CONCERNING THE FOREIGN RELATIONS OF THE REPUBLIC.

Federal Constituent Law of October 1st, 1920, text published in the Bundesgesetzblatt, No. 367, 1920.

Article 9. — The universally recognised rules of international law shall be regarded as forming an integral part of federal law.

Article 10. — In respect of the following subjects, the Confederation shall exercise the legislative and executive power :

- 1.
- 2. Foreign affairs, including political and economic representation in relations with foreign countries, in particular the conclusion of all treaties, the delimitation of frontiers, foreign trade (merchandise and livestock) and Customs questions.
- 3.

Article 50. — 1. No political treaty shall be valid until it has been approved by the National Council ; in the case of other treaties, such approval shall only be necessary if the treaty modifies the laws in force.

- 2.

Article 65. — The President of the Confederation shall represent the Republic in foreign relations, shall receive and accredit diplomatic agents, accord exequaturs to foreign consuls, appoint the consular representatives of the Republic abroad and conclude treaties.

- 2.

Article 66. — 1.
2. The President of the Confederation may empower the Federal Government or the competent members of that Government to conclude certain definite categories of treaties other than those referred to in Article 50. (See Annex B.)

Article 67. — 1. Failing any provisions in the Constitution to the contrary, the President of the Confederation shall only act on the proposal of the Federal Government or Federal Ministers empowered by the latter. . . .

2. The acts of the President of the Confederation shall not be valid until they have been countersigned by the Federal Chancellor or the competent Federal Councillor.

B. — RESOLUTION OF THE PRESIDENT OF THE CONFEDERATION DATED DECEMBER 31ST, 1920, BY WHICH THE FEDERAL GOVERNMENT AND THE COMPETENT MEMBERS OF THAT GOVERNMENT ARE EMPOWERED TO CONCLUDE CERTAIN CATEGORIES OF INTERNATIONAL AGREEMENTS (Bundesgesetzblatt, No. 49, 1921).

Under paragraph 2 of Article 66 of the Law of October 1st, 1920, B.G.B.L. No. 1 (Federal Constitution), I grant permission to conclude international agreements which do not require the approval of the National Council in conformity with Article 50 of the Federal Constitution, except such as are expressly defined as State Treaties or such as are concluded by the exchange of instruments of ratification :

- (a) To the Federal Government, in so far as such international agreements take the form of agreements between Governments ;
- (b) To the competent Federal Councillor acting in agreement with the Federal Councillor for Foreign Affairs, or to the latter only if the Federal Ministry of Foreign Affairs is the competent department ; this authorisation only applies to international agreements in the form of agreements between the competent ministries of the Contracting Parties ;
- (c) To the competent Federal Councillor in the case of international agreements which are merely agreements between administrative departments.

(Signed) HAINISCH.
(Signed) MAYR.

C. — CONSTITUENT LAW CONCERNING THE AUTHORISATION GRANTED TO THE FEDERAL GOVERNMENT TO PUT INTO FORCE PROVISIONALLY THE MATERIAL PROVISIONS OF CERTAIN INTERNATIONAL COMMERCIAL AGREEMENTS (THE LAW IN QUESTION TO SERVE AS A STANDARD TYPE).

Federal Constituent Law of December 20th, 1924 (Bundesgesetzblatt No. 460), concerning the Settlement of Commercial Relations and Trade with Foreign States.

The National Council has decided as follows :

Article 1. — The Federal Government is authorised to put into force provisionally by decree, up to June 30th, 1925, at the latest, subject to the consent of the principal Commission, the material provisions of treaties which come under the heading of the agreements referred to in paragraph 1 of Article 50 of the Federal Constitution, and concern the provisional regulation of commercial relations and trade with foreign States; the Federal Government may take such action as soon as the draft treaties have been signed by the representatives of the Contracting States. Moreover, the Federal Government may abrogate the decrees promulgated under this authorisation as soon as any circumstance arises which warrants the denunciation of the agreement.

Article 2. — It shall be the duty of the Federal Government to ensure the execution of this Federal Constituent Law.

(Signed) HAINISH, RAMEK, WABER, SCHNEIDER,
RESCH, AHRER, BUCHINGER, SCHÜRFF,
VAUGOIN, MATAJA.

Belgium.

QUESTIONNAIRE No. 1.

Letter of October 20th, 1926.

[Translation.]

I have the honour to inform you that the Belgian Government considers that, although an agreement on questions of nationality would in theory present incontestable advantages, it is nevertheless impracticable. It would, in fact, necessitate the preliminary codification of the internal law of the contracting countries, at least of the law concerning the basic questions of nationality (adoption of *jus sanguinis* or *jus soli*). Political, social, economic and geographical circumstances alter the complexion of these questions in every individual country.

It would seem that the only possible solution is the conclusion of bilateral conventions.

In the light of this opinion, I would communicate the remarks of my Government on the text of the draft convention which you were good enough to forward to me :

Article 1. This provision recognises that the convention cannot prevent dual nationality, since it deals with the existence of such cases. As regards the substance of the question, it is difficult to accept the text because of the anomaly which it confirms. The result would be the creation of two kinds of nationals of the same State and to prevent a State from affording its protection as regards another State to one class of its nationals.

Article 2. No observations.

Article 3. The effect of this article would be to grant automatically the nationality of the State in which they were born to children of parents of unknown nationality. This is in contradiction to the spirit of the Belgian Law regarding nationality of May 15th, 1922. Further, it would compel a State to accept as nationals by right of birth foreigners who might be undesirable.

Under Belgian law, such children have the right of *opting* for Belgian nationality; such option is only valid after enquiry by the competent magistrates and confirmation by the Court of First Instance.

Article 4. This article calls for the same remarks as Article 3.

Article 5. Under this article a person would sometimes have one nationality and sometimes another attributed to him by third States. Instead of removing causes of dispute, the article would give rise to complications by recognising officially as it were one person's possession of several nationalities to one person. Without going into details of the difficulties that would arise, it is permissible to point out the difficulties which would arise in questions concerning marriage, divorce, inheritance (especially if the deceased leaves property in several countries), etc.

Article 6. No objection.

Article 7. No objection. The period laid down for the validity of a "release from allegiance" granted to a person seeking naturalisation abroad should, however, be a fairly lengthy one, as the formalities required for naturalisation *sensu stricto* are generally protracted (sometimes lasting several years).

Article 8. This article does not specify that the recovery of her original nationality by a widow or divorced woman should be *voluntary*, and the result would therefore be that she would lose, *against her will*, the nationality she had acquired by marriage. This would be opposed to the Belgian law, under which a widow or divorced woman who has acquired Belgian nationality by marriage retains this nationality until she acquires — by a *definite voluntary act* and not automatically — foreign nationality, whether her original nationality or another.

Article 9. This article does not correspond entirely with the Belgian law. Article 18, paragraph 3, of the Law of May 15th, 1922, amended by Article 17 of the Law of August 4th, 1926, provides that a woman shall lose her Belgian nationality “where her husband *voluntarily* acquires foreign nationality, if she acquires the nationality of the husband under the foreign law”, but, on the other hand, such woman may, unless she acquired Belgian nationality by marriage, *retain Belgian nationality* by making a declaration in the form and within the period laid down by the above law.

Article 10. This article refers to the granting of passports, and would seem to be out of place in a convention for the purpose of removing disputes concerning nationality.

Article 11. This article concerns the loss of its nationality of origin by an illegitimate child “in consequence of the change in its civil status (legitimation, recognition)”.

As regards legitimation, this provision is in accordance with Belgian law in so far as it affects *non-emancipated minors*. Article 3 of the Law of May 15th, 1922, provides that “an illegitimate child, legitimised during its minority and before its emancipation, retains the nationality of its father, if a Belgian or subject of a nation the law of which confers the nationality of the father on legitimised children”. When the child becomes major or emancipated, its nationality is definitely settled and legitimation can no longer affect its status.

On the other hand, Article 11 of the draft convention attributes greater effects to recognition than is done by Belgian law, under which an illegitimate child recognised by a father of no nationality loses Belgian nationality. The law is not concerned with the point whether recognition by a non-Belgian (whether possessed of foreign nationality or no nationality) confers a foreign nationality on such a child: it merely considers that the child loses Belgian nationality.

Article 12. Under Belgian law, adoption is not a method of acquiring or losing nationality.

Article 13. No objection.

(Signed) VANDERVELDE.

QUESTIONNAIRES NOS. 3, 4, 5, 6 AND 7.

Letter of January 27th, 1927.

[Translation.]

In continuation of my letter of October 20th, 1926, in which I replied to the questionnaire on nationality prepared by the Committee of Experts for the Progressive Codification of International Law, I have the honour to inform you that the Belgian Government considers that the settlement by international agreement of the following subjects of international law would also be desirable and realisable at no very distant date.

1. *Diplomatic Privileges and Immunities.*

2. *Responsibility of States for Damage done in their Territory to the Person and Property of Foreigners* (particular attention should be devoted to defining the grounds on which such responsibility rests to the specifying of the cases in which it is incurred); and to the settlement of disputes which may arise between two States on account of damage done to foreigners in the territory of one of them.

3. *Procedure of International Conferences and Procedure for the Conclusion and Drafting of Treaties.* — The opinion of the Government is as follows: The preparation of a complete code on this subject may perhaps be impossible, but it should be possible to draw up a body of rules regarding the form of treaties, full powers, signature, ratification, denunciation, etc.

4. *Piracy.* — The definition by international agreement of the rules applicable to piracy seems to be possible if only actual piracy be considered, to the exclusion of privateering or other ventures of a similar political nature.

The draft prepared by the Sub-Committee of Experts contains a series of suggestions which could be usefully considered by an international conference.

5. *Exploitation of the Products of the Sea.* — The Belgian Government would have no objection to participating in an effort to settle this matter by international agreement. It feels, however, that an enquiry into this very-special question could not be conducted satisfactorily without the assistance of the International Council for the Exploitation of the Sea, an organ which has been engaged for many years in studying from a practical point of view all the points mentioned in the report of the Committee of Experts.

(Signed) E. VANDERVELDE.

Brazil.

QUESTIONNAIRES NOS. 1 TO 7.

Letter of February 3rd, 1927.

OPINION OF PROFESSOR CLOVIS BEVILAQUA,
Legal Adviser to the Ministry of Foreign Affairs,

Transmitted by His Excellency the Minister of Foreign Affairs of Brazil.

I.

There can be no longer any doubt as to the desirability of the codification of international law. It is an admitted necessity: without it the nations can never feel secure. It must be founded on justice, embodied in definite, clear rules, and its ultimate aim must be to protect the major interests of civilisation. The democratisation of the world, the equality of States, the elimination of force as a decisive factor in international relations — these are the constituent elements of a new international order which necessitates the careful definition of reciprocal rights and duties.

America has long been engaged in a patient effort to solve this problem. Hardly had the American nations proclaimed their political independence when a first attempt was made to establish their external relations on a juridico-political basis and consolidate their international status. These efforts have been continued at various conferences, and it is not too much to say that the ground is now ready for the final work of construction. At one of these conferences a distinguished Brazilian, José Hygino, boldly faced the whole problem of the codification of international law, both public and private. Again, Rio de Janeiro was the city chosen for a meeting of juriconsults to whom the task had been confided of systematising international law. This ideal, therefore, forms an integral part of American civilisation and its attainment is one of Brazil's most earnest aspirations. The seed sown by José Hygino has grown and prospered, and has produced Epitacio PESSÔA's *Code of Public International Law* and LAFAYETTE'S *Code of Private International Law*.

The fact that Brazil has withdrawn from the League of Nations in no way implies that she should hold aloof from the work of co-ordinating international relations. The codification which America so fervently desires is at last, it would seem, nearing completion; but this should not deter her from co-operating in the similar work now being undertaken in Europe. As stated in the Second Draft Convention prepared by the American Institute of International Law, America is not aiming at "creating an international system the result of which would be to separate the republics of this hemisphere from the rest of the world".

II.

The questions selected as a commencement of the work of codification are, in our opinion, capable of settlement, and their settlement would be desirable.

III.

Nationality. — Article 1 of the preliminary draft Convention as prepared by M. Rundstein and revised by the Committee of Experts satisfactorily solves one question of double nationality. The article provides for the case of a person whom two States claim as their national: the State in which he was born (*jus soli*) and the State of which his parents were nationals (*jus sanguinis*). With a view to harmonising these conflicting claims, it is laid down that the High Contracting Parties undertake not to afford diplomatic protection to and not to intervene on behalf of their nationals if the latter are simultaneously considered as its nationals from the moment of their birth, by the law of the State on which the claim would be made.

The principle is a sound one, and it faithfully reflects modern international opinion on the subject. The right of every State to decide what persons it regards as its nationals is irrefutable : the nationality laws of one country, however, are often in conflict with those of another. The obvious solution, based on mutual consideration between nations, is that each should, in the territory of another, respect the latter's law in so far as it is political, including the law of nationality. The article of the draft Convention does nothing more than mention diplomatic protection ; it is therefore an expression of the broader principle which we have enunciated above.

* * *

Article 2 is in conformity with paragraphs 1 and 3 of Article 69 of the Brazilian Constitution, which, although it gives preference to the *jus soli*, recognises that the children of foreigners resident in Brazil in the service of their country possess their parents' nationality, just as the children of Brazilian parents in the service of the Republic abroad, when born in foreign territory, are Brazilian.

* * *

There is no need to review separately the various clauses adopted. It may be said that they harmonise the divergent laws on nationality without in any way impairing the intrinsic value of each. If free peoples are to live peacefully side by side, the sovereignty of each must be limited by the sovereignty of the others in the same field.

IV.

Territorial Sea. — M. Schücking's draft, as revised by the Committee, realises a recommendation we made in 1911 :

"It would be highly desirable to fix the zone of the jurisdictional sea by international agreement in such a way that States might, without conflict of sovereignty, supervise and police this area for the maintenance of order, the punishment of crime, the regulation of fishing, the prevention of contraband and the establishment of such general rules as may be deemed necessary for navigation and commerce, without prejudice to the rights of international trade."¹

The draft accepts the traditional three-mile limit, but does not preclude a State from exercising administrative rights beyond the zone of its sovereignty. If the breadth of the territorial sea could be extended, we should avoid the necessity of admitting that a State may exercise administrative rights outside its territorial waters.

We think that Article 5 of the Draft would be improved if it were drawn up on the lines of Article 7 of the American project No. 10. The idea is the same, but the American text expresses with greater clearness the principle which it is sought to establish.

V.

Diplomatic Immunities. — M. Diena, the distinguished international jurist, has not embodied the conclusions of his learned report in the form of a Convention. The American project might therefore be adopted with two alterations. In Article 27 we might omit paragraph 3 concerning actions arising out of contracts concluded by a diplomatic agent, provided it be stipulated, in a special clause, that the obligation must be fulfilled in the country to which the agent is accredited. It is a case of the renunciation of diplomatic immunity without the authorisation of the Government of which the agent is an official, and the other parties to the contract should alone be entitled to invoke such a consideration against this form of immunity. When, however, the immunity derives from the representative character of the envoy, it cannot be subject to these contingencies, since they would invalidate it.

The other alteration necessary is in that part of Article 30 in which immunity, or exemption from jurisdiction, is extended to the servants of the diplomatic agent. It is reasonable, as a matter of courtesy, respect and honour, that exemption should be extended to the members of the diplomatic agent's family. It is also necessary to extend it to the whole staff of the legation or embassy, because the staff constitutes the administrative organ of the diplomatic mission. Servants, however, do not form part of the diplomatic personnel ; they are not officials and have no right to enjoy a privilege which was created solely in order to facilitate the work and enhance the prestige of diplomatic agents.

¹ *Derecho publico internacional*, I, page 322.

VI.

Responsibility of the State for Injury suffered by Foreigners in its Territory. — M. Guerrero's conclusions, which have been accepted by the Committee, are excellent on account of the principle they emphasise, namely, that it is the illegal act itself which in international relations creates responsibility, apart from any question of intention.

I venture to observe that this is the point of view adopted in *Direito publico internacional*. The passage in question is as follows:

"In international matters the illegal acts which States, as legal entities, can commit are acts that may be defined as *any offence committed by one State against the rights or legitimate interests of another*. There can be no international illegal act unless that act is committed by the representatives of the State in its international relations (direct responsibility) or by the home authorities (indirect responsibility). Furthermore, the act must be contrary to justice. The illegal act places the offending State under an obligation either to restore the right it has violated or grant adequate satisfaction: moral, when the offence is against the dignity of the foreign nation and cannot be estimated in material terms: monetary, when such compensation can be offered for the right or interests violated."¹

The deductions drawn from this principle in paragraphs 29-44 are, in general outline, similar to those set out in M. Guerrero's report, and we have quoted the above passage merely in order to show that in this respect Brazilian doctrine coincides with the conclusions reached by the Committee in the light of international usage.

VII.

I have no observations to offer regarding the *Procedure for International Conferences and the Drafting of Treaties*.

Although *Piracy*, which M. Matsuda has examined and defined as a question of international law, is at present of very limited interest, there is no reason why it should not be suppressed by international action. I must admit that this crime, which is extremely rare in the Western hemisphere, seems to me to be hardly worth consideration outside the penal codes of each country.

VIII.

Exploitation of the Products of the Sea. — The report of the distinguished Argentine professor, Léon Suárez, deals with this matter satisfactorily, without, however, proposing any rules for its settlement. He nevertheless defines the problem and indicates certain bases for its solution which would be entirely acceptable.

Subject to the above observations, I earnestly and sincerely hope that the work of codifying international law will make steady and continual progress. On such codification the peace of the world depends.

Rio de Janeiro, January 25th, 1927.

(Signed) Clovis BEVILAQUA.

British Empire.

QUESTIONNAIRE No. 1. — NATIONALITY.

Letter of December 31st, 1926.

In reply to the enquiry contained in your letter (C.L. 25.1926.V) of March 22nd last, relative to the report of the Committee for the Progressive Codification of International Law concerning nationality, I am directed by Secretary Sir Austen Chamberlain to inform you that His Majesty's Government in Great Britain consider that the questions which arise in connection with dual nationality and statelessness are subjects whose regulation by international agreement it might be desirable to attempt, and that they do not consider that it would be possible to regulate questions of nationality as a whole by this means or desirable at the present time to attempt to do so.

(Signed) G. R. WARNER.

¹ *Direito publico internacional*, I, pages 179-180.

QUESTIONNAIRE NO. 2. — TERRITORIAL WATERS.

Letter of October 12th, 1926.

I am directed by Secretary Sir Austen Chamberlain to inform you that His Majesty's Government consider the amended draft convention on territorial waters on pages 47-48¹ of the report a useful basis for future discussion.

(Signed) G. R. WARNER.

QUESTIONNAIRE NO. 3. — DIPLOMATIC PRIVILEGES AND IMMUNITIES.

Letter of October 11th, 1926.

I am directed by Secretary Sir Austen Chamberlain to inform you that His Majesty's Government do not consider that the question of diplomatic privileges and immunities is a subject of international law which it would be at present possible or desirable to regulate by international agreement.

(Signed) G. R. WARNER.

QUESTIONNAIRE NO. 4. — RESPONSIBILITY OF STATES.

Letter of November 23rd, 1926.

In reply to the enquiry contained in your letter (C.L. 25.1926. V) of March 22nd last in regard to the report of the Committee for the Codification of International Law on the subject of the responsibility of States in respect of injury caused in their territory to the person or property of foreigners, I am directed by Secretary Sir Austen Chamberlain to inform you that His Majesty's Government consider that this is a subject of international law whose regulation, by international agreement, it might be desirable to attempt.

2. They wish, however, to place it on record that the Report of the Sub-Committee to the Committee of Experts, while making many excellent suggestions, contains conclusions with which His Majesty's Government are not in agreement.

(Signed) Alexander CADOGAN.

QUESTIONNAIRE NO. 5. — PROCEDURE OF INTERNATIONAL CONFERENCES.

Letter of September 25th, 1926.

I am directed by Secretary Sir Austen Chamberlain to inform you that His Majesty's Government do not consider the procedure of international conferences and the procedure for the conclusion and drafting of treaties to be a subject of international law whose regulation by international agreement is desirable and realisable.

2. They note that the Committee themselves have pointed out that there is no question of attempting to reach by way of international agreement a body of rules which will be binding obligatorily upon the various States.

3. At the same time, the proposals in the report will no doubt receive careful study at the hands of those legal and technical advisers of each Government who are responsible for the preparation of the technical portions of any treaty which may be concluded by their Government.

(Signed) G. R. WARNER.

QUESTIONNAIRE NO. 6. — PIRACY.

Letter of October 7th, 1926.

I am directed by Secretary Sir Austen Chamberlain to inform you that His Majesty's Government consider that piracy is a subject of international law the regulation of which by international agreement it might be desirable to attempt.

(Signed) Alexander CADOGAN.

¹ See p. 72 of the present document.

QUESTIONNAIRE NO. 7. — PRODUCTS OF THE SEA.

Letter of November 11th, 1926.

In reply to the enquiry contained in your letter (C.L.25.1926.V) of March 22nd last in regard to the report of the Committee for the Codification of International Law on the subject of the exploitation of the products of the sea, I am directed by Secretary Sir Austen Chamberlain to inform you that His Majesty's Government consider that this is not a subject the regulation of which by general international agreement is feasible, for the reasons that the considerations upon which its regulation must depend are of a technical rather than a legal character and that the information at present in the possession of His Majesty's Government on the subject leads them to the conclusion that the exploitation of the products of the sea cannot be made the subject of any general convention, but should be attempted rather by particular conventions relating to particular products and particular areas between the countries interested.

(Signed) Alexander CADOGAN.

Bulgaria.

QUESTIONNAIRES NOS. 1 TO 7.

Letter of February 15th, 1927.

[Translation.]

In reply to your letter C.L. 25. 1926, I have the honour to inform you that, in the opinion of the Bulgarian Government, the regulation by international agreement of the subjects treated in the questionnaires is desirable and realisable.

Trusting that you will forgive the delay in forwarding this reply,

(Signed) MIKOFF,
Chargé d'Affaires.

Chile.

QUESTIONNAIRE NO. 4. -

Letter of October 15th, 1926.

[Translation.]

I am directed by my Government to inform you that it has first of all examined Questionnaire No. 4 concerning the responsibility of States for damage done in their territory to the person or property of foreigners. My Government is not yet in a position to forward its replies to the other questions, but instructs me meanwhile to communicate to you the following reply to Questionnaire No. 4, with the request that you will be good enough to transmit it to the Committee of Experts.

The American doctrine has always been to restrict diplomatic disputes as far as possible, and, since the Fifth Pan-American Conference, conciliation has, in practice, been an essential part of American procedure in international affairs. The Chilean Government, therefore, accepts the conclusions of the report of His Excellency M. Guerrero on the responsibilities of States for damage done in their territories to the person or property of foreigners, with the following explanatory remarks :

To paragraph 7 of the Conclusions : For a *denial of justice* to be established the decision must have been influenced by the fact that the litigant was a foreigner.

To paragraph 11: Chile does not wish to enter into a compulsory arbitration agreement of a general nature.

(Signed) J. VALDES-MENDEVILLE,
Chilean Minister in Switzerland,
Head of the Permanent Chilean
Secretariat accredited to the League
of Nations.

Cuba.

QUESTIONNAIRES NOS. 1 TO 7.

Letter of January 26th, 1927.

[*Translation.*]

I have the honour to refer to this Department's letter of December 31st last acknowledging receipt of your letter C.L. 147. 1926.V of December 3rd, concerning the replies to the questionnaire prepared by the Committee of Experts for the Progressive Codification of International Law, the various Governments being requested to send these replies before February 15th, 1927, in order that there might be time to examine them.

I beg to inform you that the questionnaire has been submitted to the competent authority, who has now replied fully to the seven questions raised. I beg to communicate this reply to you herewith, and would request you to refer it to the proper Committee for such action as may be necessary, stating at the same time that it represents the considered opinion of the Cuban Government.

(Signed) Miguel Angel CAMPE,
Under-Secretary of State.

Questionnaire No. 1. — Nationality.

There should be no difficulty whatever in reaching an international agreement on those questions which have not yet, either directly or indirectly, been settled under existing Constitutions.

The Constitutional Charters of almost all the American Republics contain more or less absolute rules regarding nationality and naturalisation, and it can hardly be expected that any of them will alter its Constitution merely to comply with a treaty which is contrary to the principles embodied in that Constitution.

Subject to this reservation, agreement might be reached, first of all, on the following points: each contracting State will apply its own law in determining nationality of origin or the subsequent acquisition or loss of nationality within its territory or elsewhere when one of the nationalities in question is that of the State itself; problems regarding nationality of origin which arise in a State and in which that State is not directly concerned shall be settled according to the law of the country of which the person in question is, or was last, domiciled — Article 5 of the draft being modified accordingly; failing such domicile, the principles followed in the State in which the matter is being decided shall apply; questions connected with the acquisition by an individual of a new nationality shall be settled in accordance with the laws of the country whose nationality the individual is deemed to have acquired; loss of nationality shall be governed by the law of the country of which the nationality is lost, but points arising after such loss shall be governed by the law of the country of which the nationality is acquired.

The above observations do not apply to problems of collective naturalisation or the nationality and naturalisation of legal entities, since these problems are not dealt with in the Draft.

Coming now to examine the preliminary draft Convention itself, we would suggest that, in view of the provisions of the Cuban Constitution, the expression "From the moment of their birth (by)", in Article 1, should be altered to "By birth (under)".

The provisions of our Constitution make it impossible for us to accept Article 3.

We have already stated our reservations with regard to Article 5.

As regards paragraph (ii) of Article 6, we fail to see why, in this case of double nationality, one State is not allowed to accord diplomatic protection while the other is implicitly permitted to do so. The law should be the same for all.

Neither do we see how the provisions of Article 9 and the subsequent provisions can be harmonised with existing Cuban Constitutional Law. According to Article 4 of the present Constitution, Cuban nationality is acquired only by birth or by naturalisation, while Articles 5 and 6 of the Constitution define limitatively the categories of persons possessing Cuban nationality by birth and by naturalisation respectively. No one can become a Cuban national except in the manner laid down in the Constitution. As Article 6 of the Constitution also defines limitatively the grounds on which Cuban nationality is lost, we could not subscribe to any treaty under which Cuban nationality might be lost in another way or for other reasons.

We consider the last article of the Draft, Article 13, to be an excellent one and obviously most practical.

Questionnaire No. 2. — Territorial Waters.

There would be no difficulty either, in principle, in preparing a convention on territorial waters. The special usages and requirements of America must, of course, be taken into account; these are to a certain extent defined in Sections 2 and 3 of Draft No. 10 submitted to the Committee of Legal Experts which is to meet at Rio de Janeiro next April. Draft No. 12 also contains certain principles which are applicable, from the point of view of jurisdiction.

In the proposed Convention the final sentence of Article 2 calls for some comment. Rights of economic jurisdiction which have their source and origin in the coast or territorial sea are often exercised far beyond the zone of sovereignty; provision should therefore be made for this case. Article 5 lays down that, if there are islands so far distant from the mainland as not to come within the zone of the territorial sea, the latter should be measured from the mainland. We think that measurements should be taken in both directions, from the island and from the rest of the territory, so that, if the two zones meet, they can be unified.

The article should also be drafted in such a way as to include cays in the same category as islands; that is to say, it should apply even when there is no mainland but only a large island surrounded by smaller ones, as is the case with Cuba.

In Article 7, the right of sojourn in territorial seas should be more clearly defined.

Again, in our opinion, the provisions of Article 9 concerning jurisdiction and the provisions of Article 13 are not sufficiently clear.

We do not propose to refer to other provisions which might be included in the text of the Draft.

Questionnaire No. 3. — Diplomatic Privileges and Immunities.

No draft has been prepared; generally speaking, however, the questions defined in this document might, and indeed should, be examined and settled internationally.

Questionnaire No. 4. — Responsibility of States.

As this is another of the questions which will presumably be carefully examined by the Committee of Legal Experts at Rio de Janeiro (and later, in all probability, by the Havana Conference) and as it is of exceptional interest to America, we feel that Cuba should not agree to its settlement by the Committee until the American countries have expressed their final opinion at these Conferences.

Questionnaire No. 5. — Procedure for International Conferences, etc.

We feel that this question — which is only one of detail — hardly merits attention; in the organisation of conferences, so much depends on the object for which they have been convened, while procedure in the drafting of treaties is extremely varied. We do not, however, think there would be any objection to drawing up certain general rules.

The list of points to be considered includes certain questions, such as the definition of international conferences and treaties, which seem to be more suitable for theoretical study than for embodiment in a practical convention.

Questionnaire No. 6. — Piracy.

There can be no objection to the discussion and international settlement of this question, which is of some importance in certain parts of the world.

We think that the definition in Article 1 is rather dangerous, and constitutes a departure from recognised international practice.

Article 2 goes somewhat far, in that it prevents discussion of the act of piracy itself and may lead to difficulties between States.

Apart from the fact that Articles 3 and 4 are slightly contradictory, and that excessive powers are accorded to commanders of warships in judging pirates, the remainder of the Convention calls for no particular comment.

Questionnaire No. 7. — Products of the Sea.

The general principles laid down in No. 5 of the Rapporteur's conclusions might be discussed by the various States; but it is impossible to enter into details or make any proposals at present.

Denmark.

QUESTIONNAIRES NOS. 1 TO 7.

Letter of January 22nd, 1927.

[*Translation.*]

In a letter No.C.L.25.1926.V, of March 22nd, 1926, the Secretary-General of the League of Nations forwarded to the Danish Government several questionnaires and reports from the Committee of Experts for the Progressive Codification of International Law, with the request that the Danish Government would give its opinion as to whether the regulation by international agreement of the subjects treated in these questionnaires was desirable and realisable in the near future.

The Danish Government has examined these documents with great interest and has the honour to submit herewith several observations on the various points raised. In the first place, however, it would venture to offer a few comments of a more general nature.

The Royal Government is aware that the Committee's main task has been defined by the Assembly resolution of September 22nd, 1924, and the Council resolution of December 8th, 1924. It feels, however, that it would also be highly desirable to have a general statement setting out the Committee's own conception of its task as outlined in these resolutions. It would thus be possible to secure a certain uniformity in the Committee's proposals, while Governments would be able to submit their counter-proposals and additions with full knowledge of the facts. In particular, the Danish Government holds that it would be very desirable to know whether the main object of the Committee is :

1. To draw up a list of the questions of international law which might be embodied in a code of international law. If so, the first step would be to make a list of questions already dealt with in the international conventions which have been concluded between various groups of countries, such as the Hague Conventions on Civil Procedure, the Conventions on the Protection of Industrial Property, etc. A judicious selection would then have to be made. The questions would be dealt with from a new standpoint, and an international code of great importance and utility would then emerge.

2. It might also be argued that the Committee should, as far as possible, avoid the examination of questions already dealt with in the form of bilateral or plurilateral treaties: that it should, on the contrary, prepare a list of new questions which — though there is a certain amount of international agreement regarding them — have not yet been embodied in the formal rules of international law. Accepting these hypotheses, the object would be to discover hitherto uncodified questions which call for settlement by international treaty, the juridical views concerning them being already more or less uniform. This, to a certain extent, is the case with the Committee's proposals regarding nationality and territorial waters. Here, again, the work would be mainly formal, *i.e.*, putting unwritten laws into writing. The most suitable subjects would be those least open to discussion, regarding which a recognised juridical conception has already crystallised but has never been clearly defined in any treaty.

3. Finally, it may be argued that the aim of the Committee is to draw up a list of entirely new questions which could be regulated by international convention. That, of course, would be a totally different matter. In that case, the Committee would have to establish a new body of law and discover problems which have not yet received any legal solution, either because opinion has been too divided concerning them or because, up to the present, they have not attracted the attention of jurists. It may be pointed out that the Committee's questionnaire on the exploitation of the products of the sea deals with a problem of this kind.

These three tasks are so very different in character that it is by no means easy to reply to the Committee's questions without knowing which of the three objects the Committee has mainly in view. The Danish Government feels that, in any case, the results to be aimed at should be as practical as possible and should be limited to codification; otherwise the Committee may, if it pursues too scientific or theoretical an ideal, discover that it has laboured in vain. The Danish Government feels that the Committee should devote its attention to preparing a draft, on broad and succinct lines, for the codification of those questions on which it may be possible to reach an agreement. As an illustration, the Danish Government ventures to refer to the draft codification of American international law submitted to the Pan-American Congress on March 2nd 1925..

In this connection also, attention should be paid to the form in which the drafts are submitted by the Committee. Those hitherto submitted have been prepared on very different lines. For instance, the proposals regarding nationality and piracy are presented in the form of complete draft conventions with explanatory notes, and the draft on territorial waters is a very detailed study of the question from a broad scientific standpoint.

The draft on diplomatic privileges and immunities, however, is little more than an abstract list of a number of problems which arise in this connection; no attempt is made to offer a solution in the form of a draft international convention.

The observations regarding the responsibilities of States for damage done in their territory to the person or property of foreigners are also mainly of a theoretical character; and the questionnaire regarding the procedure to be followed at international conferences and the procedure for the conclusion and drafting of treaties is, in reality, a carefully-arranged list or index of subjects from which it is very difficult to extract any definite conclusions as to the desirability or possibility of solving any concrete problems by means of international conventions. Finally, Questionnaire No. 7 concerning the exploitation of the riches of the sea deals with a new question of great interest. At the present time, however, this problem is of a political nature; it can hardly, therefore, be regarded as a mere question of codification.

The Danish Government considers that each document is, in its own way, interesting and instructive; but it desires to draw attention to the different nature of each problem and the consequent difficulty which States experience in replying to the questionnaires. It would also observe that there may be some danger in submitting over-detailed proposals at this preliminary stage of the Committee's enquiry. Such proposals might lead States to conclude that they were bound even now to enter into details, and that their different views on these points of detail — for instance, with regard to the question of territorial waters and their juridical character — would prevent them *ab initio* from recommending codification in cases in which, to them, the general utility and need for such codification was not apparent.

It may well be conceived that such procedure would, from the outset, evoke much comment and lead to misunderstanding on particular points, a fact which would hardly contribute, and might indeed be detrimental, to the attainment of the Committee's aims. The Danish Government is of opinion, therefore, that it would be desirable to attain some measure of uniformity in the first questionnaires sent out on each subject, so that each questionnaire might — avoiding detail — constitute a brief statement of the problem raised and its possible solutions.

This would make it easier for the various Governments to form an opinion on the proposals; it would then be possible, in the light of their comments, to draw up more detailed schemes. The above procedure would, the Danish Government thinks, be in keeping with the Assembly resolution of September 22nd, 1924, which refers to a provisional list to be communicated to the various Governments.

Subject to the above reservations the Danish Government desires to offer the following provisional comments on the five questionnaires received.

Questionnaire No. 1. — Nationality.

In view of the similarity of the laws of nationality in the three northern countries, Danish and Swedish experts are working together to prepare replies to the questions raised in this questionnaire. The Danish Government will send its reply later, after it has been informed of the results of these negotiations.

Questionnaire No. 2. — Territorial Waters.

The Danish Government is of opinion that a settlement of this question by international agreement is desirable and realisable in the near future. It regards the memorandum submitted by the Committee, with the draft convention attached, as an excellent piece of work which might very suitably form the basis of subsequent negotiations for an international convention on the subject. The Danish authorities to whom this draft has been shown have made the following observations:

The case in which the captain of a vessel asks the authorities of the riparian States for assistance is only mentioned in Article 13 in connection with maritime ports. The same rule should also be inserted in Article 9 with regard to the territorial sea. The Ministry of Justice is of opinion that the criminal jurisdiction of the riparian State should only be allowed in cases in which the offender has not been handed over in accordance with extradition treaties or existing usage in this matter; this should also be the case when the courts of the riparian State would be competent to deal with the offence in question, even if it had been committed abroad.

The Ministry of Justice is, on the whole, opposed to the principle laid down in Article 9, paragraphs 2 and 3, of the draft. It finds itself unable to agree with the view that a riparian State should in no circumstances be allowed to punish the offences referred to in this clause, mainly because States cannot, in every case, owing to the lack of appropriate legislation, punish all offences committed on board their own vessels in foreign territorial waters or ports. Under the draft, however, these offences would also be excepted from the criminal jurisdiction of the riparian State. Even if appropriate legislation existed, it would perhaps, on account of the distance of the locality in which the offence was committed, be impossible to continue proceedings to the point which would lead to a conviction.

Again, there is no guarantee that an offence committed in the territorial waters or ports of a State but exempt from the criminal jurisdiction of that State could be dealt with — or, at any rate, as effectively dealt with — in the other State to which the vessel belonged.

The rule in Article 10, paragraph 7, that capture on the high seas must immediately be notified to the State whose flag the vessel flies is, in the opinion of the Ministry of Marine, too stringent a provision.

The Ministry of Commerce suggests that it would be very desirable to insert in the draft a clear definition of the "internal waters" referred to in Article 4 of the draft, and the difference between these waters and the territorial sea from the point of view of sovereignty.

The Ministry of Finance has raised the question of the possibility, under special conventions for the suppression of contraband and alcoholic substances, of extending the area of territorial waters.

Questionnaire No. 3. — Diplomatic Privileges and Immunities.

The Danish Government is of opinion that a settlement of this question by international agreement is both desirable and realisable in the near future. In its view, the Sub-Committee's report attached to Questionnaire No. 3 raises many interesting points, the settlement of which on a universal basis would be highly desirable. It ventures, moreover, to draw attention to the following questions, which also appear to be of special interest :

(a) Loss of diplomatic privileges if the diplomatic agent engages in commercial transactions on behalf of his Government, which may itself engage in foreign trade, both in general and in special cases, and uses its diplomatic agent to conclude treaties of commerce or engage in commercial transactions.

(b) Question of immunity from taxation, when the taxes are really in the nature of payment for services rendered by the State or municipality; for instance, electric and water supply, light, broadcasting, etc.

(c) Limitation of the number of persons who may be included as diplomatic members of the Legation.

In the Danish Government's opinion, it would be desirable to secure, on all these points, as complete a documentation as possible with regard to the rules and customs already followed in inter-State relations. The Committee might therefore, as a first step, prepare a detailed questionnaire asking States for information regarding the practice followed by them in various matters connected with this branch of codification. It might even be possible, in the light of the information thus obtained, to devise a better form of procedure which would respect existing traditions and at the same time satisfy modern requirements.

Questionnaire No. 4. — Responsibility of States.

This question seems to be as far-reaching as it is complex; the Danish Government is not quite sure whether the existing body of international juridical practice and scientific theory on this subject is as yet sufficient to allow of general codification. It would, however, be very interesting to make the attempt and see to what extent the question could be settled by means of international conventions. It would perhaps be preferable for the present to refrain from exhaustive codification and confine attention to certain questions of a very special nature. The Danish Government therefore thinks that it would be highly desirable and practical, for the purpose of avoiding dangerous international disputes, to conclude international agreements to the effect that :

(a) No State shall be held responsible for offences, even of a political nature, committed in its territory when it can, under its own legislation, adequately punish these acts and makes every possible effort to discover and punish the offenders.

(b) A State shall be held responsible if, either directly or through its officials, it disregards the personal or property rights of foreigners, provided such action be an infringement of the personal and property rights at present recognised under the constitutions of most civilised countries, even if the measures in question have at the same time been applied against the nationals of the State itself or are authorised by that State's domestic legislation.

Questionnaire No. 5. — Procedure of International Conferences, etc.

The Danish Government is of opinion that the points mentioned in the lists accompanying this questionnaire are, as regards theory and systemisation, of considerable interest. It is not, however, entirely convinced that present-day necessities warrant an endeavour to codify these points in an international convention. The Danish Government

is therefore of opinion that it would be sufficient, for the time being, to select certain questions of special practical importance concerning which the need for a settlement has on more than one occasion been manifest in practice. It would, for instance, suggest the following points :

- (a) The right of denouncing an international convention when the convention itself includes no express provision on the subject.
- (b) Interpretation of the most-favoured-nation clause and clauses regarding treatment on the same footing as nationals.
- (c) The right to make reservations when signing or ratifying an international convention, and the effect of these reservations on other contracting States.
- (d) The validity of a convention between the contracting parties when legal questions arise in which there are also third parties (*Allbeteiligungsklausel*).
- (e) Date on which international conventions become binding on the contracting parties, and date of their coming into force (verbal convention, signature, ratification, registration under Article 18 of the Covenant, provisions regarding execution).
- (f) Right of the majority or minority to make alterations without previous denunciation of the original convention, and the future validity of the latter as regards other contracting States.

Questionnaire No. 6. — Piracy.

The Danish Government has no observations to offer on this point.

Questionnaire No. 7. — Exploitation of Products of the Sea.

The Danish Government has read the excellent report accompanying this questionnaire with great interest. It considers that the question dealt with therein is of high practical importance and would be very glad if this question could be satisfactorily settled in an international convention.

Egypt.

QUESTIONNAIRES NOS. 1 to 7.

Letter of September 29th, 1926.

[*Translation.*]

I have pleasure in expressing to you the sincere thanks of the Egyptian Government for the communication relating to the progressive codification of international law which you forwarded to me on March 22nd, 1926, and for the questionnaires, reports and letter which accompanied it.

The Government, which has been occupied with a late parliamentary session, has not yet been able to give to the many very important matters dealt with in these questionnaires and reports the attention they deserve. It is therefore compelled for a time to postpone communicating the opinions asked of it.

The Egyptian Government is delighted to assist in the discussion of the questions submitted to the Committee on Codification and will forward its reply as soon as possible.¹

(Signed) V. E. ABOUISSOUD,
Minister for Foreign Affairs
ad interim.

Spain.

QUESTIONNAIRES NOS. 1 AND 4.

Letter of February 26th, 1927.

[*Translation.*]

In continuation of my letter of January 29th last, concerning the Progressive Codification of International Law, I have the honour to forward the following observations, submitted by the competent Department of His Majesty's Government, on certain points in the questionnaire attached to your letter C.L.25 of March 22nd last.

¹ See Annex II bis.

Questionnaire No. 1. — Nationality.

The competent Department has carefully considered the important problems raised in this document. Avoiding the more delicate questions in connection with nationality which, in view of their highly important character and the political considerations they involve, are not suitable for immediate settlement, it agrees that the best method would be to endeavour to settle, by codification, certain conflicts of law for which the various courts have also been endeavouring to discover a satisfactory solution. It offers the following observations with regard to the articles of the preliminary Draft which is given in this questionnaire.

Article 2. — Under Spanish law, every person born in Spanish territory of foreign parents, or whose father is a foreigner though the mother be Spanish, is a foreigner unless he or she applies for Spanish nationality. As regards the children of diplomatic, consular and other officials in the service of their Government abroad, we consider that it would be very desirable to enlarge the present concession of courtesy to all officials, by recognising that the children of such officials born in the country in which they are serving possess the nationality of the official in question.

Article 3. — In Spanish law, when the parents are unknown or are of unknown nationality, the child is presumed to be Spanish. We are therefore entirely satisfied with the concordant view expressed in the last clause of this article, when the child cannot claim another nationality and when the law in force at the place where it was found or born holds such evidence to be admissible.

Article 4. — Spanish law regards the children of Spaniards born abroad as Spanish so long as they remain under parental control (*sub potestate paternali*).

Articles 5 et seq., except Article 6. — The competent Department states that it is in favour of the proposals as a whole, but would offer an opinion on the following points:

Article 9. — This article is opposed to the principle of the Spanish Civil Code as regards a Spanish woman married to a foreigner, who thereby — whether she acquires her husband's nationality or not — forfeits her Spanish nationality.

Article 13. — The provisions of this article are held to be very satisfactory.

Questionnaire No. 4. — Responsibility of States.

In general, we consider the conclusions in Part VI of the report to be excellent, particularly those in No. 6, "Legal Protection", and 7, "Denial of Justice". Spanish law accords legal protection on a very liberal scale and the law of civil procedure lays down that civil actions in Spanish territory, between Spaniards, between foreigners, or between Spaniards and foreigners, shall fall exclusively within the ordinary jurisdiction of the courts. As regards denial of justice, Article 27 of the Civil Code extends to foreigners the rights which the civil laws accord to Spaniards, with the exception of the provisions of Article 2 of the Spanish Constitution.

(Signed) ESPINOSA DE LOS MONTEROS.

QUESTIONNAIRES NOS. 2, 6 AND 7.

Letter of January 29th, 1927.

[Translation.]

With reference to your communications C.L.25 and C.L.147 of March 22nd and December 3rd last, concerning the Progressive Codification of International Law, I have the honour to inform you that the questionnaires which accompanied the first of these communications were immediately referred to the various departments of His Majesty's Government for examination. It is not, however, possible to reply to all these questionnaires at present on account of the complexity of the problems raised.

The examination of the following questions has been completed.

Questionnaire No. 2. — Territorial Waters.

Among the fundamental principles laid down in this questionnaire is one fixing the area of the territorial, or, to employ a more accurate term, jurisdictional, sea at three marine miles. This is contrary to Spanish law, which, after the abandonment of the doubtful definition under which a State could only exercise sovereignty over that part of the sea where it could, by force of arms, render such jurisdiction effective, has adopted the unwritten principle that territorial waters shall extend for six miles (or 11,111 metres) from the extreme seaward limit of the coast-line or from low-water mark. The provisions

is therefore of opinion that it would be sufficient, for the time being, to select certain questions of special practical importance concerning which the need for a settlement has on more than one occasion been manifest in practice. It would, for instance, suggest the following points :

(a) The right of denouncing an international convention when the convention itself includes no express provision on the subject.

(b) Interpretation of the most-favoured-nation clause and clauses regarding treatment on the same footing as nationals.

(c) The right to make reservations when signing or ratifying an international convention, and the effect of these reservations on other contracting States.

(d) The validity of a convention between the contracting parties when legal questions arise in which there are also third parties (*Allbeteiligungsklausel*).

(e) Date on which international conventions become binding on the contracting parties, and date of their coming into force (verbal convention, signature, ratification, registration under Article 18 of the Covenant, provisions regarding execution).

(f) Right of the majority or minority to make alterations without previous denunciation of the original convention, and the future validity of the latter as regards other contracting States.

Questionnaire No. 6. — Piracy.

The Danish Government has no observations to offer on this point.

Questionnaire No. 7. — Exploitation of Products of the Sea.

The Danish Government has read the excellent report accompanying this questionnaire with great interest. It considers that the question dealt with therein is of high practical importance and would be very glad if this question could be satisfactorily settled in an international convention.

Egypt.

QUESTIONNAIRES NOS. 1 to 7.

Letter of September 29th, 1926.

[*Translation.*]

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The Government, which has been occupied with a late parliamentary session, has not yet been able to give to the many very important matters dealt with in these questionnaires and reports the attention they deserve. It is therefore compelled for a time to postpone communicating the opinions asked of it.

The Egyptian Government is delighted to assist in the discussion of the questions submitted to the Committee on Codification and will forward its reply as soon as possible.¹

(Signed) V. E. ABOUISOUD,
Minister for Foreign Affairs
ad interim.

Spain.

QUESTIONNAIRES NOS. 1 AND 4.

Letter of February 26th, 1927.

[*Translation.*]

In continuation of my letter of January 29th last, concerning the Progressive Codification of International Law, I have the honour to forward the following observations, submitted by the competent Department of His Majesty's Government, on certain points in the questionnaire attached to your letter C.L.25 of March 22nd last.

¹ See Annex II bis.

Questionnaire No. 1. — Nationality.

The competent Department has carefully considered the important problems raised in this document. Avoiding the more delicate questions in connection with nationality which, in view of their highly important character and the political considerations they involve, are not suitable for immediate settlement, it agrees that the best method would be to endeavour to settle, by codification, certain conflicts of law for which the various courts have also been endeavouring to discover a satisfactory solution. It offers the following observations with regard to the articles of the preliminary Draft which is given in this questionnaire.

Article 2. — Under Spanish law, every person born in Spanish territory of foreign parents, or whose father is a foreigner though the mother be Spanish, is a foreigner unless he or she applies for Spanish nationality. As regards the children of diplomatic, consular and other officials in the service of their Government abroad, we consider that it would be very desirable to enlarge the present concession of courtesy to all officials, by recognising that the children of such officials born in the country in which they are serving possess the nationality of the official in question.

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Questionnaire No. 4. — Responsibility of States.

In general, we consider the conclusions in Part VI of the report to be excellent, particularly those in No. 6, "Legal Protection", and 7, "Denial of Justice". Spanish law accords legal protection on a very liberal scale and the law of civil procedure lays down that civil actions in Spanish territory, between Spaniards, between foreigners, or between Spaniards and foreigners, shall fall exclusively within the ordinary jurisdiction of the courts. As regards denial of justice, Article 27 of the Civil Code extends to foreigners the rights which the civil laws accord to Spaniards, with the exception of the provisions of Article 2 of the Spanish Constitution.

(Signed) ESPINOSA DE LOS MONTEROS.

QUESTIONNAIRES NOS. 2, 6 AND 7.

Letter of January 29th, 1927.

[Translation.]

With reference to your communications C.L.25 and C.L.147 of March 22nd and December 3rd last, concerning the Progressive Codification of International Law, I have the honour to inform you that the questionnaires which accompanied the first of these communications were immediately referred to the various departments of His Majesty's Government for examination. It is not, however, possible to reply to all these questionnaires at present on account of the complexity of the problems raised.

The examination of the following questions has been completed.

Questionnaire No. 2. — Territorial Waters.

Among the fundamental principles laid down in this questionnaire is one fixing the area of the territorial, or, to employ a more accurate term, jurisdictional, sea at three marine miles. This is contrary to Spanish law, which, after the abandonment of the doubtful definition under which a State could only exercise sovereignty over that part of the sea where it could, by force of arms, render such jurisdiction effective, has adopted the unwritten principle that territorial waters shall extend for six miles (or 11,111 metres) from the extreme seaward limit of the coast-line or from low-water mark. The provisions

of the Royal Decree of November 23rd, 1914, are the only derogation from this rule. The Decree lays down that, for the purposes of Spain's neutrality in the European War, neutral Spanish waters shall be those included between the water-line and an imaginary line drawn parallel to the latter three miles out at sea.

This precedent is certainly an important one. It is also of interest to note that, in the conventions concluded in 1924 by the United States of America with the principal European countries regarding alcoholic beverages (page 67, Questionnaire 2¹, Observations by Mr. Wickersham), the normal limit of the territorial sea has been fixed at three miles. This proposal might therefore be accepted as a general and final solution of the much-discussed problem of the territorial sea, and it is a solution that merits the consideration of the Spanish Government.

Paragraph 2 of Article 9 of the draft lays down that crimes committed on board a foreign vessel passing through territorial waters by persons on board such vessels against persons or things also on board shall, as such, be exempt from the jurisdiction of the riparian State.

This seems to be too categorical. Such a provision might clash with the fundamental sovereign rights of riparian States over their jurisdictional waters where merchant vessels are concerned: for the legal fiction that vessels form part of the State to which they belong applies with less force to merchantmen than to men-of-war. The second paragraph of Article 9 should therefore be amended and it should be laid down, as a general rule, that each State shall be competent to deal with all offences committed on board foreign merchant vessels passing through its jurisdictional waters or moored therein. The only exception should be that, when the diplomatic agent or consul of the country whose flag the vessel flies so requests, the State should hand over these offenders, if only the crew of the vessel is concerned, in which case the jurisdiction of the courts of the riparian State would cease.

This observation is based on the principle laid down in our law regarding the organisation, powers and duties of Naval Courts, which is worded as follows:—

"In view of the place in which the crime was committed and apart from crimes which can only be dealt with at the instance of a party, Naval Courts may deal with cases arising out of the commission of the following offences and misdemeanours:

"(3) Offences committed on board any merchant vessel, national or foreign, which happens to be in the ports, bays, roadsteads, navigable waterways or other parts of the sea-coast of the Kingdom.

"Notwithstanding the provision contained in the preceding paragraph, whenever a crime is committed on board any foreign merchant vessel within the Spanish maritime zone and the matter affects the crew only, offenders who are not Spanish subjects shall be handed over to the diplomatic agents or consuls of the country in whose waters the vessel lies. The agents in question shall file an official request to this effect should no treaty clause exist to the contrary."

Questionnaire No. 6. — Piracy.

The rules laid down in the eight articles of the draft Convention for the repression of piracy as modified by M. Matsuda, following on the discussions of the Committee of Experts, are acceptable (pages 4 and 5 of the questionnaire)²; but the first of these articles should contain a definition of the term "pirate vessel".

The deduction to be drawn from the text of Article 1 and the following articles is clearly this: So long as no acts of depredation or violence have been committed, there has been no act of piracy. Consequently, the right of search and capture defined in Articles 6 and 7 may only be exercised in the case of suspected vessels after it has been proved that acts of piracy have been committed; conversely, vessels which have not committed acts of piracy, though they have been fitted out for the purpose, may not be searched.

It would therefore seem desirable to add to Article 1 a paragraph stating that a vessel flying no flag, or not legitimately entitled to fly the flag of any State, shall be regarded as a pirate.

Questionnaire No. 7. — Exploitation of the Products of the Sea.

The Spanish naval authorities have no objection to the proposal to convene a conference for the purpose of examining and establishing the basis of an international settlement of these points, which have already been considered at former conferences and concerning which certain suggestions have been made. On the contrary, they consider these proposals to be highly opportune.

As soon as the other points referred to in the questionnaires and reports have been studied, I will inform you of the Spanish Government's views on the subject.

(Signed) Espinosa DE LOS MONTEROS.

¹ See p. 69 of the present document.

² See p. 119 of the present document.

Estonia.

QUESTIONNAIRES NOS. 1 TO 7.

Letter of October 14th, 1926.

[Translation.]

A careful consideration of the suggestions of the Committee of Experts has led me to the conclusion that the majority of the problems studied by it are suitable for solution by international agreement, with the exception of one or two which, at any rate as far as Estonia is concerned, are not capable of such solution in the near future.

I accordingly have the honour to submit to you in this connection a number of observations which I should be grateful if you would forward to the Committee of Experts.

Questionnaire No. 1. — Nationality.

The preliminary draft convention on nationality contains two articles the adoption of which would encounter considerable difficulties. As regards Article 4, in the first place, it should be pointed out that a considerable number of persons live in Estonia whose countries of origin do not grant them the benefits of their nationality. According to the stipulations of Article 4, Estonia would be obliged to grant the children of such persons the benefits of Estonian nationality, which for reasons of domestic policy is not considered desirable.

Moreover, Article 9 of the same preliminary draft is in formal contradiction with the legislation at present in force in Estonia. Article 19 of the Law on Nationality — a translation of which follows — lays down that a married woman does not lose her original nationality when she marries if she makes a formal declaration of her desire to retain it.

LAW OF ALLEGIANCE ADOPTED BY THE ESTONIAN ASSEMBLY OF STATE ON OCTOBER 27th, 1922.

§ 1. — The rights and duties of a national of the Estonian Republic shall be accorded to all persons who :

- (1) Have been permanently domiciled within the territory of the Estonian Republic up to the coming into force of this law ;
- (2) Have been subjects of the former Russian State up to February 24th, 1918, and not naturalised in any other country before the coming into force of the present law ;
- (3) Who have themselves or whose parents have been inscribed in the registers of communal or corporate institutions within the present territory of Estonia.

§ 2. — Further, the following persons shall be recognised as nationals of the Estonian Republic :

- (1) Persons admitted to Estonian nationality under § 2, paragraph (6), of the Regulations of the National Council relating to nationals of the democratic Republic of Estonia (*Official Journal*, No. 4, 1918) ;
- (2) Persons recognised as Estonian nationals in virtue of international treaties concluded by the Estonian Republic ;
- (3) Children born within the territory of the Estonian Republic or outside such territory if their father at the time of birth was an Estonian national ;
- (4) Illegitimate children of women of Estonian nationality ;
- (5) Wives and widows of Estonian nationals ;
- (6) Children legally adopted or legitimised by an Estonian national ;
- (7) Minor children of foreigners, legitimate or illegitimate, up to the age of 18 years, from the date of naturalisation of their parents, with the exception of daughters who are or have been married ;
- (8) Children found on Estonian territory until they are proved to have a different nationality ;
- (9) All women, formerly Estonian nationals, whose marriage with foreign nationals is annulled in Estonia, as well as children born of such marriage.

§ 3. — Persons covered by § 1, paragraphs (1) and (2) only, must, in order to acquire Estonian nationality, submit a proper declaration, accompanied by all the necessary certificates, to the president of the district board or mayor of the town within a period of six months dating from the coming into force of this law, if they have been permanently domiciled within the territory of the Estonian Republic for six years at least before making the declaration.

§ 4. — Should all the conditions laid down in § 3 be fulfilled, a certificate of Estonian nationality shall be delivered by the president of the district board or the mayor of the town.

Appeal may be made to the Court of Appeal of First Instance against an adverse administrative decision by the president of the district board or the mayor of the town.

§ 5. — Apart from the conditions laid down in § 1, nationals of the former Russian State may be naturalised in the Estonian Republic if they have not been naturalised in any other country or are not recognised as subjects of any other country. Such persons shall submit, if they reside within the territory of the Estonian Republic, to the president of the district board or mayor of the town, and, if they reside abroad, to the nearest consul of the Estonian Republic or to its diplomatic representative, or to the Minister of the Interior, within one year from the coming into force of this law, a similar declaration. A certificate of Estonian nationality will be given to them by the aforesaid officials.

§ 6. — Nationals of the Estonian Republic may not at the same time be subjects of another country.

§ 7. — Estonian nationality may be acquired by naturalisation.

§ 8. — All persons wishing to be naturalised must have been permanently domiciled for at least two years before submitting their applications and for one year afterwards within the territory of the Estonian Republic. Knowledge of the Estonian language is required of all persons wishing to become Estonian nationals.

§ 9. — The conditions as to time and knowledge of the Estonian language laid down in § 8 are not strictly compulsory as regards the naturalisation of persons who have rendered special services to the Republic, either socially, or in the Civil or military services, or who are famous for their exceptional gifts, knowledge or works, or who are of Estonian origin.

§ 10. — Persons wishing to be naturalised must be at least 18 years of age. All persons under 18 years of age must submit an authorisation from their guardians.

§ 11. — Women married to foreigners and their children may, if they fulfil the conditions required for naturalisation, declare their wish to become nationals without requiring the authorisation of their husband or father.

§ 12. — Applications for naturalisation should contain the following information :

- (1) Name and surname ;
- (2) Age ;
- (3) Married or single ;
- (4) Names of wife and children ;
- (5) Nationality ;
- (6) Domicile ;
- (7) Date since which the applicant has been living in the territory of the Estonian Republic ;
- (8) Occupation ;
- (9) Financial position ;
- (10) Police record ;
- (11) Knowledge of the Estonian language.

§ 13. — Applications for naturalisation, accompanied by all the necessary certificates or certified copies attesting that the applicant fulfils the conditions laid down in § 12, are to be addressed to the Minister of the Interior.

If the applicant fulfils the conditions required for naturalisation and if he is not considered undesirable, a certificate of nationality shall be delivered to him by authority of the Minister of the Interior. No appeal shall lie against the Minister's decision.

Observation. — Only persons mentioned in the certificate of nationality are considered as nationals.

§ 14. — Any woman of Estonian nationality marrying a foreigner may re-acquire Estonian nationality if her husband dies, if she is divorced or if her marriage is annulled abroad, by submitting, if she is domiciled within the territory of the Estonian Republic, to the president of the district board or the mayor of the town, and, if she resides abroad, to the nearest consul of the Estonian Republic, to the diplomatic representative or to the Minister of the Interior, a similar declaration accompanied by a certificate attesting the dissolution of her marriage.

§ 15. — The children of a widow or a divorced woman and children of a woman of Estonian nationality married to a foreigner permanently domiciled within the territory of the Estonian Republic acquire Estonian nationality on attaining 18 years of age, unless they opt, as provided in § 14, for their father's nationality.

§ 16. — Under the provisions of § 14, former Estonian nationals who have relinquished their nationality may re-acquire Estonian nationality, as also former Estonian nationals who, by virtue of being minors, relinquished their nationality at the same time as their parents.

§ 17. — Naturalisation shall date from the delivery of the certificate of nationality as provided in this law.

§ 18. — Allegiance to the Estonian Republic terminates concurrently with Estonian nationality.

§ 19. — The following persons shall be considered as having lost Estonian nationality :

(1) Any woman of Estonian nationality who marries a foreigner and who does not within two weeks from the conclusion of her marriage make a declaration that she desires to remain an Estonian national to the president of the district board, or the mayor of the town, if she is domiciled within the territory of the Republic, or to the nearest Estonian consul or diplomatic representative or the Minister of the Interior, if she resides abroad.

(2) Any person who renounces Estonian nationality under the provisions of § 20.

§ 20. — Any national of the Republic of Estonia who desires to renounce his nationality shall submit a declaration in the proper form to the Minister of the Interior ; minors below 18 years of age must, in addition, produce authority from their parents or guardians. The declaration must indicate the State of which the petitioner wishes to become a national, and there must also be attached a certificate of acceptance as a national of such State.

If the petitioner is not on military service and if he has fulfilled all his other obligations as a national, the Minister of the Interior shall decide as to his relinquishment of nationality. If the petitioner is on military service, an authorisation from the Minister of War must be attached to the declaration.

An appeal may be lodged against an adverse administrative decision of the Minister of the Interior.

§ 21. — The withdrawal of nationality ceases to be in force if the person concerned continues to be permanently domiciled within the territory of the Republic for one year from the pronouncement of the withdrawal of nationality.

§ 22. — A decision regarding withdrawal of nationality does not apply to the children of the persons concerned under 18 years of age, or to a wife unless she expresses the desire to renounce her nationality. Children under 18 years of age acquire the new nationality of the father if the mother gives her consent.

§ 23. — The Minister of the Interior is authorised to enact supplementary regulations and to issue the necessary instructions for the application of this law.

§ 24. — With the coming into force of this law the following will cease to apply: the Regulations of the National Council concerning Estonian nationality (*Official Journal*, No. 4, 1918) and the law supplementing paragraph 6 of the said Regulations adopted by the Government of the Republic on August 27th, 1920 (*Official Journal*, No. 137-138, 1920).

Questionnaire No. 2. — Territorial Waters.

The draft convention drawn up by the special Sub-Committee and amended by M. Schücking appears to me to be deserving of Estonia's adhesion.

A slight modification should, however, be made in Article 2, which, although it defines the zone of sovereignty, does not give a precise definition of the zone in which States may also exercise administrative rights.

It is true that, in one of his notes, M. Schücking observes that he does not think such a definition to be possible. I consider, however, that it would be preferable to try to reach an agreement in some way or other on the basis of the farthest line up to which any particular State has hitherto exercised a special right.

I therefore propose that this limit should be fixed at 12 miles, which from the Customs point of view corresponds to the laws at present in force in Estonia.

Questionnaire No. 3. — Diplomatic Privileges and Immunities.

I do not think there can be any doubt as to the desirability of regulating the question of diplomatic privileges and immunities by means of an international convention or as to the possibility of such regulation in the near future. In the latter connection, the two drafts drawn up respectively by the Institute of International Law at its Cambridge session, which is dated August 13th, 1925, and by the American Institute of International Law, which is dated March 2nd, 1925, together with the reports submitted to the Committee of Experts, in my opinion are quite suitable as a basis for this work, and allow an affirmative reply to be given to the question we are considering.

In approaching this question from the same standpoint as Professor Diena, I can only express my entire concurrence in the opinion expressed by him with regard to the term "ex-territoriality". If this term is retained out of respect for tradition in spite of the criticisms to which it gives rise, it seems to me that no other meaning can be attached to it than that defined by M. Diena. This, however, could only be a sort of compromise, and, in order to make my opinion quite clear, I should like to emphasise that in principle I share the view expressed in Article 23 of the American draft.

The first point raised by the questionnaire is that of the *inviolability* attaching to the persons under consideration. The solution given by the Cambridge draft in Articles 3 and 6 is phrased in such a manner that in my opinion it could be adopted without change. As regards what acts could be regarded as "reprehensible", I consider that the articles of the American draft concerning the duties of diplomatic agents make this sufficiently clear. If, for example, the stipulations contained in the second sentence of Article 5 and in Articles 16 and 22 of the American draft were introduced in the preliminary draft convention, it would be easy to conclude that the diplomatic agent who failed to observe them would commit an act which the local Government would be entitled to regard as reprehensible.

As regards the succeeding points of the same part of the questionnaire, I should like to pronounce in favour of the wording adopted in Article 4 of the Cambridge draft on condition that it is supplemented by the first paragraph of Article 21 of the American draft. I advisedly do not speak of Article 9 of the Cambridge draft, as I consider that it tends to solve the question on the basis of the principle of "exterritoriality".

With regard to *immunity from criminal jurisdiction*, M. Diena — and in this I entirely agree with him — supports the solution given by Article 25 of the American draft. I need not, therefore, repeat the objections which appear to me to exist against the Cambridge wording, which is based on recognition of the idea of "ex-territoriality". With regard to immunity from civil or commercial jurisdiction, and particularly with regard to the exceptions to be made to the principle of this immunity, I again agree with M. Diena's proposals. I am also of the same opinion as the Rapporteur on the question whether a diplomatic agent can renounce his privilege of immunity with or without the previous consent of his Government; it appears to me obvious that this is a matter solely for the Government and its agent, and that it in no way concerns the local authorities.

With regard to the duty of a diplomatic agent to give evidence in court, the principle expressed in Article 17 of the Cambridge draft seems to me that most deserving of approval; as M. Diena rightly remarks, it is that which best takes account of the interests of justice.

In reply to the last question in the first part of the questionnaire, I think it would be quite correct to adopt the wording of Article 9 (first sentence) and Article 11 of the Cambridge draft. With regard to point 2 of Article 24 of the American draft, it clearly does not come into the category of the immunities attached to a diplomat's own person, but I think, nevertheless, that it would be advisable to deal with this point in the same convention, although in another place.

For your information, I venture to send you herewith¹ a few extracts from the Estonian laws in force regarding the points dealt with above.

The second part of the questionnaire deals with the persons who are entitled to the immunities and privileges defined above. I entirely agree with M. Diena that they should only apply to the chiefs of mission and the persons belonging to their official staff. The wording adopted by the Rapporteur might, however, lead to the belief that only members of the family of the chief of the mission should enjoy these privileges, whereas, in my opinion, they should also be allowed to the families of all the members of the official staff. With regard to the privileges granted to the non-official staff in practice, Estonia does not desire their maintenance — at any rate, on the present scale.

The questionnaire also contains a certain number of points on which neither M. Diena nor M. Mastny has given an opinion; the chief of these are points 1, 2 and 4 of the second part. The first proposal, regarding the number of officials, may seem contrary to the practice at present followed; in certain exceptional cases, however, it may be of genuine importance. No question of this kind has ever arisen in practice in Estonia in connection with diplomatic agents; but in another sphere, which, particularly nowadays, is closely connected with that under discussion, it has had to be definitely decided. On many occasions our consular conventions have stipulated that a limited number of officials should be guaranteed exemption from certain taxes.

The second question is also of great importance, particularly to-day, when the number of special representatives is continually increasing. In Estonian practice, this point has been settled on the broadest basis; nevertheless, a precise definition of the rules to be followed in this matter appears to me to be very desirable.

With regard to the last question to which I have alluded, and which is stated in point 4 of this part of the questionnaire, it seems to me that there can be no doubt of the position of an agent who is a national of the country concerned or who aspires to rights of citizenship in that country.

The third part of the questionnaire concerns the duration of diplomatic privileges and immunities. As regards, first of all, the persons entitled to these privileges, Article 5 of the Cambridge draft seems to me to be more happily worded than Article 29 of the American draft, for it may happen that a diplomatic agent will not leave the territory in which he has performed his duties as soon as his official mission has come to an end. Even the Cambridge draft, however, does not seem to cover all the cases which may arise in practice. The custom generally adopted in time of war might well be also applied in time of peace, for it seems quite logical to make these privileges last a sufficient time for it to be possible to leave the country before their expiration. This right should, in my opinion, be extended not only to a diplomatic agent leaving his post but also to the family of a diplomat who has died in the country in which he was serving.

Lastly, there is the question dealt with by the Cambridge draft in Article 14 and by the American draft in Article 26. Without wishing to pronounce in favour of one or other of these drafts, as I consider that they both offer a satisfactory solution, I should nevertheless prefer, if I had to make a choice, the wording of the Cambridge draft, which seems to me to be more definite.

With regard to the duration of privileges concerning archives, it seems to me impossible to fix their termination at the date of decease of the agent to which they have been entrusted. A detailed study of this question seems to me to be most desirable. In particular, it would be a good thing to stipulate the measures to be taken in such a case by the local authorities. The latter should in any case refrain from any measure not strictly necessary for ensuring the inviolability of the archives.

The questionnaire also contains a second section on which I do not wish to make any separate pronouncement, for I consider that the essential problem has been dealt with in the first part. When this has been satisfactorily solved, I am of opinion that it will be easy to determine the rules to be applied to the different categories of persons enumerated in Section B.

EXTRACTS FROM THE CRIMINAL PROCEDURE CODE OF ESTONIA.

§ 360. — Search warrants and attachments relating to premises occupied by foreign ministers shall not be executed without the previous consent of the Minister for Foreign Affairs.

§ 230. — Crimes and offences committed by persons in the service of ambassadors, envoys and other diplomatic agents shall fall in the ordinary manner within the jurisdiction of the criminal courts, unless special provision to the contrary exists in treaties concluded with foreign Powers; nevertheless, summonses, whether in connection with the preliminary enquiries or the final proceedings in the court, shall be transmitted to such persons through the Ministry for Foreign Affairs.

§ 229. — Proceedings in respect of crimes or offences committed by persons belonging to foreign embassies and missions shall only be instituted after diplomatic communication with the immediate official superior of the accused.

¹ See below.

EXTRACT FROM THE CODE OF CIVIL PROCEDURE.

§ 225. — The provisions of § 224 shall not apply in actions against persons belonging to foreign legations. Russian subjects having money claims against such persons may apply to the Ministry for Foreign Affairs, which shall take the necessary steps for their settlement.

Observation. — Persons in the service of foreign ambassadors, envoys and other diplomatic agents are subject to the jurisdiction of the courts under the provisions of the ordinary law relating to jurisdiction; but summonses to appear before the courts in cases where their domicile is known must be transmitted to them through the Ministry for Foreign Affairs.

PRIVILEGES GRANTED TO DIPLOMATIC REPRESENTATIVES.

(Official Journal, Nos. 45-46, 1923.)

§ 354. — Heads of foreign States and their suites when crossing the Estonian frontier are exempt from Customs supervision.

Representatives of foreign States accredited to Estonia, as well as representatives accredited to other States passing through Estonian territory, such as envoys, ministers resident, *chargés d'affaires*, military and naval attachés, members of legations with diplomatic status, their wives and families, are, when entering and leaving the country, entitled to pass the Customs in advance of other travellers and without hindrance or examination of their luggage.

§ 355. — All packages and consignments from abroad closed with official seals or lead seals of foreign Governments addressed to the diplomatic representatives mentioned in the preceding paragraph, or without seals or lead seals addressed to the head of the legation or to the legation, are admitted freely without supervision.

Observation. — Packages and consignments not closed with official seals or lead seals and not addressed to the legation or to the head of the legation but to a member or employee of the legation or of the despatching office are exempted from supervision only if the Customs house receives from the head of the legation (or his representative) information signed by him notifying that such consignment or package is in fact intended for the legation.

§ 356. — All packages or consignments sent abroad from Estonia shall be allowed to pass freely and without supervision if they are closed with the seal or lead seal of a legation.

§ 357. — In addition to the facilities mentioned in the preceding paragraphs, the heads of foreign legations in Estonia are entitled to exemption from the following Customs duties: In the first year of their stay in Estonia they are entirely exempt from Customs duties, and in the following years up to 500,000 Estonian marks annually. Other diplomatic representatives and members of legations with diplomatic status are entitled to Customs exemption up to 200,000 Estonian marks per annum.

Observation 1. — If, under the provisions of this paragraph, Customs duties are not imposed, the consignments in question are also exempted from excise and other fiscal taxes, except warehouse tax and special taxes for the purpose of covering the expenses of Customs supervision and payments to officials for overtime, but these taxes are to be charged if the amount of uncollected tax would exceed the above-mentioned scale.

Observation 2. — Goods exempted from Customs duties under this paragraph are also exempt from the special conditions, such as the affixing of marks by the Customs or the Stamp Office, the submission of special licences, etc.; in the same way, objects may be admitted the importation of which is prohibited under the ordinary regulations.

§ 358. — Consuls of foreign countries in Estonia performing diplomatic as well as consular duties enjoy the same privileges as members of foreign diplomatic legations (§§ 354-357). Consuls who have no diplomatic duties but who are consuls *de carrière* (*consules misai*) of the State they represent, are entitled to transport their luggage without hindrance or supervision when proceeding to their destination in Estonia and when leaving. Other consuls of foreign countries, vice-consuls, and consular agents both nationals of the country they represent and nationals of another country or Estonians are entitled, unless provision to the contrary is contained in international conventions, to exemption only for the things that are necessary for their consular duties, such as official printed matter, office books, seals, stamps, bills, flags, etc., and articles of uniform.

§ 359. — Messengers of foreign Governments and legations, when such persons have no diplomatic status themselves, are only entitled to carry freely and without supervision packages and consignments closed with official seals or lead seals; as regards import, with the seals of foreign Governments and authorities; as regards export, with the seals of foreign legations in Estonia. All other packages and consignments, as well as the personal luggage of such messengers, are subject to Customs supervision in the ordinary manner but are entitled to pass first.

Observation 1. — Should a foreign messenger arriving from abroad at the frontier not be willing to submit to Customs supervision packages, consignments and objects not closed with official seals and lead seals, they are not to be opened at the Customs office but shall be closed with a lead seal and given back to the messenger to be presented at the Customs house at Tallinn. Notice shall be sent by the Customs house at the frontier by telephone or telegraph of the number of packages thus sealed.

Observation 2. — The facilities provided in §§ 354-359 are conditional on the same privileges being granted by the foreign countries.

EXTRACT FROM THE LAW ON INCOME-TAX ADOPTED BY THE ESTONIAN GOVERNMENT ON APRIL 12th, 1920.

(Official Journal, Nos. 63-64, 1920.)

§ 20. — The following persons are not subject to income-tax:

(a) The accredited representatives of foreign countries, the members of their families, officials attached to their service, as well as domestic servants who are not Estonian nationals; consuls-general, consuls, vice-consuls and consular agents if they are nationals of the country appointing them and provided that the same privileges as regards taxation are granted to persons in the corresponding services of the Estonian Republic.

Observation. — Income of such persons derived from immovable property or undertakings within the territory of Estonia, as well as income derived from the State Treasury, whether in the form of maintenance grants, pensions or subsidies, are subject to income-tax on the ordinary basis.

Questionnaire No. 4. — Responsibility of States.

The principles laid down in the report concerning this question appear to me entirely suitable as the basis of an international convention, provided that the text of the latter expressly and clearly establishes the fact that the treatment accorded to foreigners should in no case, and particularly not in the circumstances specified in points 3 and 9 of the report's conclusions, be more favourable than that enjoyed by nationals in virtue of domestic legislation.

Questionnaire No. 5. — (a) Procedure of International Conferences.

I entirely agree with the Rapporteur's suggestion that regulations should be drawn up, regarding the procedure of international conferences, which would have the character of strictly directive and subsidiary "model regulations", and would be regarded as *jus dispositivum* without restricting the freedom of States. Such regulations would greatly contribute to the uniformity and simplification of the procedure of conferences. But at the same time I am not sure whether, among the subjects relating to the procedure of conferences, there are not a certain number for the regulation of which it would be preferable to recommend the form of conventional, and therefore compulsory, codification. The brief enumeration of these subjects which appears in the first list of matters susceptible of regulation (see page 11 of Questionnaire No. 5)¹, under Heading A (Organisation), does not allow us to pronounce on the possibility of codification. The task would be materially facilitated if detailed questionnaires were drawn up by the Rapporteur and included an analysis of the questions from the point of view of the proposed codification, as is suggested on page 6 of Questionnaire No. 5.²

(b). Procedure for the Conclusion and Drafting of Treaties.

For the regulation of this procedure, the Rapporteur recommends a similar method, and divides the various subjects into two categories, those which seem to be susceptible of regulation by international convention and those whose codification should be purely formal. The first group, which figures in the second list of matters susceptible of regulation under Heading A, "Methods of Conclusion", comprises a series of questions which should be definitely settled by conventional regulation, a method to which I see no objection.

One of M. Rundstein's observations referring to the difficulties of interpretation which occur in cases in which a convention is drafted in two or more languages seems to be deserving of special attention and should also be considered at the discussions of the Committee of Experts.

Questionnaire No. 6. — Piracy.

Estonia has no observations to make on this point, which, as far as she is concerned, is not a question of primary importance.

Questionnaire No. 7. — Products of the Sea.

In view of the predominantly technical character of this question, we share the Rapporteur's opinion that a conference should be convened consisting of experts in applied marine zoology, persons engaged in marine industries, and jurists. This conference would have to pronounce on the possibility, by means of adequate regulations, of securing the economical exploitation of the products of the sea.

(Signed) FR. AKEL.

United States of America.

QUESTIONNAIRES NOS. 1 TO 7.

Letter of October 12th, 1926.

It is the view of the Government of the United States that international arrangements on the general subjects of: (1) Nationality; (2) Territorial Waters; (3) Diplomatic Privileges and Immunities; (4) Responsibility of States in respect to Injury caused in their Territory to the Person or Property of Foreigners, which are the first four subjects mentioned in the communication of the Secretary-General, would serve a useful purpose and would therefore be desirable, and that there would be no insuperable obstacles to the concluding of agreements on these general subjects. The Government of the United States is not prepared

¹ See page 114 of the present document.

² See page 110 of the present document.

at this time to state whether all the points mentioned in the questionnaires on the subjects referred to would yield to regulation by international agreement, nor does it desire to express an opinion regarding the desirability or possibility of regulating all the points by international agreement until it has had opportunity to make a more intensive study of them than it has as yet done. The details would seem to be proper matters for discussion in any negotiations which may ensue.

With respect to the fifth subject, namely, Procedure of International Conferences and Procedure for the Concluding and Drafting of Treaties, the Government of the United States perceives no real necessity for the regulation of these subjects by international agreement. It will seem that the determination of the procedure of international conferences might well be left to the discretion of the delegates representing the Governments participating in such conferences and that the procedure for the drafting and concluding of treaties might be left for determination by the parties negotiating them.

With regard to the sixth subject enumerated in the communication of the Secretary-General, namely, Piracy, it is the view of the Government of the United States that piracy, as that term is known in international law, is so nearly extinct as to render of little importance consideration of that subject as one to be regulated by international agreement.

With respect to the seventh subject, namely, Exploitation of the Products of the Sea, the Government of the United States is of the opinion :

1. That international regulation of certain fisheries, such as those for whales, is desirable and should be realisable;

2. That information as to the status of fisheries for most of the true fishes is not sufficiently complete to admit of the formulation of regulations at the present time;

3. That in most cases particular fisheries may best be regulated by treaties between the nations most directly concerned;

4. That investigations to determine the need for and character of regulations to sustain the various fisheries should be encouraged; and

5. That an international conference is desirable to consider the problem of conserving the whale.

Finland.

QUESTIONNAIRES Nos. 1 to 7.

Letter of October 13th, 1926.

[*Translation.*]

With reference to the Secretary-General's circular of March 22nd, 1926, the Finnish Government has the honour to submit herewith a few observations on the questionnaires and reports drawn up by the Committee of Experts for the Progressive Codification of International Law.

As the Committee proposes to pursue its enquiry with regard to the branches of international law which are suitable for codification, the Finnish Government will refrain, for the moment, from expressing an opinion as to which branches, in addition to those already examined, are suitable for codification and how far it is possible and advisable to proceed at present to the codification of a particular branch without at the same time submitting certain other questions to a similar examination.

Questionnaire No. 1. — Nationality.

With regard to Question No. 1, Nationality, the Finnish Government has much pleasure in recognising the great merits of the preliminary draft convention drawn up by M. Rundstein. Of course, as long as the modes of acquiring and losing nationality remain subject in principle to the domestic legislation of each State, there must in the nature of things arise anomalies, conflicts of laws, points requiring interpretation, and even injustices. The present preliminary draft is therefore chiefly valuable in so far as it draws attention to the defects which are inseparable from any regulations based on a system which recognises the supreme competence of individual States in this sphere.

The Finnish Government does not wish to imply that, in preparing the way for codification, an opposite starting-point should be taken, viz., the supremacy of international law, whose competence would be recognised in principle and would only leave a subordinate and supplementary character to domestic legislation on nationality. The Finnish Government fully realises the opposition which would be aroused by any such proposal; a limited degree of codification on the basis adopted for the present preliminary draft may nevertheless be capable of subsequent development. The most that could at present be

proposed would be an alternative draft based on a more radical "internationalisation" of this important branch, and capable of serving at the same time as a model for States prepared to go further in their relations with each other.

It may be questioned whether the advantages of the undertaking not to intervene as formulated in Article 1 of the preliminary draft are in reality greater than the disadvantages and injustices which may result from the abandoning of a State's own nationals to the legislation of a foreign State. Can all the consequences which may ensue from this principle really be accepted?

The stipulation contained in Article 2 appears to lead to the conclusion that a married woman has an even greater claim to the elementary right of living in the country of which her husband is a national.

According to Article 7, naturalisation will only be granted on condition that the applicant is released from his allegiance by his country of origin; it may be supposed that the consequences would be the same if the legislation of the State of origin provided that the acquisition of another nationality had the direct effect of releasing a person from his allegiance.

The condition laid down in Article 7, paragraph 2, by the words "if the applicant proves that he has been refused expatriation without just and reasonable cause" is liable to destroy practically all the force of the general rule laid down in the previous paragraph if the applicant is authorised to prove not only that the law in force has been incorrectly applied but also that the law itself is unjust or unreasonable; the terms employed, at any rate, lend themselves to this interpretation.

Paragraph 3 of Article 7 logically requires as a sequel to the condition expressed or implied the words "...national, unless that State subsequently releases him from his allegiance".

In addition to formal naturalisation, there can be other acts which directly or indirectly involve the acquisition of a new nationality. Consideration should be given to the case of the employment of a foreigner in a public service, of tacit naturalisation by a kind of acquisitive prescription, etc.

It would be of interest to know why the preliminary draft does not deal with the loss of nationality. It is nevertheless of great importance to settle the position of the "heimatlose" (persons without nationality) in particular. A number of questions present themselves in this connection. Should a State be entitled, from the point of view of international law, to deprive — let us say, for political reasons — its own nationals residing abroad of their right of nationality either purely and simply, or subject to certain conditions — for example, if they do not return to their own country within a specified period (exposing themselves, it may be, to political persecutions)? Should a State refuse to receive on its soil a person it considered to be expatriated when this person is not recognised by any other State as its own national? *Are there cases in which the expulsion by a State of one of its own nationals can be considered admissible according to international law?* How is one to preclude the possibility of an individual not being recognised as a national by any State?

It may perhaps be said that some of these questions might be considered to be sufficiently elucidated in practice and consequently not to be open to discussion. This is not a reason for disregarding them in a draft aiming at the codification of rules on nationality, particularly as it cannot be claimed that the rules regarding nationality which seem to have become definitely established in international law are always scrupulously observed in international relations.

Questionnaire No. 2. — Territorial Waters.

The Finnish Government is convinced that the questions relating to territorial waters should be considered as one of the most suitable branches for general regulation. At the same time, the practical need for unification in this branch is making itself felt more and more urgently in view of the multiplicity of the interests it affects in the lives of modern nations. Thus Finland and many other countries consider the prevention of the illicit importation of alcoholic beverages as a matter of great importance, which requires rules of conduct universally observed and measures of supervision and repression taken by common agreement. This matter is closely connected with more than one question relating to territorial waters.

Without going into a detailed examination of the questions dealt with by the Committee, which would clearly be premature, the Finnish Government will confine itself to expressing briefly its opinion on the three questions raised in connection with this problem on page 2 of Questionnaire No. 2.¹

For practical reasons, it seems essential to admit the possibility of several maritime zones of diverse legal character. Whether the designation "territorial waters" should be reserved for the zone "within which the powers of the coastal State are most complete", or whether it should be used to indicate all zones, which, owing to a particular interest or a special function or competence have a different legal character from the "open sea" ("free sea"), is, of course, only of secondary importance. As it is only possible to speak of the *sovereignty* of a State over the waters in question if the State is entitled to exercise

¹ See page 28 of the present document.

a *general competence* regarding them, which is not the same thing as an unlimited competence; and for that very reason may, subject to certain exceptions, be extended according to requirements, it is necessary to distinguish between territorial waters proper, which constitute a sort of annex to the dry land, and which are consequently considered as subject to the sovereignty of the coastal State, and the outer zones in which the State can only exercise strictly limited functions. The conception of sovereignty cannot be applied to the latter category.

On these conditions, the zone of three nautical miles may usefully be recognised as the "zone of sovereignty" provided no exceptions to this rule are admitted other than those already stipulated in the preliminary draft. The extent of the other zones depends on special circumstances, which we do not propose to examine here.

Questionnaire No. 3. — Diplomatic Privileges and Immunities.

The Finnish Government also agrees with the Committee of Experts as to the utility of codifying diplomatic privileges and immunities.

Among other questions, the Committee has raised that of whether and on what grounds the list delivered to the Foreign Office could be refused or modified by the Government of the country concerned. It may also be asked whether and in what circumstances such an attitude could be justified by the fact that the duty of an official figuring on this list was to represent his country in another State, or at the League of Nations, for example, and that his principal residence was in a foreign capital, for instance.

It might be well to give particular attention to the situation of representatives on special missions or representing their country at a congress or conference.

Questionnaire No. 4. — Responsibility of States.

If, in regard to the subject dealt with in Questionnaire No. 4, emphasis is laid on the term *damage*, the legislative acts of the State may indeed, as the report assumes, remain outside the limits of the responsibility of States as contemplated in the questionnaire.

Nevertheless, if we leave out of account the question whether according to domestic law a measure has been rightly or wrongly taken by the public authorities, we may be justified in speaking of the damage done to foreigners even in cases in which the acts of the State that cause this damage come within the province of its legislative functions. According to international law, should acts of expropriation in the widest sense of the term, *i.e.*, acts which infringe an acquired right or render a definitively established situation subject to the effects of a law with retro-active force, be applied indiscriminately to foreigners or do they involve the obligation of paying full compensation to foreigners suffering from the consequences of such acts? The problem is one of tremendous importance and raises questions of great difficulty. This is sufficiently proved by cases such as the agrarian reforms in several countries, the "Aufwertung" legislation in Germany, etc., not to speak of the radical "nationalisation" of private property carried out in Russia under the Bolshevik regime.

Until recent times, writers have maintained with remarkable unanimity that the State is obliged to pay compensation for damage caused by measures of this kind — in other words, the State becomes responsible for damage caused by such legislative acts, so that the State becomes guilty of a breach of international law if it refuses to grant full compensation to foreigners whose interests are affected by a law of the category in question.

It is only under the influence of a legislation more or less incompatible with these principles that certain authors have begun to question the duty of a State to accord foreigners more favourable treatment in this respect than its own citizens. Be that as it may, this is an extremely important question which deserves to be studied with the greatest care.

Questionnaire No. 5. — Procedure of Conferences, etc.

As regards Questionnaire No. 5, the Finnish Government ventures to emphasise a very important question — and its importance is particularly evident in connection with any attempt to codify international law — namely, that of the necessity of considering the admissibility, scope and other conditions of the *reservations* by which a State, when agreeing to sign or ratify a convention or to adhere thereto, may limit the scope of this convention as far as it is concerned, and thus escape certain of the convention's effects. This practice is obviously liable to cause disturbances in international relations.

Moreover, as certain branches of international law come to be codified, it becomes a matter of urgency and importance to know whether, *as regards the particular branch codified*, an amendment requires an absolute majority or whether departures from this strict principle should be allowed.

Questionnaire No. 6. — Piracy. Questionnaire No. 7. — Products of the Sea.

With regard to Questionnaires Nos. 6 and 7, the Finnish Government has no observations to make.

The Finnish Government has taken note of the three reports communicated to the Governments but not included in the provisional list submitted to them. In pursuance of the Committee's wishes, the Government of the Republic refrains from expressing any opinion at present on the subjects they deal with.

France.

QUESTIONNAIRES NOS. 1 TO 7.

Letter of November 15th, 1926.

[*Translation.*]

In a letter dated March 22nd last, referring to the decisions of the Assembly and of the Council which constituted the Committee of Experts for the Progressive Codification of International Law, you were good enough to communicate to me the questionnaire drawn up by these experts on subjects capable of international regulation in the near future.

These subjects, seven in number, were as follows :

- (1) Nationality ;
- (2) Territorial Waters ;
- (3) Diplomatic Privileges and Immunities ;
- (4) Responsibility of States in respect of Injury caused in their Territory to the Person or Property of Foreigners ;
- (5) Procedure of International Conferences and Procedure for the Conclusion and Drafting of Treaties ;
- (6) Piracy ;
- (7) Exploitation of the Products of the Sea.

You expressed the desire to know the French Government's opinion as to the possibility of the immediate regulation of these subjects by international agreement; and you asked me to inform you as to which of them were, in the French Government's opinion, sufficiently ripe to claim priority of treatment.

Questionnaire No. 7. — Products of the Sea.

In conformity with the indications you gave me, I should like to mention first the question of the Exploitation of the Products of the Sea (the subject of Questionnaire 7) as, in the French Government's opinion, it is desirable, practicable and urgent to regulate this matter by international agreement. It would seem, moreover, that every country must have the same interest as France in preventing the extinction of marine animals in the near future, and in putting an end to the reckless slaughter reported from different quarters, particularly in the South Seas and, more recently, on the coasts of Gaboon. The question is already under serious consideration by our ministries concerned; they agree that a conference convened to study this question could without undue difficulty conclude a general convention, as indeed has already been done in Africa for the protection of the fauna of that continent, in Europe for the protection of birds useful to agriculture, and in the Northern Pacific between the Powers concerned in regard to fur-bearing seals.

I should therefore be very grateful if you would inform the Committee of Experts that the French Government attaches special importance to this question, and would ask it if the preliminary procedure could not be accelerated in order that a conference may be summoned as soon as possible.

While not considering that the necessity of their regulation is as urgent as in the above-mentioned case, the French Government would see no objection to the international regulation of the subjects of questionnaires 1, 3 and 5, i.e., Nationality, Diplomatic Privileges and Immunities, and the Procedure of International Conferences.

Questionnaire No. 1. — Nationality.

As regards Nationality, general conventional provisions — *i.e.*, provisions open to the adhesion of every Power — such as are contained in the proposed preliminary draft, would, except in a few points of detail, embody generally accepted views. The French Government approves the terms of this preliminary draft as a whole, apart from a few reservations which it will have to make with regard to certain articles (including Articles 6, 7 and 10 of the preliminary draft).

Questionnaire No. 3. — Diplomatic Privileges and Immunities.

Questionnaire No. 3 deals with questions which are undoubtedly complex, and the satisfactory solution of which presents more than one difficulty. Nevertheless, the interests of States in this matter do not seem so divergent as to preclude the possibility of a general agreement. On the contrary, it appears to be in the general interest to draw up, by means of an agreement embracing as many States as possible, joint rules such as will prevent many disputes which arise solely through the indefiniteness of international law. Here, too, subject to examination of any preliminary drafts which may be submitted, the French Government would welcome a conference.

Questionnaire No. 5. — Procedure of International Conferences, etc.

The same observation applies to No. 5. It appears desirable and practicable to draw up for the use of international conferences and Foreign Offices a body of rules which would serve as a guide except as otherwise agreed in some particular case. The document communicated to the French Government by the Secretariat of the League of Nations, contains, however, no more than a fairly detailed table of contents; and before the French Government could give its final opinion it would require to receive a preliminary draft containing provisions drawn up with some degree of precision.

On the other hand, the French Government thinks that an agreement on Questions 2, 4 and 6 : Territorial Waters, Responsibility of States, and Piracy would be premature or else would be hardly practicable.

Questionnaire No. 2. — Territorial Waters.

The regulation of the question of territorial waters is conditioned in the different States by such diverse requirements, due to the geographical, economic and political factors involved, that it would be difficult to regulate in a uniform manner. It has often been proposed to draw up general regulations with regard to territorial waters, and it has never yet been found possible to give practical effect to this proposal. It seems likely that in future difficulties will be encountered similar to those which have prevented success in the past.

Questionnaire No. 4. — Responsibility of States.

Questionnaire No. 4 too-closely affects the internal or the external policy of States, their social life and the stability of their institutions for it to be possible, without serious danger, to propose to establish conventional or general stipulations acceptable by every State in its relations with the other States.

Questionnaire No. 6. — Piracy.

Finally, Piracy, dealt with in document No. 6, would seem at first sight to be a matter on which a general agreement would be desirable and practicable. But if the question is examined from the practical and political point of view, it will be found that the condition of establishing a general regulation on such a matter would be that every contracting State should possess a police organisation and powers of supervision and jurisdiction over its own flag which could be recognised by the other States. No general regulation seems desirable until this condition is everywhere fulfilled.

For the Minister of Foreign Affairs, and by delegation :

(Signed) BERTHELOT,

French Ambassador, Secretary-General.

Greece.

QUESTIONNAIRES NOS. 1 TO 7.

Letter of December 3rd, 1926.

[*Translation.*]

In reply to your letter of March 22nd last, I have the honour to transmit to you herewith the observations of the Technical Commission set up to examine the points raised in the questionnaire which accompanied your letter.

The opinion of the Commission does not, in the main, differ from the conclusions reached by the Committee of Experts.

The Hellenic Government is of opinion that the settlement of these problems by means of international agreement would, in principle, be desirable.

It reserves the right, however, to define, enlarge or modify, if necessary, at the proper time and in the proper place, the opinions advanced by the above Commission.

(Signed) P. A. ARGYROPOULOS.

Questionnaire No. 1. — Nationality.

The Technical Commission adopts the opinion that, as questions of nationality are closely correlated with the political views of each Government and are consequently a matter of domestic law, the problem has not yet reached a stage at which it can be settled on a uniform basis by means of an international convention.

With regard to the questions for which the Committee of Experts proposes codification, the Technical Commission has no objection to raise to the preliminary draft convention drawn up by M. Rundstein as a result of the discussions of the Committee of Experts, particularly as Articles 2, 3, 4, 8 and 9, paragraph 1 of this draft are in conformity with Greek law.

Hellenic law differs from paragraph 2 of Article 9 in that it allows a married woman of foreign origin to keep her former nationality by making a declaration within one year from the date of her husband's naturalisation in the presence of the municipal authorities of her place of domicile. A certificate issued by the competent foreign authorities attesting that the married woman has not lost her former nationality by reason of her husband's naturalisation should be attached to this declaration.

As regards the question of multiple nationality referred to in Article 5 of the preliminary draft, the Technical Commission is of opinion that the psychological factor should also be taken into account (FRANKENSTEIN, *Internationales Privatrecht* I (1926), page 92). It further proposes the addition of a final article worded as follows: "The above provisions shall apply unless the person in question has expressly or tacitly manifested his wishes with regard to the nationality he desires to possess".

Questionnaire No. 2. — Territorial Waters.

The Technical Commission agrees with the Committee of Experts that it is necessary to solve by means of an international convention the problems connected with the rights of the riparian State within its territorial waters.

Without wishing to give a final opinion on the Committee's proposals, the Technical Commission feels that it may make the following suggestions:

1. The question whether the territorial sea does or does not form part of the territory of the State seems to be a purely doctrinal point on which it would be difficult to reach an agreement in view of the divergent opinions held by various jurisconsults. It would be preferable merely to define as clearly as possible the rights and duties of the riparian State within the limits of its territorial waters.

2. As regards the extent of the zone, Greece adopts in principle the three-mile zone. In the matter of the exercise of the rights arising out of security and Customs and health supervision, it would seem necessary to extend the zone, but a maximum limit should also be fixed for the exercise of these rights. We might suggest for this purpose a distance of ten miles. In spite of the difficulties which arise when we endeavour to determine fishery rights, the Technical Commission is of opinion that, even for the exercise of these rights, a limit should be fixed on behalf of the riparian State. The distance of six miles suggested by the 1898 Fishery Congress might well be adopted.

3. M. Schücking's suggestion for the creation, under the aegis of the League of Nations, of a Waters Office should be maintained.

4. The rights of the riparian State in the matter of coastwise trade should be carefully defined. Article 22 of the Convention on the Status of the Danube (1921) and the addition to this article in the same Convention might well serve as a basis for this definition.

Questionnaire No. 3. — Diplomatic Immunities and Privileges.

The Commission agrees, in principle, with the conclusions reached in M. Diona's careful report.

It considers, as the distinguished Rapporteur suggests, that the question of diplomatic privileges and immunities is one which is eminently susceptible of regulation in a convention.

It agrees with him that the term "ex-territoriality", being derived from a fiction which is in direct contradiction with fact, may give rise to misunderstanding and lead to impossible juridical results. It should, therefore, be abandoned, or only used with extreme caution.

The Technical Commission is, in principle, in agreement with the Rapporteur on the other points dealt with by the Sub-Committee of Experts.

In particular, it agrees with the principle of the inviolability of diplomatic agents and the exceptions to this rule; the employment of precautionary and defensive measures in conformity with Number 3 of Article 6 of the Institute's draft, in the case of reprehensible acts committed by the agent; fiscal immunities, immunity from criminal, civil or commercial jurisdiction, and the definition of those members of the staff who are entitled to diplomatic privileges. With regard to the latter point, the Commission agrees with the Rapporteur that it would perhaps be preferable to exclude non-official staff from the enjoyment of these prerogatives.

The Commission reserves the right to define and discuss these various questions in detail at the proper time and in the proper place.

Questionnaire No. 4. — Responsibility of States for Damage done in their Territory to the Property of Foreigners.

The Commission is of opinion that of the two rival theories on this subject — the theory of risk and that of culpability — the latter should be preferred, in conformity with the conclusions of the Rapporteur to the Sub-Committee of Experts.

The theory of risk is based on the highly debatable principle that, as the foreigner is a source of profit to the State which receives him, he should, so to speak, be immune, and should be entitled to demand compensation for damages suffered by him, apart from all question of culpability on the part of the State.

On the contrary, culpability, that is to say, a negative or positive act of commission or omission, seems to be so essential an element in responsibility that it is hardly possible to conceive of responsibility apart from this fundamental cause and generative factor.

Thus in the various concrete cases of responsibility submitted to it, the Commission will base its conclusions on the conception of culpability. It will insist that the "culpa" must exist, as carefully defined in the Sub-Committee's report.

Political crimes. — The Hellenic Government has already had occasion, before the Council of the League of Nations, in the Italian-Greek dispute at the Council session on September 5th, 1923, to define its point of view (which was approved by the other members of the Council), namely, that States ought not to be held responsible for crimes committed in their territory, but only for the punishment of these crimes. It is glad to note that the Sub-Committee, in its report, has confirmed this standpoint, adopting the formula of the report drawn up by the jurists of the Council of the League on September 28th, in its general conclusions and intrinsic tenor.

In damage caused by officials, the formula to be adopted should take into account the line of demarcation which separates the administrative responsibility of officials originating in culpable acts which are also official acts, from individual responsibility which is involved when the culpable acts are not official acts.

In the first case, the responsibility of the State should, in the opinion of the Commission, be generally and absolutely involved whether the agent has or has not acted within the limits of his competence. The criterion of competence which the report adopts might become a source of difficulty and misunderstanding which it would be in the interests of all States to eliminate. (See OPPENHEIM, *International Law*.)

As regards personal culpability, when officials are alleged to have acted as private individuals, the responsibility of the State should be determined in the same manner and under the same conditions and reservations as are set out in the report.

Since in this case administrative legal action is replaced by individual legal action, it would be desirable to ask for the *judicial protection* of the foreigner on a rational basis, conjointly with the administrative protection afforded by police and general security legislation under which the foreigner benefits in the same way as the national.

In the matter of judicial protection, and as regards questions connected with the enjoyment and exercise of private rights, and with jurisdiction, the Commission considers that all suggestions should be favourably received which tend to assimilate foreigners to nationals on a basis of reciprocity, both as regards private rights and free and easy access to the national Courts, which is a primary condition for the effective enjoyment of the rights conferred.

In the case of damage caused by private individuals, the Commission agrees with the conception of non-responsibility admitted in the Sub-Committee's report — a solution which, it thinks, is the natural outcome of the general principles laid down.

*The same should be the case with judicial decisions which are erroneous or manifestly unjust. The principle of responsibility will therefore again come into play, even in the case of decisions which have become *res judicatae* if the violation of any clear principle of positive or contractual international law can be proved.*

We should refer in this connection to a decision of the Areopagos given in 1896 (reported in CLUNET, 1926, page 775), which allows that undisputed principles of international law should have the same force and authority in the Courts as municipal law.

The Commission also agrees that the responsibility of the State will be involved in cases of a denial of justice, as laid down in the Rapporteur's conclusions.

Second Question. — Finally, the Commission considers that a State should not resort to measures of coercion in the matter of disputes arising in connection with damage suffered by foreigners, before all ordinary methods of settling international disputes have been exhausted, such as commissions of enquiry and arbitration. Such procedure is, moreover, in entire conformity with the reply of the Hellenic Government which was, by a Council resolution of September 23rd, 1923, invited to submit its observations on the report of the Committee of Jurists.

The Hellenic Government was unable to agree to the fourth question of the jurists concerning measures of coercion. It held that the absence of any definite standard by which it might be possible to distinguish between measures of coercion which are compatible with the Covenant and prohibitive measures was likely to lead to misunderstandings which ought to be avoided. It argued that there were in such measures certain essential factors of direct action which could hardly be reconciled with the text and spirit of the Covenant, and an arbitral procedure, the effect of which would be to deprive the parties to the dispute of their right of action.

Questionnaire No. 5. — Procedure of International Conferences, etc.

The Technical Commission adopts the Sub-Committee's report.

Questionnaire No. 6. — Piracy.

The Technical Commission agrees in principle with the Committee of Experts for the Codification of International Law regarding the necessity of establishing an international convention the provisions of which will ensure the suppression of piracy. It also approves the general outline of the Draft Convention drawn up by the Committee, subject to the following observations :

The definition of piracy in Article 1 would be more complete if stress were laid upon the fact that piracy is only committed by a private vessel against another vessel, or by the crew or passengers in revolt against their own vessel. This would avoid all danger of including, in the definition, acts of violence which are not really piracy ; for instance, the murder of the captain of a vessel by the crew on account of the captain's cruelty (OPPENHEIM, *International Law*, 1920, I, page 435).

The expression "for private ends" might, for clearness sake, be replaced by the phrase "without Government authorisation".

As piracy is a crime committed against the international community, it should be repressed by all possible means. Consequently, it does not seem desirable to confine the right of pursuing and arresting pirates to warships. Merchant vessels should also have the right to pursue. This, indeed, is the prevailing view of the publicists (OPPENHEIM, *International Law*, I, page 409). "The vessels of all the nations, whether men-of-war, other public vessels or merchantmen, can on the open sea chase, attack and seize the pirate" (LISZT, *Völkerrecht*, 1925, page 300). Article 5 should therefore be modified accordingly. If every vessel, public or private, has the right to chase and seize, the right of punishment should in all cases be reserved for the Courts of the State which has made the capture, or, if necessary, the riparian State. Consequently, the provision in Article 6 allowing the commander of a warship to try pirates should, the Commission thinks, be omitted.

Among the results of capture referred to in Article 8 of the Draft, there is also the question of recovery of property by the legal owners, which is governed by the laws of the State to which jurisdiction belongs.

According to the Draft, national legislation might recognise or refuse to recognise the lawful owner's right to recover his property. This, at the present time, seems inadmissible for the maxim *Pirata non mutat dominium* seems by now to have become accepted in international law and should not be counteracted by any national legislation.

Finally, the Technical Commission feels that it should make an express reservation regarding cases which may—from the point of view of their consequences—be likened to piracy under an international convention.

We might, for instance, mention the Washington Agreement of February 6th, 1922. This Convention treats submarines which violate its clauses as pirate vessels.

Questionnaire No. 7. — Products of the Sea.

The Technical Commission adopts the opinion of the Committee's Rapporteur.

India.

QUESTIONNAIRE NO. 1. — NATIONALITY.

Letter of January 7th, 1927.

I am directed by the Secretary of State for India in Council to inform you that the Government of India consider that the questions which arise in connection with dual nationality and statelessness are subjects whose regulation by international agreement it might be desirable to attempt, but that they do not consider that it would be possible to regulate questions of nationality as a whole by this means, nor do they consider it desirable at present to attempt to do so.

(Signed) E. J. TURNER.

QUESTIONNAIRE NO. 2. — TERRITORIAL WATERS.

Letter of October 8th, 1926.

I am directed by the Secretary of State for India to inform you that the Government of India consider that the Amended Draft Convention on Territorial Waters on pages 47-48¹ of the Report is a useful basis for future discussion.

(Signed) E. J. TURNER.

QUESTIONNAIRE NO. 3. — DIPLOMATIC PRIVILEGES AND IMMUNITIES.

Letter of October 18th, 1926.

I am directed by the Secretary of State for India to inform you that the Government of India do not consider that the question of diplomatic privileges and immunities is a matter which it would be at present either possible or desirable to regulate by international agreement.

(Signed) E. J. TURNER.

QUESTIONNAIRE NO. 4. — RESPONSIBILITY OF STATES.

Letter of December 6th, 1926.

In reply to your letter of March 22nd, 1926, C.L.25.1926.V, in regard to the report of the Committee for the Codification of International Law, I am directed by the Secretary of State for India to inform you that the Government of India consider that the responsibility of States in respect of injury caused in their territory to the person or property of foreigners is a subject of international law whose regulation by international agreement it might be desirable to attempt. They are of opinion, however, that the Committee's conclusions require further consideration.

(Signed) E. J. TURNER.

QUESTIONNAIRE NO. 5. — PROCEDURE OF INTERNATIONAL CONFERENCES.

Letter of October 18th, 1926.

I am directed by the Secretary of State for India to inform you that the Government of India desire to associate themselves, as regards the Procedure of International Conferences and the Procedure for the Conclusion and Drafting of Treaties, with the views expressed by His Majesty's Government in their letter dated September 25th.

(Signed) E. J. TURNER.

QUESTIONNAIRE NO. 6. — PIRACY.

Letter of October 19th, 1926.

I am directed by the Secretary of State for India to inform you that the Government of India consider that Piracy is a subject of international law the regulation of which by international agreement it might be desirable to attempt.

(Signed) E. J. TURNER.

¹ See pp. 72-73 of the present document.

QUESTIONNAIRE No. 7. — PRODUCTS OF THE SEA.

Letter of July 28th, 1926.

The Government of India have now stated, with reference to Questionnaire No. 7 (Exploitation of the Products of the Sea), C.49.M.26.1926.V, that there is no intensive exploitation of such products in India and that they have no observations to offer on the subject.

(Signed) P. PATRICK,
for Secretary,
Economic and Overseas Department,
India Office.

Irish Free State.

QUESTIONNAIRE No. 2. — TERRITORIAL WATERS.

Letter of October 5th, 1926.

I have the honour to inform you that the Government of the Irish Free State, having examined the Questionnaire and Draft Convention on Territorial Waters included therein, consider that it offers an acceptable basis for discussion of the subject by an international conference.

(Signed) J. P. WALSH.

Italy.

QUESTIONNAIRES NOS. 1 TO 7.

Letter of March 24th, 1927.

[Translation.]

Questionnaire No. 1. — Nationality.

This does not seem to be a matter which can be settled by international agreement in the near future. The differences between the laws of the various countries, some of which follow more or less strictly the conception of the *jus soli*, while others are based mainly on the *jus sanguinis*, are so great and the interests involved are so considerable that it would be impossible to reach any agreements of a general character. However desirable the uniform international settlement of this question may seem to be, we are of opinion that, for the present at least, the only practical method will be for countries having interests which can be harmonised to conclude special agreements on definite points.

Questionnaire No. 2. — Territorial Waters.

We are of opinion that, in this question also, it will be difficult to secure general international agreement on account of the widely different geographical, economic and political circumstances in the various countries, their divergent needs in the matter of defence and the fact that the requirements of countries which have an ocean seaboard are dissimilar from those of countries whose shores are washed by inland seas. The insuperable difficulties which similar efforts have encountered in the past are bound to re-occur in the near future and frustrate all attempts to formulate uniform rules for this branch of the law.

Questionnaire No. 3. — Diplomatic Privileges and Immunities.

In principle, the Italian Government would willingly take part in a conference on this question, since general agreement appears to be not only desirable — particularly if a large number of States participate — but realisable in practice. Although the complex material presents some difficulties on account of the uncertainty and vagueness of doctrine itself, international usages are not so dissimilar nor are the interests of the various countries so divergent as to preclude the possibility of an agreement which would be accepted by all, or at any rate, most countries of the world. The adoption of uniform international rules

would assuredly help to make intercourse between the various States through their representatives less complicated and more cordial, since many causes of minor annoyances and many trifling incidents would be eliminated.

Questionnaire No. 4. — Responsibility of States.

We think that, in principle, and subject to certain reservations, it would be possible to lay down certain general rules in an international convention, bearing in mind, however, the discussions which took place at Geneva in the Council of the League as a result of the report of the Committee of Jurists on the interpretation of the relevant Articles of the Covenant.

Questionnaire No. 5. — Procedure of International Conferences.

The Royal Government sees no objection, in principle, but does not consider the matter to be of any urgency.

Questionnaire No. 6. — Piracy.

The Royal Government agrees, subject to certain reservations, and provided no matters of doubtful analogy are discussed.

Questionnaire No. 7. — Products of the Sea.

We willingly agree with the proposal to lay down, in general conventions, rules for this question, which is so closely allied to the protection of certain animal species of great economic value. In this connection, we would refer to the international organisations which already exist, such as the Permanent International Council for the Exploration of the Sea, and its special committees (for the Atlantic, the Mediterranean, etc.).

Japan.

QUESTIONNAIRES NOS. 1 TO 7.

Letter of March 4th, 1927.

[*Translation.*]

In your letter C.L.25.1926.V, of March 22nd, 1926, to the Minister for Foreign Affairs at Tokio, you were good enough to enclose a letter from the Chairman of the Committee of Experts for the Progressive Codification of International Law, C.96.N.47, 1926.V, together with the questionnaires and reports referred to in that letter, adding that you would be glad to ascertain the opinion of the Imperial Government on these questions.

I have now received the Imperial Government's reply, which I have been instructed to communicate to you, with the request that you will be good enough to forward it to the Committee of Experts.

1. The Imperial Government considers that the reports on Questions 1, 2, 3, and 6, referring to nationality, territorial waters, diplomatic privileges and immunities and piracy respectively, might provide a satisfactory basis for discussion. It would observe, however, that these reports contain certain points which it could not approve in their present form, and would add that the competent Japanese authorities are at present engaged in a very careful study of these problems.

2. With regard to the reports on Questions 4 and 5, which deal respectively with the responsibility of States for damage done in their territory to the person or property of foreigners, and with the procedure for international conferences and for the conclusion and drafting of treaties, the Imperial Government is inclined to think that these questions are not yet sufficiently ripe to allow of the conclusion of an international convention. It feels, however, that it would be very desirable for representatives of the various countries to examine these questions in common, with a possible view to preparing an agreement, which should, however, contain nothing more than recommendations. It is of the same opinion with regard to the report on the criminal jurisdiction of States in respect of offences committed outside their territory.

3. The Japanese Government is of opinion that it would be preferable to settle question No. 7, concerning the exploitation of the products of the sea, by means of bilateral or plurilateral agreements between the countries directly concerned. The same applies to the problem of extradition. As regards the latter question, however, it would be desirable to draw up a model convention which could be subsequently submitted to the various States for approval.

(Signed) SATO,

Director of the Imperial Japanese League
of Nations Bureau.

Norway.

QUESTIONNAIRE NO. 1. — NATIONALITY.

Letter of September 15th, 1926.

[Translation.]

With regard to the question of Nationality (Questionnaire No. 1), His Majesty's Government is of opinion that it would be desirable to conclude an international convention with a view to solving problems arising out of the conflict of laws regarding nationality.

The Government considers that the questions raised in the amended preliminary draft of a convention, with the exception, however, of the contents of Article 6, would be capable of solution in the way indicated.

Without examining more closely the various questions submitted by the Committee of Experts, I would observe that, in regard to certain points, it is doubtful whether the Norwegian Government would find it possible to accept the solution proposed by the amended preliminary draft convention.

(Signed) IVOR LYKKE.

QUESTIONNAIRE NO 2. — TERRITORIAL WATERS.

Letter of March 3rd, 1927.

[Translation.]

In your letter of March 22nd, 1926, you were good enough to transmit to me a number of questionnaires, including Questionnaire No. 2 (C.44, M.21, 1926.V), adopted by the Committee of Experts for the Progressive Codification of International Law, in which the Committee expresses its desire to ascertain the opinion of the Norwegian Government as to whether there are problems connected with the law of the territorial sea, considered in its various aspects, which might find their solution by way of convention, and, if so, what are these problems and what solutions should be given to them, and, in particular, what should be the rights of jurisdiction of a State over foreign commercial vessels within its territorial waters or in its ports.

I have the honour to transmit to you the following communication on the subject :

The Norwegian Government considers it highly important and desirable that international law, the relative vagueness of which in this matter has caused many difficulties in international relations, should be clarified and defined as far as possible. It feels, however, that the reasons which can be adduced in favour of such action vary so considerably from country to country that it is difficult for a State to reply separately and definitely to the main questions until sufficient data have been obtained regarding the practice followed in other countries and the light in which they regard their own territorial waters. In the opinion of the Norwegian Government, the questionnaire is a first preliminary step towards international agreement on these questions, and it gladly avails itself of this opportunity to set out in brief, and in the form of comments on the draft Convention submitted to it, the attitude of Norwegian law towards some of the questions dealt with in the draft Convention.

Article 1. — Character and Extent of the Rights of the Riparian States. — According to Norwegian opinion and practice, Norway possesses full sovereignty within the limits of her territorial sea. For ten marine miles beyond these limits Norwegian Customs legislation is also applied to foreigners, and Norway has ratified a Convention, signed at Helsingfors on August 19th, 1925, between the various Baltic riparian States, under which the Contracting Parties grant each other the right to exercise supervision and control for the suppression of contraband to a distance of twelve marine miles from the coast or extreme edge of the coastal archipelago (*skjærgård*).

Article 2. — Extent of the Rights of the Riparian State. — The draft Convention proposes to fix the breadth of the territorial sea at three marine miles. The Norwegian Government desires to point out that Norway has from time immemorial claimed for her territorial sea a breadth which has never been less than one geographical league (one-fifteenth of an equatorial degree, or 7,420 meters). This limit was laid down by Royal Decree in 1745 and 1756. Since then it has always been fully maintained; it is therefore based on usage over a period of nearly two hundred years. The introduction of this limit was by no means an extension but rather a considerable restriction of the area over which the Kingdom of Norway had till then claimed to exercise sovereignty. The decision to reduce the limits of the territorial sea to one geographical league was from the outset inspired solely by considerations of neutrality, though it gradually came to be applied to fisheries. (It is therefore not correct to state that the Norwegian fishery zone extends for one league, as indicated on page 31 of the report¹; similarly, the Customs boundary is inaccurately described as ten marine leagues instead of ten marine miles.) It is well known that the first occasion on which a three-marine-mile limit was applied was when the United States of America chose this limit as a provisional measure to be applied solely for purposes of neutrality during the European war. As applied to fisheries, the three-mile rule was, as far as the Norwegian Government is aware, laid down for the first time in the Treaty of 1818 between Great Britain and the United States in connection with fishery rights in the British possessions of the east coast of Northern America, and it was also applied in the Anglo-French Treaty of 1839 concerning fisheries. It is by no means generally admitted that the subsequent adoption of this zone by certain States and in certain treaties in connection with their fisheries has confirmed this distance as the universal limit of fishery rights, and still less as the limit for territorial waters in general. This limit has never been applied in Norway. Logically and without any derogation, Norwegian legislation has always been based on the ancient national limit consecrated by uninterrupted usage, regarding it as a minimum limit. The considerable interests which are bound up with this limit also preclude its abandonment in the future. It is above all a vital necessity for Norway to be able herself to preserve and maintain for the inhabitants of her long and tempest-worn coasts, whose existence almost everywhere depends on fishery, the exclusive right to certain important fisheries which are carried on beyond the ancient national limit, a right which the population has enjoyed uninterruptedly throughout the thousand years and more covered by the history of the Kingdom of Norway, and with which its means of subsistence are so indissolubly connected.

In the opinion of the Norwegian Government, it would be unreasonable to fix a definite zone of sovereignty if, in accordance with the suggestions of the revised Draft, this could only be achieved by avoiding the discussion not only of all questions of neutrality but even of fishery. If these questions are left on one side, it is rather difficult to see what need would remain for fixing a limit by a general international convention or what arguments could be adduced in its favour. Failure to examine or discuss considerations connected with fisheries when an attempt is made to fix a normal rule for the extent of the territorial sea would, in the opinion of the Norwegian Government, be an intrinsically erroneous procedure and would constitute a social injustice for a country like Norway by fixing a rule without regard for the vital interests of the State and its coastal population.

As regards the tracing of the boundaries, it should be observed that the series of fjords and archipelagos (*skjærgård*) which are so characteristic a feature of the peculiar Norwegian coast-line, with its numerous fjords penetrating right into the heart of the country and with its countless islands, large and small, islets and rocks scattered in a wide band along practically the whole of the coast, has made it quite impossible for Norway to trace a boundary for her territorial waters corresponding to all the sinuosities of her coast-line and *skjærgård*. The boundary has therefore been drawn at a distance of one geographical league from the extreme edge of the coast at low tide or from straight lines drawn between the last outlying islets or rocks not constantly covered by the sea, while, outside the bays and fjords (which from the most ancient times have been regarded and claimed *in extenso* as internal Norwegian waters), the limit has been measured from a line drawn between the two farthestmost seaward ends of the coast (mainland, isle or islet).

The Norwegian Government considers that, in these circumstances, it would be desirable — and, if Norway is to adhere to the proposed Convention, necessary — so to draft the present article that, as regards the extent and delimitation of the zone of sovereignty itself, it should, like Article 4, which relates to bays, take into proper account a peculiar *de facto* situation which has been consecrated by continuous and century-old usage.

In the opinion of the Norwegian Government, it would be neither natural nor reasonable to fix an identical limit of territorial waters for all coasts without taking into account the various characteristics of the latter and without making due allowance for the varying importance, from the point of view of national economy and the very existence of the inhabitants, of the question of maintaining for the coastal population an exclusive right to

¹ See page 57 of the present document.

exploit the economic wealth of the territorial sea. It would not even seem necessary to fix a standard boundary and we do not see how it would be possible to obtain such a result on the lines laid down in the draft Convention.

As regards the exercise of certain administrative rights outside Norwegian territorial waters, see the observations on Article 1.

Article 4. — Bays. — As we have pointed out in our observations with regard to Article 2, the Norwegian bays and fjords have always been regarded and claimed by Norway as forming part of the territory of the Kingdom. This attitude is the necessary result of history, of local conditions along the very indented Norwegian coasts with their remarkable geographical peculiarities, and of the capital importance of a rational exploitation of the fjords and coastal archipelagos (*skjærgård*) from the point of view of living conditions for the coastal population, and national economy. By fjords we mean not only those sea areas which are bounded on both sides by the continental coast-line but also areas bounded by a continuous series of islands or a coastal archipelago (*skjærgård*). Norwegian law has always held from most ancient times that these bays and fjords are in their entirety an integral part of Norwegian territorial waters, even should the breadth at the seaward end exceed the more or less arbitrary maxima breadths which certain countries, with a less characteristic coastline, have recently established for special purposes in view of their *own* needs and for very dissimilar reasons.

Article 5. — Islands. — As stated above, the boundary of Norwegian territorial waters is, according to Norwegian law, traced at a distance of one geographical league from the islands, islets or rocks farthest seawards which are not constantly covered by the sea. The general provision at present in force on this subject, contained in a Chancellery Memorandum of February 25th, 1812, does not stipulate any limit as regards the distance between these islands, islets and rocks and the mainland; it thus provides for a territorial sea extending in one continuous band along the coast to a distance of one geographical league from the islands, islets or rocks farthest seaward without taking account of the distance which separates the latter from the continental coast-line.

In conformity with the observations it has felt bound to offer in connection with Article 2 of the Draft, the Norwegian Government feels that it would be desirable to draft the passages of Article 5, which concern the delimitation of territorial waters around islands, in such a way as to bring them reasonably into line with Norwegian law on this subject, which owes its origin to the peculiar geographical conditions of the country and has been consecrated by continuous and century-old usage.

Article 6. — Straits. — We would also suggest that, in drafting Article 6, attention should be paid to the different laws of different countries, on the basis not only of special conventions but also of continuous and century-old usage.

Article 7. — Pacific Passage. — As at present drafted, this article applies to "all vessels without distinction": consequently, to warships. The Norwegian Government has duly noted that, according to an observation in the report itself, the draft Convention is only intended to refer to questions arising in peace-time; but nowhere in the draft Convention is there any statement to this effect. In the case of Article 7, therefore, the Norwegian Government feels bound to point out that it could not agree to any interpretation which would mean that the right of peaceful passage also applied to warships in time of war.

Article 9. — Jurisdiction. — The Norwegian Government has no fundamental objections to the provisions of this article. It presumes that the provisions of paragraph 2 are not intended to restrict the possibility of criminal courts applying the penal laws of the riparian State to acts committed on board foreign vessels when, according to the legislation of the country, the act comes within the jurisdiction of these courts. Presumably the sole meaning of this paragraph is that the riparian State may not take penal proceedings by employing force against a foreign vessel during the latter's passage through the territorial sea.

Article 10. — Regulations. — The logical consequence of the provisions of Article 2 with regard to a zone extending beyond the zone of sovereignty in which "administrative rights" may be exercised would seem to be that the right of pursuit referred to in paragraph 2 of Article 10 may be exercised not only when pursuit has begun within the zone of sovereignty but also when it has commenced in the zone where "administrative rights" are allowed, or in any such zone of fisheries as may be established, supposing such a zone may extend beyond the zone of sovereignty. It should be observed in this connection that Article 9 of the Convention concluded on August 19th, 1925, between Norway and the various riparian Baltic States for the purpose of suppressing contraband traffic in alcohol accords a right of pursuit beyond the twelve-marine-mile zone within which it is recognised under the Convention that each Contracting Party may apply to the vessels of the other signatory Powers its own legislation with regard to contraband traffic in alcohol.

Article 11. — Riches of the Sea, the Bottom and the Subsoil. — This article does not call for any observations on the part of the Norwegian Government.

Article 12. — Warships. — In the opinion of the Norwegian Government, it would be desirable to state that the provisions of this article do not apply to war conditions; see the observations in connection with Article 7.

Article 13. — Jurisdiction of Foreign Merchant Vessels in Maritime Ports. — The Norwegian Government shares the opinion expressed in this article that foreign merchant vessels should, in maritime ports, be subject to the civil jurisdiction of the riparian State, but feels that it would be desirable to exempt from such jurisdiction disputes which may arise between a captain and his crew on points which concern the running of the vessel, unless, in some particular case, very special circumstances warrant a deviation from this principle.

With regard to the second paragraph of the article, the Norwegian Government presumes that here, as in Article 9, there is no intention of restricting the possibility of criminal courts applying the penal law of the riparian State in the case of acts committed on board foreign vessels when, according to the legislation of the country, the act comes within the jurisdiction of these courts. Presumably the sole meaning of this paragraph is that the riparian State may not take penal proceedings by employing force against a foreign vessel during the latter's passage through the territorial sea.

The second paragraph of the article (which, doubtless through an oversight, mentions only offences and not crimes, as in Article 9) is too restrictive of the criminal jurisdiction of the riparian State. As it stands at present, this provision deprives the riparian State — unintentionally perhaps — of the possibility of punishing even one of its own citizens who, when on board a foreign vessel in one of the country's own ports, commits a punishable offence against a member of the crew or a passenger (whatever the nationality may be) or their property.

In this connection, the Norwegian Government desires to point out that, according to present Norwegian law, Norwegian criminal law is applicable to all punishable acts committed on board foreign vessels in Norwegian territorial waters, apart from the exceptions allowed by international law. The only punishable acts, therefore, which are ignored by Norwegian criminal law are those committed on board a vessel by a member of the crew against another member of the crew, or against a member of the crew of another vessel of the same nationality, if the matter is simply a question of discipline, if the assistance of the local authorities has not been sought and if the punishable act produces no effects outside the vessels (for instance, by disturbing public peace and tranquillity).

(Signed) Ivor LYKKE.

QUESTIONNAIRE NO. 3. — DIPLOMATIC PRIVILEGES AND IMMUNITIES.

Letter of November 27th, 1926.

[Translation.]

In reply to your letter of March 22nd last concerning the Progressive Codification of International Law, Questionnaire No. 3, Diplomatic Privileges and Immunities, C.45. M.22. 1926 V, I have the honour to inform you that the Norwegian Government considers it desirable to conclude an international Convention, based on the generally recognised principles of international law, to settle various points of the general problem of diplomatic privileges and immunities.

Without wishing to pledge itself in any way, the Royal Government is of opinion that the list of questions raised in the above-mentioned questionnaire is a very complete one. There are, however several questions which are, it is true, included in the above list but which are not mentioned in the Sub-Committee's report. As, in its opinion, these questions might be settled by means of a general convention, the Norwegian Government feels that it is its duty to recapitulate them¹.

The Royal Government holds that the codification of the provisions concerning the inviolability of domicile and official premises (I, 1 (b) and (c) of the list) should also include a settlement of questions connected with the application of national legislation on the subject of, for instance, health regulations, regulations concerning the construction of dwellings, expropriation, the fixing of rents and electric and radio-technical installations. It would also be desirable to draw up, if possible, provisions defining the extent to which the rules regarding inviolability of domicile shall apply when the persons enjoying diplomatic privileges live in hotels.

In connection with letter I, 4, of the list (fiscal and Customs immunity), it would perhaps be desirable to consider to what extent import prohibitions instituted on grounds of social policy should apply to diplomats.

¹ Text of paragraph 3 as amended in accordance with a request of the Norwegian Government in a letter dated February 14th, 1927.

As regards sub-chapter III, 1, it would perhaps be desirable to define the exact scope of the rules for the inviolability of archives.

For your information, I venture to transmit to you two memoranda, explaining the fiscal system now applied in Norway to diplomatic (and consular) agents in the matter of *taxes* and *Customs duties* due to the State or to municipalities. You will note that foreign diplomatic agents in Norway are exempt from taxation *in personam*: but, if they possess immovable property, they must pay the municipal tax levied on the property as such. They are also to a certain extent exempt from the consumption tax, tax on motor-cars, pleasure boats, dogs, etc.

Reserving the right to revert to this question later and make further suggestions in connection with the report of the Committee of Experts, I have etc.

(Signed) IVOR LYKKE.

ANNEX I. — MEMORANDUM.

Concerning the Exemption from Taxation of Foreign Diplomats and Consuls in Norway.

[Translation.]

The provisions in force in Norway regarding the exemption from taxation of foreign diplomats and consuls are contained in the Royal Decree of January 17th, 1913, which provides:

I. The following are exempt from public and municipal taxes on capital and revenue:

1. *Foreign Ministers and Chargés d'Affaires* (permanently accredited or accredited *ad interim*), counsellors, secretaries, attachés (both civil and military), and chaplains of foreign legations at Oslo, with their wives and children actually living with them.

2. *Consuls de carrière (consules missi)* and consular staff *de carrière* with their wives and children actually living with them.

3. *Honorary consuls (consules electi)* and the minor staff of foreign legations and consulates at the head of which there is a *consul de carrière*, in respect of the salary which they receive *in their official capacity*.

4. *Domestic staff* of foreign nationality in the service of the diplomatic officials referred to in paragraph 1.

II. The exemption of capital and revenue from taxation shall not apply to any profession or industry exercised, or income derived therefrom, by the persons in question within the Kingdom, that is unconnected with their diplomatic or consular functions. The same rule shall apply to their wives, children and domestic staff in so far as the latter are, in virtue of the above regulations, exempted from the payment of taxes.

April 1925.

ANNEX II. — MEMORANDUM.

Concerning Customs Privileges enjoyed by Foreign Diplomats and Consuls in Norway.

[Translation.]

The rules observed in Norway with regard to the Customs privileges enjoyed by foreign diplomats and consuls have not been embodied in a law, but have been fixed by a decision taken by the Ministry of Foreign Affairs in agreement with the Ministry of Finance and Customs.

These rules, as set out hereinafter, continue to be legally binding until modified by further decision of the competent Ministries, by Royal Decree or by a law.

I. *Diplomats.*

1. *Heads of Missions* (Ministers and Chargés d'Affaires both permanently accredited and accredited *ad interim*) at Oslo enjoy in Norway — subject to reciprocity — freedom of Customs as regards:

(a) Their furniture and baggage, and the baggage of their families (wife and children living with them).

(b) Goods, etc., imported from abroad for their personal use or the use of their household; all such goods must be addressed to the *head of the legation* in question.

(c) Office supplies (such as furniture, flags, shields, printed matter, etc.) imported from abroad and intended for use in legation chancelleries.

2. *Minor diplomatic officials* (counsellors, secretaries and attachés), both civil and military, of foreign legations at Oslo, enjoy in Norway the same privileges that Norwegian diplomatic officials of the same rank enjoy in the foreign countries, in conformity with the special reciprocal arrangements concluded with each individual State on this subject.

The above-mentioned minor diplomatic officials are, however — apart from all question of reciprocity — exempted from Customs duties as regards their furniture on their first arrival in Norway and, on all subsequent occasions, as regards their baggage and the baggage of their families (wife and children living with them).

Requests from foreign diplomats at Oslo for permission to import goods Customs free must be signed by the head of the legation in question. Special forms are issued on request by the Ministry of Foreign Affairs.

These forms are numbered and bear the stamp of the Ministry.

II. Consuls.

1. *Consuls de carrière* (*consules missi*), their wives and children if living with them, are exempt — apart from all question of reciprocity — from Customs duties as regards their furniture and baggage on their first arrival in Norway.

2. *Honorary consuls* (*consules electi*) do not enjoy any Customs privileges in Norway.

3. *Office supplies* (such as flags, shields, printed-matter, etc.) intended for the use of the consular offices may be imported into Norway Customs free — subject to reciprocity — by all foreign consuls, whether *missi* or *electi*, on the submission by the head of the consulate of a statement to the effect that the articles are intended for the use of his *consular* office.

January 1st, 1926.

QUESTIONNAIRE NO. 4. — RESPONSIBILITY OF STATES.

Letter of November 24th, 1926.

[*Translation.*]

I have the honour to acknowledge your letter of March 22nd last, in which you express a desire to learn the Norwegian Government's point of view with regard to the questions raised by the Committee of Experts for the Progressive Codification of International Law in its Questionnaire 4 (C.46, M.23, 1926, V), namely :

1. Whether and, if so, in what cases a State may be held responsible for damage done in its territory to the person or property of foreigners ;

2. Whether and, if so, in what terms it would be possible to frame an international convention whereby facts which might involve the responsibility of States could be established, and prohibiting in such cases recourse to measures of coercion until all possible means of pacific settlement have been exhausted.

In answer to your request, I have the honour to inform you that the Norwegian Government agrees in the main with the general principles enunciated in Section VI of the Sub-Committee's report, which is attached to the Questionnaire, subject to the following observations with regard to certain paragraphs of the conclusions :

Paragraph 1. — We do not consider it desirable to limit the responsibility of a State solely to cases of the violation of a duty contracted by treaty or recognised by customary law ; a State may also be under obligations which arise out of the general principles of international law and which cannot be said to be due to a treaty, or a precise and definite rule of customary law. The violation of such a duty should also involve international responsibility.

Paragraph 2. — We think that the categories of persons mentioned in paragraph 2 should be defined in greater detail.

Paragraph 3. — (a) We are of opinion that a positive right may be invoked by a State not only if this right is based on a treaty or custom but when it arises out of a general principle of international law (see the observation to paragraph 1).

This provision of the paragraph in question would therefore seem to be confined within too narrow a limit.

(b) This provision as drafted is too vague, since not every act performed for the defence of the rights of a State exempts that State from responsibility. Nor is it certain that the defence of a right of this kind can or should invariably involve exemption from responsibility.

This provision might, as far as we can see, be omitted as unnecessary, because only an act performed in the defence of the rights of a State which is authorised by international law should involve exemption from responsibility ; but then the act would not be an "act contrary to international law".

Paragraph 4. — (b) The question arises whether it can and should be definitely established that a State is in all cases *bound* to punish the official in question — in other words, whether a State should forgo its right, in special cases, and in conformity with the general trend of its legislation on the subject, either to prosecute the official or to pardon him, or again, for political reasons, to grant an amnesty covering the official.

Paragraph 6. — (b) The text seems to be too categorical. According to international law, the State is responsible when the decision of the court is manifestly unjust.

Paragraph 8. — We presume that this provision will apply only to the acts of private individuals and that responsibility for the acts of public officials will be determined in accordance with the provisions of paragraph 4.

Paragraph 9. — This provision should not be taken to mean that a State will be responsible, if, under a general amnesty, it remits the sentences imposed — a measure which, after internal disorders, might be desirable and necessary for the restoration of peace and the pacification of public opinion.

Paragraph 11. — This procedure constitutes a considerable progress. It should not, however, be substituted for, but merely run parallel, as a subsidiary method, to the procedure already in force between the various States, which allows the parties the right to demand the settlement of these disputes by judicial decision, or by procedure for conciliation first and judicial decision afterwards.

Paragraph 12. — It seems somewhat excessive to prohibit a State from employing any measure of coercion, thereby forcing it to resort to acts of pressure, which are not in themselves contrary to law, such for instance, as increases in Customs duties, expulsion, refusal to grant concessions, etc.

(Signed) IVOR LYKKE.

QUESTIONNAIRE No. 5. — PROCEDURE OF INTERNATIONAL CONFERENCES.

Letter of October 21st, 1926.

In continuation of my letter of September 15th with regard to the progressive codification of international law, I have the honour to inform you that His Majesty's Government is of opinion that it would be desirable to conclude an international convention or to frame international regulations relating to the Procedure of International Conferences and Procedure for the Conclusion and Drafting of Treaties (Questionnaire No. 5), on condition, however, that the rules to be established should not in any way limit the freedom of Governments. Even if such regulations are not binding upon the different States, they would, in the opinion of the Norwegian Government, tend to develop a correct and uniform practice in the matters at issue.

The Government further considers that the subjects contained in the amended lists drawn up by the Sub-Committee of Experts are capable of settlement by international agreement.

(Signed) IVOR LYKKE.

QUESTIONNAIRE No. 6. — PIRACY.

Letter of October 16th, 1926.

I have the honour to acknowledge the receipt of your letter of March 22nd last, in which you ask me, among other things, to inform you of the opinion of the Norwegian Government on the question whether, and to what extent, it would be possible to establish by an international convention appropriate provisions to secure the suppression of piracy.

In pursuance of your request, I have the honour to inform you that, as the question does not directly concern the Royal Government, it does not feel called upon to pronounce upon the desirability of establishing an international convention on the matter.

(Signed) IVOR LYKKE.

QUESTIONNAIRE No. 7. — PRODUCTS OF THE SEA.

Letter of March 21st, 1927.

[Translation.]

I have the honour to acknowledge receipt of your letter of March 22nd, 1926, in which among other matters, you ask me to acquaint you with the opinion of the Royal Government on the question asked by the Committee of Experts for the Progressive

Codification of International Law, in document C. 49. 1926 V. (May 26th), namely, whether it would be possible to establish, by way of international agreement, rules regarding the exploitation of the products of the sea.

I have the honour to reply to your request as follows :

The exploitation of the products of the sea — both as regards fisheries and the hunting of aquatic animals — is of the highest importance from the point of view of our national economy. Naturally, therefore, in the interests of its own maritime industries, for which any scarcity of the species on which they rely would be fatal, His Majesty's Government would be prepared to give its entire support to the establishment of regulations for such exploitation provided — and it would lay all possible stress on this point — that such a measure be preceded by adequate scientific research and experiment. The problems involved are so serious and of such great economic importance that the matter cannot be solved satisfactorily unless a very careful enquiry is conducted beforehand. This enquiry which, at any rate as far as fisheries are concerned, was begun several years ago by the International Council for the Exploration of the Sea at Copenhagen has not yet been completed. This, we think, clearly proves the great theoretical and practical difficulty of the problem even if only a limited part of the ocean is considered, namely, the North Sea. If the problem were dealt with on a world basis, the difficulties would increase proportionately. The above-mentioned Council, of which thirteen European States are members, has also considered the possibility of protecting whales. It has recently appointed an International Committee to collect and prepare the scientific data necessary for the study of the question. This Committee will endeavour to supplement the material collected by a British Committee — the "Discovery" — which is co-operating with Norwegian bodies interested in the subject. Finally, I would observe that the question of the protection of seals is also being examined. The Norwegian Government and the Government of the Socialist Soviet Republics have recently appointed a committee consisting of three Norwegian and three Russian experts to consider whether it is necessary to take steps to preserve the seals in the White Sea and to increase their numbers.

In view of the above considerations, the Norwegian Government doubts the propriety, at the present moment, of adopting the proposal of the Committee of Experts on the Progressive Codification of International Law that a conference comprising experts in the different subjects should be convened to examine the problem in question, for it would be difficult in the present circumstances for such a conference to secure results of really practical value. In the opinion of the Norwegian Government, it would be best to await the results of the researches of the International Council referred to above, and to regard them as the first stage in the investigation of a question which covers so wide a field. In view of the continually increasing importance of the question, we are justified in assuming that the Council will spare no efforts to expedite the completion of its work.

(Signed) Ivor LYKKE.

The Netherlands.

QUESTIONNAIRES NOS. 1 TO 7.

Letter of February 8th, 1927.

[Translation.]

In a circular letter (C.L. 25) of March 22nd, 1926, from the Secretary-General of the League regarding the work of the Committee of Experts for the Progressive Codification of International Law, the Netherlands Government was asked to give its opinion as to whether the regulation by international agreement of the subjects dealt with in a number of questionnaires would be desirable and realisable in the near future.

The Netherlands Government has the honour to inform you that it has examined the provisional result of the Committee's work with great interest. A country on whose soil two Peace Conferences have met, and which is proud to offer its hospitality to the Conferences on Private International Law, naturally follows with undivided attention all endeavours to secure the progressive codification of international law. From the point of view of world peace and justice in international relations, the Netherlands Government feels that the importance of developing such jurisprudence cannot be over-estimated.

With regard to the first part of the Questionnaire, *i.e.*, whether a regulation of the subjects set out in the questionnaires is *desirable*, the Netherlands Government feels that it can, without hesitation, reply in the affirmative on all the points raised. The need for regulation, however, is not equally urgent in every case. Her Majesty's Government is of opinion that the points which most obviously call for international regulation are 1 (Nationality), 2 (Territorial Waters) and 7 (the Exploitation of the Products of the Sea).

Next in order of importance are Nos. 4 (Responsibility of States for Damage done in their Territories to the Person or Property of Foreigners) and 3 (Diplomatic Privileges and Immunities). Last in this classification come points 6 and 5. Acts of Piracy are not so frequent as to necessitate an immediate regulation on the subject; the Unification of the Procedure of International Conferences and the Procedure for the Conclusion and Drafting of Treaties would no doubt be desirable, but it should be remembered that a certain elasticity should always prevail and, that even should no definite rules be drawn up on the subject, a certain degree of uniformity is sure to be attained, owing to the increasing number of treaties concluded under the auspices of the League.

The second part of the question, *i.e.*, whether a regulation of the seven points mentioned would be *realisable* in the near future, calls for the following comment.

If the aim is to attain a comprehensive settlement which could be simultaneously accepted by all the Powers concerned, then the Netherlands Government feels that the reply to all seven points would be in the negative. None of these questions seems as yet to have reached a stage at which general, uniform and universal settlement could be secured. If, however, no attempt is made to settle these questions in their absolute entirety, international conferences might succeed, to a certain degree, in harmonising divergent opinions and, as a consequence, diminishing the difficulties which modern practice occasions.

The consideration, in this light, of the three questions which Her Majesty's Government holds to be of most immediate importance leads to the following conclusions.

Questionnaire No. 1. — Nationality.

There can be no doubt that nationality is a question the settlement of which will be difficult at the present time, because opinion is so divided on a number of essential points. MM. Rundstein and de Magalhaes' excellent report makes this absolutely clear. It might, however, be possible to proceed by stages, as the report suggests, and deal first of all with the less-complicated problems, in the solution of which no fundamental objections on the part of the States concerned are likely to be encountered. In this connection, the Netherlands Government would venture to point out that the Hague Conference on Private International Law (fifth session) requested it to prepare for the next session of the Conference a questionnaire covering the whole field of the problem which arises in connection with divorce and judicial separation when the husband and wife are of different nationality. Acting on this request, the Netherlands Government has come to the conclusion that it would be desirable to include, on the agenda of the Hague Conference, the problem of nationality in its wider aspect. It has therefore drawn up four questionnaires, which it has communicated to the Governments concerned and of which copies are attached to this letter¹.

Whereas the first of these deals with general principles, the second refers to the questions of double nationality, persons without nationality and various other matters connected with the status of persons and family rights which have not been touched upon in the Hague Conventions of 1902 and 1905. The third questionnaire deals with the same subjects in so far as they have already been settled in the 1902 and 1905 Conventions: this questionnaire, therefore, does not confine itself to the problems connected with divorce and judicial separation already settled in the Convention. The fourth questionnaire deals with the nationality of legal entities. The Netherlands Government is aware that the question of nationality invades in one direction the domain of public law, and in another, that of private law. But as it seems hardly possible to keep the two aspects of the problem rigidly apart, the Government felt that it ought to include, in the points raised in the first questionnaire, certain general principles which, because they are very closely connected with private law, might be settled on uniform lines. Convinced as it is of the impossibility of including the whole problem of nationality on the agenda of the next session, the Netherlands Government has proposed that this session shall only consider Questionnaire III, leaving the other questionnaires to be dealt with by the seventh session.

In these circumstances, Her Majesty's Government is of opinion that the Committee of Experts might defer its consideration of the subject until such time as the Conferences on Private International Law have terminated their enquiry.

Questionnaire No. 2. — Territorial Waters.

Territorial waters also constitute a problem which it would be difficult apparently, in the present state of law, to settle at once and *in toto*. Her Majesty's Government feels, however, that in this case also an international conference would be useful even if it did nothing more than define the questions on which agreement seemed possible. It would,

¹ These questionnaires are reproduced as an annex to the present memorandum.

however, be highly desirable, before the conference met, to set up a preparatory committee which would clear the ground and define the precise scope of the conference's work. In this connection, the Netherlands Government is unable to share the Rapporteur's opinion that attention should be confined solely to the status of the territorial sea in peace-time. The war-time limits of the territorial sea should also be defined; it would be extremely inconvenient to adopt rules which would be applicable in peace-time but would not, as they failed to take into account the interests of belligerents and neutrals, be applicable in time of war.

Questionnaire No. 7. — Products of the Sea.

The question of the products of the sea is, Her Majesty's Government thinks, on a somewhat different plane. As it has already stated, the Government is extremely anxious that an international agreement should be reached on this subject. M. Suarez, however, is quite right when he points out that, up to the present, international regulations governing sea fishery have been very limited, both in scope and number, and that, consequently, existing treaties will be of little help if the work is to be undertaken on broader lines so as to be of undoubted benefit to all mankind. The question, therefore, is not one of "codification" but rather of "legislation" in a practically unexplored domain of law. As the problem is not primarily a legal one, but economic and commercial, Her Majesty's Government wonders whether it would not be preferable to refer this question to the Economic Committee of the League, which might examine it in conjunction with the Permanent International Council for the Exploration of the Sea, at Copenhagen. In this connection, the Netherlands Government ventures to point out the desirability of international legislation for the protection of the Pleuronectidæ. The Permanent International Council has already taken up this question, but it does not seem yet to have obtained any tangible result.

Questionnaire No. 4. — Responsibility of States.

With regard to the responsibility of States for damage caused in their territories to the person or property of foreigners, the Netherlands Government feels that, in view of the wide divergence of views on the fundamental legal principles at stake, serious difficulties would be encountered in any attempt to solve the problem.

Questionnaire No. 3. — Diplomatic Privileges and Immunities.

Questionnaire No. 5. — Procedure of International Conferences.

Questionnaire No. 6. — Piracy.

As regards the three other questions: (1) Diplomatic Privileges and Immunities; (2) Piracy; and (3) the Procedure to be followed at International Conferences and in the Conclusion and Drafting of Treaties, Her Majesty's Government is of opinion that — leaving aside all consideration of the urgency of codification — these questions have now reached a state at which it should be possible to reach an agreement on the main points.

Annexes to the Reply of the Netherlands.

I. QUESTIONNAIRE CONCERNING A DRAFT CONVENTION FOR THE SETTLEMENT OF CERTAIN DIFFICULTIES ARISING OUT OF THE DIVERSITY OF THE LAWS OF NATIONALITY IN VARIOUS COUNTRIES.

Question No. 1.

In cases of double nationality, should each of the States concerned have the right to accord diplomatic protection to its national? If so, should a State refrain from according diplomatic protection against another State when that State also regards the person as a national, on some other grounds than mere residence in the country?

Or should a person possessing two nationalities be regarded, as far as third States are concerned, as belonging to the country in which he is domiciled or—failing a domicile in one of these countries—to that of the two countries in which he was last domiciled?

Question No. 2.

Is a married woman entitled to the diplomatic protection of the State of which her husband is a national if, by reason of her marriage, she has forfeited her original nationality without acquiring that of her husband?

Question No. 3.

Is the State in which a person without nationality is domiciled entitled to afford that person its diplomatic protection?

Should the case referred to in question 2 be regarded as an exception?

Question No. 4.

Are the children of officials accredited to a foreign Government to be regarded as having been born in their father's country?

Notwithstanding this, should they be entitled in every circumstance or in special circumstances only to claim the benefit of the laws of the State in which they were born?

Question No. 5.

Should loss of nationality:

- (a) By marriage;
- (b) By a change in the civil status of a child (recognition, legitimation, etc.);
- (c) By naturalisation when the persons naturalised are not those who have made the request (wife, children);

only occur if a new nationality is acquired by the selfsame act?

Question No. 6.

Should the incapacity of a person, according to the laws of his country (because he is a minor, has been deprived of his civil rights, etc.), entail, in addition to loss of nationality, the impossibility of acquiring new nationality on the ground that change of nationality presumes an intention on the part of the individual (naturalisation, entry into the service of another State, option)?

Should such incapacity be limited in its effects to certain definite acts?

Question No. 7.

Should a convention for the regulation of the above points merely oblige the contracting States to bring their own laws into line with the solutions adopted?

Question No. 8.

Should the convention deal with the case of an individual who changes his nationality in order to evade the law, and should it determine the effects of such change of nationality?

II. QUESTIONNAIRE REGARDING THE DRAFT CONVENTION ON CERTAIN MATTERS CONNECTED WITH THE STATUS OF PERSONS AND FAMILY RIGHTS.

A. *General Capacity.*

Question No. 1.

What law should govern general capacity — the law of the country of which the person is a national or the law of the country in which he is domiciled?

Question No. 2.

If the law of the country of which the person is a national is to apply, should reservations be made to protect third parties from entering into relations with a foreigner whose incapacity is unknown to them?

Question No. 3.

Will the general capacity of a person who changes his nationality (domicile) be governed thenceforth by the law of his new country (the new *lex domicilii*), except with regard to acquired rights?

Question No. 4.

Does the capacity conferred by the law of which the person was a national (or the former *lex domicilii*) continue after the change of nationality (or domicile) if the law of the new country (or if the new *lex domicilii*) does not grant it?

Question No. 5.

Does the law of the person's new country (or new *lex domicilii*) have retro-active effect as regards the validity of an act of which the author, who has subsequently changed his nationality (or domicile), was incapable at the time of the act but capable according to the law of his new country (or new *lex domicilii*)?

Question No. 6.

Should the same principles be applied in special cases of capacity with which the Hague Conventions do not deal (the making of a will, the recognition of children, etc.)?

B. *Relations between Parents and Legitimate Children.*

Question No. 7.

What law should govern relations between parents and legitimate children (including paternal authority, proof of filiation and usufruct of the child's property).

- (a) When the three persons in question are all of the same nationality (same domicile);
- (b) When they are of different nationality (domiciled in different places);

the law of the country of which they are nationals or the *lex domicilii*?

Question No. 8.

Should any importance be attached to the fact that the legitimate child, both parents, or one of them, changes his or her nationality (place of domicile)?

C. *Relations between Parents and Illegitimate Children.*

Question No. 9.

What law should govern the relations between parents and illegitimate children as regards :

- (1) Voluntary recognition ;
- (2) Procedure in court to obtain recognition, and the protection of the child's interests in court;
- (3) Alimony ; and
- (4) Affiliation after adultery or incest :
 - (a) When the three persons are all of the same nationality (same domicile) ?
 - (b) When they are of different nationality (domiciled in different places) ?

Question No. 10.

Should any importance be attached to the fact that the illegitimate child, both parents, or one of them, changes his or her nationality (place of domicile) ?

D. *Legitimation of Illegitimate Children.*

Question No. 11.

What law should govern the legitimation of illegitimate children :

- (a) When all three persons are of the same nationality (same domicile) ?
- (b) When they are of different nationality (domiciled in different places) ?

Should a distinction be drawn between legitimation *per subsequens matrimonium* and legitimation by letters patent ?

E. *Adoption.*

Question No. 12.

What law governs adoption :

- (a) When the persons in question are all of the same nationality (same domicile) ?
- (b) When they are of different nationalities (domiciled in different places) ?

F. *Persons without Nationality.*

Question No. 13.

In the case of persons without nationality, should the "law of the country of which the person is a national" (which might otherwise apply) be replaced by :

- (a) The *lex domicilii* ; or
- (b) The law of the State of which the person was last a national ?

If one of these two laws is selected and proves inadequate in the case of a person without nationality should the other then be substituted ?

Should States of which the person without nationality has formerly been a national be allowed to apply their laws to him ? Or should this be allowed solely in the case of the State whose nationality he last lost ?

Question No. 14.

If it is impossible to lay down a general principle, should special rules be drawn up to cover each of the points referred to in this questionnaire ?

G. *Double Nationality.*

Question No. 15.

If it is agreed that the law of the State of which the person is a national should apply in the above-mentioned instances, should express provision be made for the difficulties caused by double nationality ?

If so :

- (a) Should each of the States to which the person with double nationality belongs apply its own laws, in principle ?
- (b) Should third States apply in principle :
 - (1) The law of the State of which the person is a national and in which he is domiciled ?
 - (2) The national law of the State whose nationality the person last acquired or first acquired ?
 - (3) Such laws of the countries of which the person is a national as most nearly approach the *lex fori* in the question under consideration ?

Question No. 16.

If it is impossible to lay down a general principle, should special rules be drawn up to cover each of the points referred to in this questionnaire ?

III. QUESTIONNAIRE CONCERNING THE REVISION OF THE HAGUE CONVENTIONS OF 1902 AND 1905, APART FROM THE CONVENTION ON CIVIL PROCEDURE.

A. *1902 Convention for the Settlement of Conflicts of Law in the matter of Marriage.*

Question No. 1.

Would it be desirable to insert provisions concerning persons without nationality in the 1902 Convention for the Settlement of Conflicts of Marriage Laws ?

If so, what should be the solution of the problems raised in Question 13, Questionnaire III ?

Question No. 2.

Would it be desirable to insert in this Convention provisions applying to persons of more than one nationality ?
If so, what should be the solution of the problems raised in Question 15, Questionnaire III ?

Question No. 3.

Should there be added to this Convention an article regulating declarations of absence, and their effects when husband and wife are of different nationality ?

B. 1905 Convention on the Conflict of Laws in the matter of the Effects of Marriage on the Rights and Duties of Husband and Wife in their Personal Relations and on the Property of Husband and Wife.

Question No. 4.

Should there be added to the 1905 Convention on the Conflict of Laws in the matter of the Effects of Marriage on the Rights and Duties of Husband and Wife in their Personal Relations and on the Property of Husband and Wife a clause indicating the law applicable to the rights and duties of husband and wife who have never been of the same nationality ?
If so, what law should be applicable — the law of the country of which the husband is a national, or some other law ?

Question No. 5.

Are you in favour of maintaining in this Convention the principle that the law of the last country of which husband and wife were both nationals should apply to a husband and wife who, in the course of their married life, have acquired different nationalities ?
If not, what law should be applicable — the law of the country of which the husband is a national, or some other law ?

Question No. 6.

Are you in favour of maintaining in this Convention the principle that the possibility of husband and wife concluding a marriage settlement (*contrat de mariage*) after marriage, and the validity of the same, should be governed by the law of the country of which husband and wife are both nationals or by the law of the country of which they were last nationals in common ? (See Articles 4, 5 and 9 of the Convention.)
If not, what law should be applicable — the law of the country of which the husband was a national at the time the settlement was concluded, or some other law ?

Question No. 7.

Would it be desirable to insert in this Convention provisions concerning persons without nationality ?
If so, what law should apply to them ? Cf. Question 13, Questionnaire III.

Question No. 8.

Would it be desirable to insert in this Convention provisions concerning persons possessing more than one nationality ?

C. 1902 Convention for the Settlement of Conflicts of Law and Jurisdiction in Questions of Divorce and Judicial Separation.

Question No. 9.

Should arrangements be made in the 1902 Convention for the settlement of conflicts of law and jurisdiction in the matter of divorce and judicial separation when husband and wife have never been of the same nationality ?
If so, must requests for divorce or judicial separation be allowable under the law of the country of which the husband is a national and also under the law of the country of which the wife is a national ? Or would the fact that they were allowable under one of these laws be sufficient ?

Question No. 10.

Are you in favour of maintaining in this Convention, with regard to husband and wife who are not of the same nationality, the principle that, to be admissible, requests for divorce or judicial separation should be allowable under the law of the country of which they were last both nationals.
If not, what law should be made applicable to the case ?

Question No. 11.

Are you in favour of maintaining in this Convention the principle that the State of which either husband or wife is a national will nevertheless be bound to recognise divorce or judicial separation granted elsewhere for reasons not admitted under its own laws ?

If so, would it be desirable to make an exception .

- (a) When husband and wife have never been of the same nationality and the decree was granted by a judge of the State of which the plaintiff, or the plaintiff's spouse, was a national at the time of the celebration of marriage ?
- (b) When husband and wife have, in the course of their married life, acquired a different nationality and the decree was granted by a judge of the State of which the plaintiff, or the plaintiff's spouse, was a national at the time of the celebration of marriage ?

Question No. 12.

Would it be desirable to insert provisions concerning persons without nationality in this Convention ?
If so, under what law should the admissibility of requests for divorce or judicial separation in connection with such persons be decided ?
Cf. Question 13, Questionnaire III.

Question No. 13.

Would it be desirable to insert provisions concerning persons possessing more than one nationality in this Convention ?

If so, under what law should the admissibility of requests for divorce or judicial separation in connection with such persons be decided ?

Cf. Question 15, Questionnaire III.

D. 1902 Convention concerning the Guardianship of Minors.

Question No. 14.

Would it be desirable to insert in the 1902 Convention concerning the Guardianship of Minors a provision to the effect that the guardianship of a minor who changes his nationality shall thenceforth be governed by the law of the country of which the minor has become a national (acquired rights remaining, of course, unaffected) ?

Question No. 15.

Would it be desirable to insert in this Convention provisions concerning persons without nationality ?

If so, what law should govern the guardianship of a minor without nationality ?

Cf. Question 13, Questionnaire III.

Question No. 16.

Would it be desirable to insert in this Convention provisions concerning minors who have more than one nationality ?

If so, what law should govern the guardianship of a minor possessing more than one nationality ?

Cf. Question 15, Questionnaire III.

E. 1905 Convention concerning Deprivation of Civil Rights (Interdiction) and Similar Measures of Protection.

Question No. 17.

Would it be desirable to insert in the 1905 Convention concerning Deprivation of Civil Rights and Similar Measures of Protection a provision to the effect that, when a person deprived of civil rights changes his nationality, the question of his deprivation shall henceforth be governed by the law of the country of which he has become a national (acquired rights remaining, of course, unaffected) ?

Question No. 18.

Would it be desirable to insert in this Convention provisions concerning persons without nationality ?

If so, what law should govern the deprivation of civil rights as applied to a person without nationality ?

Cf. Question 13, Questionnaire III.

Question No. 19.

Would it be desirable to insert in this Convention provisions concerning persons deprived of their civil rights who possess more than one nationality ?

If so, what law should govern the deprivation of civil rights as applied to a person possessing more than one nationality ?

Cf. Question 15, Questionnaire III.

IV. QUESTIONNAIRE CONCERNING DRAFT CONVENTION OF FOREIGN LEGAL ENTITIES.

Question No. 1.

Should the Convention refer solely to joint-stock companies (*Sociétés anonymes*) or should its provisions include all associations or corporations which constitute a legal entity, or all artificial persons of every kind ?

Question No. 2.

Should the expression "nationality of legal entities" be taken to mean intrinsic nationality or does it merely refer to the law which is to govern the entity's capacity to act, the competency and responsibility of its organs and all similar questions ?

Question No. 3.

Should the nationality of companies, etc., be determined in accordance with formal rules, or according to circumstances making it possible to establish the nationality of the persons who control the company ?

In the first case, would the nationality of a company depend :

- (1) On the fact that the company was founded under a deed given in a certain State ?
- (2) That it was founded in conformity with the laws of that State ?
- (3) That, according to the company's articles, the official head offices are to be in that State ?
- (4) Or (when the laws of that State do not call for any mention of official head offices in a company's articles) on the fact that its official head offices are situated in that State ?

In the second case, should the nationality of the company be decided by the nationality of its shareholders, its managing directors and members of its Board, or by other circumstances making it possible to determine the nationality of the persons controlling the company ?

Question No. 4.

If the Convention merely applies formal criteria, should it expressly allow the State of origin to apply special rules to companies registered within its territory, but controlled by foreigners ?

Question No. 5.

As foreign companies possess an artificial personality in their country of origin, should they be recognised as legal entities in the other contracting countries ?

Question No. 6.

Does the recognition of such a company mean, in principle :

- (a) That it may engage in every sort of business and sue and be sued in the courts in conformity with the law { of the country in } which it was founded ?
under
- (b) That it may be represented by its organs in conformity with the law { of the country in } which it was founded ?
under
- (c) That the responsibility of its directors and other organs shall be governed by the law { of the country in } which it was founded ?
under

Question No. 7.

Should the contracting States be entitled :

- (a) To declare their own laws applicable, as regards the powers, duties and responsibility of managing directors and other representatives of the company, to all foreign companies, or merely to those which establish branches, etc., within the State ?
- (b) To oblige foreign companies to comply with measures of publicity (the official filing of their articles of association and balance-sheet, entry in the Register of Commerce, and other measures of publicity) before allowing them to transact business ?
- (c) To submit foreign companies to all the restrictions they may consider necessary for the protection of their national interests ?
- (d) To limit the number of branches, agencies, etc. to be established by a foreign company within their territories ?
- (e) Only to allow quotations regarding foreign companies to be published in their stock exchanges subject to certain conditions ?
- (f) To apply special rules to foreign companies which also transact, for instance, banking and insurance business ?

Question No. 8.

If a legal entity has fraudulent official head offices, shall it be regarded as non-existent :

- (a) In its country of origin ?
- (b) In the country contrary to whose laws it has been established ?
- (c) In other countries ?

Question No. 9.

What should be the juridical status of legal entities who, without being guilty of any fraudulent practice, have their real and effective head offices in a country other than that in which they were founded ?

What would be their status :

- (1) In the country in which the fictitious official head offices exist ?
- (2) In the country in which the real and effective head offices are situated ?
- (3) In other countries ?

Question No. 10.

Ought the expression "real and effective head offices" to mean the place in which the central management is carried on ?

Question No. 11.

Should the Convention also deal with such commercial industrial or financial associations as may, in one or more contracting States, not possess artificial personality ?

If so, should the above rules with regard to legal entities apply ?

Poland.

QUESTIONNAIRES NOS. 1 to 7.

Letter of December 4th, 1926.

[*Translation.*]

The Polish Ministry for Foreign Affairs received in March of this year your circular letter of March 22nd, 1926, No. C.L. 25.1926.V, to which were annexed the letter dated January 30th, 1926, from the Chairman of the Committee of Experts for the Progressive Codification of International Law and the questionnaires and relevant reports drawn up by the aforesaid Committee at its session at Geneva in January 1926.

In compliance with your request, the Polish Government has given its most careful consideration to the questions treated in your circular letter and in the documents prepared by the Committee of Experts, and I now have the honour to communicate to you the following :

The Polish Government cordially approves the action initiated by the Swedish Government, as the result of which the League of Nations is now examining the possibility of codifying international law. Holding, as it does, that international relations should repose on fixed and definite rules of law, and that the existence and stability of such rules

would constitute a guarantee of international co-operation, the Polish Government is of opinion that the work undertaken by the League will help to regularise juridical relations, supply the far-too-numerous deficiencies in existing procedure, and establish international law on the solid basis of clearly formulated legal provisions.

The Polish Government heartily approves the preparatory work commenced by the Committee of Experts, particularly because the method it has adopted is certain to produce definite and practical results. Indeed, the establishment of international norms on a juridical basis is only possible if the method adopted is strictly practical and takes into account the existing situation with all its consequences. Working on these lines, the object in view can be attained if codification is brought about by means of international conventions. Any attempt to establish a uniform system of world law must be regarded as impractical and quite unlikely to succeed; nor would parallel declarations by the various States to the effect that certain international rules exist and should be recognised as universally binding be sufficient for the purpose.

The Polish Government would point out, however, that codification can only become effective if the conventions to be concluded are signed by as many States as possible; otherwise they would not really be world conventions, and legal systems would still be contradictory and therefore unsatisfactory. Further, if the number of contracting parties were limited, the convention might lead to a whole series of fresh disputes on account of the divergence between the provisions in force in the signatory States and those still valid in non-signatory States. This, however, need not constitute an insuperable difficulty, because the creation of centres — small though they might be — where uniform law was applied might lead in time to the spreading of these ideas and the subsequent acceptance of rules the utility of which had been demonstrated in practice.

As the work of codification will occupy some time, and as international conferences will no doubt be convened to consider practical means for carrying out the various proposals, the Polish Government ventures to put forward a suggestion which will, it hopes, receive most careful consideration. Seeing that the League of Nations has undertaken a vast work of codification, and that the realisation of this project will entail the convening of diplomatic conferences under its auspices, the Polish Government is of opinion that it would be expedient to set up, under the ægis of the League, a permanent body of a purely technical and advisory character:

- (1) To prepare the documents for international conferences on codification;
- (2) To ensure continuity between the work of the different conferences;
- (3) To collect information relating to the application of such conventions as may be concluded, particularly in the matter of judicial and administrative case-law; and
- (4) To furnish information to Governments and international bodies.

This would mean not only the creation of a very valuable technical organisation but a simultaneous extension of the League's sphere of action. It is important to discover some means of removing the present restrictions placed on the activities of the Committee of Experts, without impeding the efforts of individual States to attain codification — efforts which should undoubtedly be encouraged because their great utility has been demonstrated by the practical results obtained. The Polish Government considers it essential that all work in connection with the codification of international law should be centralised by the League. Such centralisation would help to settle difficulties and would avoid the inconvenience of sporadic efforts.

With regard to the questionnaires annexed to your circular letter, the Polish Government desires to submit the following observations:

The Polish Government learns with satisfaction that the Committee of Experts is to consider other problems of international law in addition to the questions previously defined; the wider the range of subjects dealt with by future conferences, the easier it will be to conclude world conventions.

With reference to the questions defined in your note, the Polish Government regards nationality, diplomatic privileges and immunities, the responsibility of States in respect of injury caused to the person or property of foreigners, procedure of international conferences and procedure for the drafting of treaties, exploitation of the products of the sea, and, lastly, piracy, as suitable for codification, and considers such codification both desirable and feasible.

As regards the problem of nationality, the Polish Government is of opinion that this question should be so regulated as to avoid a conflict of laws without establishing juridical rules which would lay down — by international agreement — certain uniform principles to be embodied in national codes. It would be inexpedient, for example (owing to the difference between the various national codes), to introduce uniform regulations in the matter of the nationality of married women. It would be preferable to adopt regulations

for the avoidance of disputes on this subject. Steps must be taken, moreover, to settle questions concerning disputes at private international law which are connected with this problem but which have not been included in the programme of the Committee of Experts.

In the matter of diplomatic immunities the Polish Government considers that certain difficulties may arise as regards uniform rules on fiscal immunity.

With reference to the question of territorial waters, the Government holds that this problem cannot, as a whole, yet form the subject of codification, opinion being still so divided as to the extent of the "territorial sea" and the rights of riparian States over waters situated outside that zone. On the other hand, problems relating to jurisdiction in the matter of commercial ships in maritime ports do not, from the point of view of codification, raise any serious difficulty, and they might thus be solved on a uniform basis.

(Signed) F. SOKAL,
Minister Plenipotentiary.

Portugal.

QUESTIONNAIRES NOS. 2, 6, 7.

Letter of October 7th, 1926.

[Translation.]

I submitted these matters for examination by the competent authorities, but unfortunately they have not yet forwarded me their replies to all the questionnaires.

I am, however, able to send you herewith¹ the opinion of the Permanent Committee on International Maritime Law, which has studied Questionnaire No. 2, dealing with Territorial Waters, and No. 7, Exploitation of the Products of the Sea. This Portuguese Committee is meeting at the Ministry for Marine, and will submit shortly its opinion on the subject of Questionnaire No. 6, Piracy, which I will forward to you as soon as I receive it.

As regards the other questionnaires, I have not yet had the opinion of the Portuguese experts, and I regret profoundly that I cannot at once give an opinion on these matters which could be in the hands of the Committee of Experts by the 15th of this month, in conformity with the Assembly's resolution quoted in the letter from the Chairman of the Committee to which you refer.

I forward you by this post seventeen copies² of the observations submitted by the Portuguese delegates of the Permanent Commission of International Maritime Law to the Vienna Conference in 1926, and I would ask you to be good enough to have them distributed to the members of the Committee of Experts for the Progressive Codification of International Law.

(Signed) DA COSTA CABERAL.

OPINION OF THE PERMANENT COMMITTEE ON INTERNATIONAL MARITIME LAW (LISBON).

Questionnaire No. 2. — Territorial Waters.

Memorandum on the Limitation of Territorial Waters.

[Translation.]

Portugal has already explained her point of view in Admiral Vicente de Almeida de Eça's report, which was approved on July 28th, 1925, by the Portuguese Permanent Commission of International Maritime Law, and in the observations recently made by the representatives of that Commission during the Conference of the International Law Association at Vienna. These views were also expressed in a detailed statement made by Dr. Barboza de Magalhães before the League of Nations Committee of Experts for the Progressive Codification of International Law. Portugal, while valuing the report of the Committee of Experts most highly, and being of opinion that it would be difficult to carry

¹ See below.

² This document has not been reproduced here. Copies were distributed to members of the Committee.

into effect any draft convention which did not conform to the usages and requirements of the different countries, considers that the draft convention on Territorial Waters should be framed as follows :

Article I.

The States shall possess sovereign rights over the maritime zone which washes their coasts, over the air above that zone and the soil and subsoil beneath it.

Article II.

The coastal maritime zone referred to in the preceding article shall extend for 12 marine miles (60 to the degree of latitude) from low-water mark along the whole of the coast (see Observations).

With regard to the sea within this zone, riparian States may occupy such area as is necessary for the establishment of more or less permanent constructions, provided that these are exclusively intended for any of the following public purposes ;

- (1) As bases for non-military aeroplanes or dirigibles ;
- (2) For wireless stations ;
- (3) For submarine cable stations ;
- (4) For scientific research ;
- (5) To provide assistance for shipwrecked mariners ;
- (6) For searches for wrecks or treasures.

Paragraph 1. — It shall be forbidden, for any reason or under any pretext whatever, to fortify the constructions referred to above, or to use them even indirectly as bases of supply for warships or war aircraft or for submarines.

Paragraph 2. — These constructions must be approved in advance by the International Waters Office, and shall be under its immediate control.

This Office shall order the immediate demolition of any works set up in contravention of the provisions of the present article, and the State committing such infringement may further be sentenced to a fine to be determined by that Office or by the Permanent Court of International Justice.

Article III.

The States signatory to the Convention undertake to establish an International Waters Office. The duty of this Office shall be to register the rights possessed by States in the zone of the territorial waters belonging to foreign riparian States, or by the riparian States themselves outside the zone of their own territorial waters.

The titles to such rights must be presented and registered. The cost of establishing proof of right shall be charged to the applicant. Applications must be communicated to all the States signatories to the Convention.

Applications may be opposed within a time-limit to be fixed. If an application is opposed, the question shall be decided, in the first instance, by a mixed commission of experts and jurists. Appeal may be made from decisions of this commission to the Permanent Court of International Justice. All States shall be informed of the registration of a right. The register shall be published.

The same procedure shall apply in cases in which a State claims to have an urgent new need outside the sphere of its own territorial sea. The said State must apply to the International Waters Office, which may only grant a right after publication of the application, and provided that it is not opposed. In the event of opposition, the question shall go before a mixed commission, before which the State claiming the right must prove that it cannot forgo its claims. In this case, too, appeal lies to the Permanent Court of International Justice.

The International Waters Office shall also be responsible for publishing maritime charts showing the zones of the territorial sea.

Article IV.

In the case of bays which are bordered by the territory of a single State, the territorial sea shall follow the sinuosities of the coast, when the distance between the two extremities is above 30 miles, unless a greater distance has been established by continuous usage, or is indispensable to the State in question in order to secure its defence and its neutrality, or to maintain navigation, pilotage and maritime police services.

In the case of bays which are bordered by the territory of two or more States, the territorial sea shall follow the sinuosities of the coast (see Observations).

Article V.

If there are natural islands, not continuously submerged, situated off a coast at a distance from the coast not above 24 miles, the zone of the territorial sea shall be measured

from these islands. When the distance of the islands from the coast is above 24 miles, these islands shall have a territorial sea for themselves, as if they were part of the mainland.

In the case of an archipelago, the component islands shall be considered as forming a whole, and the width of the territorial sea shall be measured from the islands most distant from the centre of the archipelago (see Observations).

Article VI.

The regime of straits at present subject to special conventions shall remain reserved. In straits of which the shores belong to the same State, the sea shall be territorial, even if the distance between the shores exceeds 24 miles, provided that that distance is not exceeded at either entrance to the strait.

Straits not exceeding 24 miles in width whose shores belong to different States shall form part of the territorial sea as far as the middle line, when navigation is equally practicable along either shore. When, however, navigation is advised to proceed along a fixed line owing to sand-banks, rocks, or other features natural to the bottom of the sea, the line of navigation shall be the line of demarcation between the territorial waters (see Observations).

Article VII.

The lateral limitation of the territorial waters between two neighbouring riparian States, when these States are not bound by a special convention, shall be made as follows :

1. When the land frontier line between the two countries is situated on a coast free from obstacles, the territorial waters shall be determined normally, the coast-line passing through the land-frontier line.

2. When the frontier of the two countries is formed by a river with a well-defined interior channel, and when vessels of the largest tonnage can navigate this river and enter along either bank, the lateral limits of the territorial waters shall be formed by a line perpendicular to the river bar, passing through the point of intersection of the interior channel of the river and the bar.

3. When the frontier between two countries is formed by a river with a well-defined interior channel, and when vessels of the largest tonnage, on entering or passing out of this river, cannot proceed indifferently along either bank, but must, on the contrary, follow a certain definite line, owing to sand-banks, rocks or other natural obstacles, the lateral limits of the territorial waters shall be the line which vessels are advised to follow from the intersection of the interior channel and the bar as far as the point where navigation is no longer impeded by natural obstacles and can proceed indifferently along either bank; and thereafter, up to the limit of the territorial waters, a line perpendicular to the bar shall constitute the lateral limits of the territorial waters of the two States.

4. When the frontier between two States is formed by a river which has no definite channel, the lateral limits of the territorial waters shall be determined in the same way as that indicated in the foregoing numbers, the middle of the bar being substituted for the point of intersection of the interior channel and the bar.

Article VIII.

All merchant vessels shall have the right of pacific passage through foreign territorial waters, but they must conform to local laws and regulations, particularly to the provisions relating to navigation, the right of sojourn, Customs control and maritime police regulations. Submarine vessels shall only enjoy this right when they are navigating on the surface.

The right of free passage shall include the right of passage for persons and goods, independently of the right of access to the foreign mainland, but not the right of sojourn.

Article IX.

Vessels of foreign nationalities passing through territorial waters shall not thereby become subject to the civil jurisdiction of the riparian State.

Further, crimes and offences committed on board foreign vessels passing through territorial waters by persons on board such vessels against persons or things also on board shall, as such, be exempt from the jurisdiction of the riparian State.

Crimes and offences the consequences of which are not confined to the vessel or the persons on board shall be subject to the criminal jurisdiction of the riparian State, in so far as they constitute offences against its established law and its tribunals are competent to deal

with them. Offences the consequences of which are not confined to the vessel or the persons on board shall be understood to include all offences against public peace or order on the territorial sea.

Article X.

Within its territorial waters, the riparian State shall establish its own legislation, and its administration shall extend to every field of public activity, subject to the restrictions embodied in the present Convention, and it may employ the necessary means to enforce its jurisdiction in dealing with offences and punishing offenders.

The riparian State shall have the right to continue on the high seas the pursuit of a vessel commenced within its territorial waters, and to arrest and bring before its courts a vessel which has committed an offence within the limits of its waters. If, however, the vessel is captured on the high seas, the State whose flag it flies shall be notified immediately. The pursuit shall be interrupted as soon as the vessel enters the territorial waters of its own country or of a third Power. The right of pursuit shall be extinguished as soon as the vessel has entered a port of its own country or of a third Power.

Article XI.

The riparian State shall exercise in its territorial waters, for itself and for its nationals, the sole right of fishing and of taking possession of the riches of the sea, the bottom and the subsoil.

Article XII.

The exercise by warships of the right of free passage in foreign territorial waters may be subjected by the riparian State to special regulations. Foreign warships when admitted to territorial waters must observe the local laws and regulations, particularly those relating to navigation, anchoring, customs and health control. If a serious and continued offence is committed, the commander of the vessel shall receive a semi-official warning in courteous terms and, if this is without effect, he may be requested, and, if necessary, compelled, to put to sea. The same dispositions shall apply if the local authorities consider that the presence of the vessel threatens the safety of the State. Except in cases of extreme urgency, however, these stringent measures shall only be taken upon the instructions of the central Government of the country.

In the case of minor offences, the diplomatic channel shall be used.

Article XIII.

In maritime ports, foreign merchant vessels shall be subject without restriction to the civil and non-contentious jurisdiction of the riparian State.

The criminal jurisdiction of the riparian State shall be restricted to the punishment of crimes and offences committed on board which are not directed against a member of the crew or against passengers and their property. Its criminal jurisdiction shall further be restricted to cases in which the captain of the vessel has asked the port authorities for assistance and cases in which the peace or public order in the port has been disturbed.

Article XIV.

All disputes arising out of the application or interpretation of this Convention shall be subject to compulsory settlement by the Permanent Court of International Justice or by a court of arbitration constituted by agreement between the parties.

OBSERVATIONS.

Portugal is unable to forgo a very much wider limit to her territorial waters than three miles, since it is absolutely necessary for her to preserve the species of fish which inhabit her waters, these fisheries contributing largely towards the feeding of her population and the employment of her industries. If these species become rare or disappear Portugal's economic crisis, which is already acute, will be considerably aggravated.

What is true of Portugal is also true of many other countries and therefore this claim does not constitute a special case. This extended limit has indeed become an established usage in Portugal and in other countries, and is embodied in the legislations of Portugal and various nations, as was first pointed out in detail by the distinguished Professor Schücking in his masterly report to the Committee of Experts for the Progressive Codification of International Law. Beyond doubt, the present needs of the nations are of more importance than traditions and ancient usage, and therefore Portugal demands the extension to 12 miles of the limit of territorial waters, as being more in conformity

with present practice and the present needs of the majority of States. If, however, for one reason or another, this extension is impossible, Portugal considers that a minimum limit of *six* miles should be fixed and that States should have the right, in order to satisfy their vital needs or those of their defence, to exercise administrative rights over a further zone of six miles beyond the zone of their sovereignty.

The limits for islands, archipelagoes, bays and straits were fixed on the supposition that the limit of territorial waters was itself extended to 12 miles ; if this limit is lowered, it will be necessary also to restrict the zones fixed for these special cases.

PERMANENT COMMITTEE ON INTERNATIONAL MARITIME LAW. (LISBON).

Questionnaire No. 7. — Products of the Sea.

Opinion on the Exploitation of the Products of the Sea.

[*Translation.*]

The report by the eminent juriconsult, M. José Leon Suarez, on the Exploitation of the Products of the Sea, which was submitted by the Committee of Experts for the Progressive Codification of International Law to the Portuguese Government for consideration, was referred by the latter to the Portuguese Permanent Commission on International Maritime Law, which states its views as follows :

M. José Leon Suarez's report deals with a subject which is of the highest importance to maritime States ; indeed not only the States themselves, but all fishery experts have for a long time past been devoting considerable attention to the question. The report concludes :

“1. That it is possible, by means of adequate regulation, to secure the economical exploitation of the products of the sea.

“2. That such regulations could not fail to be in the general interest, since, if the present confusion persists, the extinction of the principal important species will be the inevitable consequence of their unrestricted exploitation.

“3. That the treaties dealing with this subject apply only to certain species and are for the most part regional in character. They have not in any way taken into account the point of greatest importance to humanity, which is to find means to prevent the disappearance of species; they are solely concerned with measures of police or purely commercial measures, without considering the biológico-economic aspect, which is the essential aspect.

“4. That the attention of all maritime Powers should be called to the urgency of establishing regulations by holding a conference including experts in applied maritime zoology, persons engaged in maritime industries, and jurists.

“5. That, without prejudice to other matters, the general technical programme of the conference referred to in the previous paragraph might include the following :

“(a) General and local principles for the organisation of a more rational and uniform control of the exploitation of the aquatic fauna in all its aspects ;

“(b) Creation of reserved zones, organisation of their exploitation in rotation, close periods, and fixed ages at which catching is permitted ;

“(c) Determination of the most effective method of supervising the execution of the measures adopted and for maintaining the control.”

With all due respect for M. José Leon Suarez's excellent report, this Commission feels bound to point out first of all that the Conference mentioned in No. 4 of M. Suarez's conclusions has already met on six occasions ; I refer to the six International Fishery Congresses which have already been held and all of which came to the conclusion that, as a measure for the protection of maritime species, it was essential that the zone of territorial waters should be extended, for purposes of fishery, to 12 or 15 miles. In our opinion, this is practically the only step required, and we base our opinion on the following facts :

1. The theory of the extensive migration of maritime species has been disproved by modern science, which has succeeded in identifying local varieties or species formerly held to be migratory, such as the variety of whiting called “*pescada*”, and others.

2. No methods can be successful unless based on economic control and supervision by the State whom such measures concern.

3. Except in special cases, such as that of the cetaceans, to which we make special reference, and that of the North Sea, which is entirely a continental shelf, the point of interest for each State is its own continental shelf, where the edible species dwell.

4. If the zone of territorial waters were, for purposes of fishery, increased to 12 or 15 miles — a step which has already been taken under the legislations of various countries for other, albeit less important, purposes — each State would have its continental shelf included in its own territorial waters and would consequently be able in that area to adopt such rules as it might hold to be most desirable for the preservation of species.

5. Riparian States are alone able to exercise active, constant and efficient economic control over their coastal zones.

6. Punishment for the infringement of fishery laws can only produce effective results when imposed by the riparian State within whose waters the offence has been committed.

Cetaceans are the species of which naturalists know least. Admitting, however, that restrictions are necessary in this case to prevent the extinction of the species, we think it would be sufficient for the Powers concerned to conclude a special treaty or agreement for the purpose of preventing:

- (a) The catching of females with young;
- (b) The catching of young cetaceans;
- (c) The use of floating whaling stations.

The Powers concerned might, of course, subsequently adopt such other measures as they held to be desirable or necessary.

The Powers concerned might also consider the question of the catching of pinnipedia.

The same observations might apply to the particular case of the North Sea, the riparian States of which have already concluded a convention among themselves; it should be noted that the Permanent International Council for the Exploitation of the Sea, which has its headquarters at Copenhagen, and includes among its members official representatives of the States interested in the North Sea, has for some time past had this problem under consideration.

This Commission therefore takes the view that, apart from special cases which should be dealt with by the States directly concerned, the only general measure necessary is the extension of territorial waters for fishery purposes to 12 or 15 miles.

QUESTIONNAIRE No. 2.

Letter of October 8th, 1926.

With reference to my letter of yesterday's date, I have the honour to transmit to you herewith sixteen copies¹, in order to be distributed to the members of the Committee of Experts for the Progressive Codification of International Law, of the English translation of the report dealing with Territorial Waters by the Permanent Committee on International Maritime Law, which is meeting at the Ministry for Marine.

(Signed) DA COSTA CABERAL.

QUESTIONNAIRE No. 6.

Letter of October 14th, 1926.

With reference to my letters of October 7th and 8th (S. d. N. 35), I have the honour to transmit to you herewith the reply to Questionnaire No. 6, Piracy, established by the Committee of Experts for the Progressive Codification of International Law, referred to in your letter C.L.25.1926.V, dated March 22nd last.

(Signed) DA COSTA CABERAL.

¹ This document has not been reproduced here. Copies were distributed to the members of the Committee.

REPORT BY THE PERMANENT COMMITTEE ON INTERNATIONAL MARITIME LAW (LISBON).

Questionnaire No. 6. — Piracy.

[Translation.]

The League of Nations Committee of Experts for the Progressive Codification of International Law adopted, at its session held in January 1926, Questionnaire No. 6, comprising among others the following question :

“Whether, and to what extent, it would be possible to establish by an international convention appropriate provisions to secure the suppression of piracy”.

This question was referred to a sub-committee, whose conclusions were embodied in a report signed by M. Matsuda. The Portuguese Permanent Commission has very carefully considered this report on which it presents the following comments.

The report shows a thorough knowledge of the general doctrine on the subject. There are, however, certain doubtful points to which the Portuguese Commission thinks it well to draw attention.

The report (A, I) says that piracy has as its field of operation only the high seas; the inference is that the same acts, committed in the territorial waters of a State, do not fall under international law. But history teaches that the attacks of pirates in ancient times and in the Middle Ages were almost always committed near the coasts, and that, generally, the pirates landed and attacked villages plundering, looting, and murdering and kidnapping the inhabitants. It was thus that the pirates acted on the western coasts of Europe, and later the Barbary pirates in the Mediterranean, though the latter, it must be said, preferred to attack on the open sea. It is true that nowadays piracy in either form has become rare. But from time to time piratical acts are still committed, either on the high seas or on the coasts, especially in the Far East, and there appears to be no great difference in the gravity of the offence whatever the scene of the robbery.

As regards the suppression of piracy, the report quite properly says (Article A, II(2)) that, if a vessel is only under suspicion, a warship is authorised to verify its true character. But it adds that, if the suspicion proves to have been unfounded, the captain of the suspected vessel is entitled to reparation or compensation according to circumstances. This right had perhaps better not be established. It may be assumed that the commander of a warship does not act without due consideration; though doubtless cases may occur in which his suspicions prove to be unfounded. Just as, in time of war, a belligerent searches a neutral vessel, and, that vessel's neutrality having been established, no reparation is due to it on account of the delay in the voyage, here also it would seem that the delay of the ship would be sufficiently compensated for by the sense of security afforded by the navy's vigilance.

The report goes on to deal (B) with acts which it classifies as piracy in accordance with treaties or the laws of individual States.

Among these acts the report cites (I), in the first place, privateering. It seems to admit the legality of privateering in certain circumstances. But the Declaration of Paris of 1856 expressly lays down: “Privateering is and shall remain abolished”. Accordingly, privateering is illegal, at any rate for States which signed or adhered to the Declaration. In perhaps the most-recent work on international law, *International Law for Naval Officers*, published at Annapolis in 1925, we find (page 96): “Privateering was abolished by the Declaration of Paris, 1856”. Moreover, the participation of merchantmen in operations of war is regulated by the 7th Convention of the Hague Peace Conference of 1907, which legalised the existence and action of *converted ships*. Such ships, which are placed on exactly the same footing as warships, were largely used in the late war, and therefore the theory of the legal existence of privateers is no longer admissible.

A fortiori, it seems impossible to admit, as is suggested in the report (B, 2), that a vessel which, while its own country remained neutral, had received a commission from a foreign belligerent State, might capture vessels belonging to a Power which, while an enemy of that State, was at peace with the vessel's own country. Obviously such a ship would have to be considered a pirate.

Quite possibly some of the above objections have already been raised in the Committee of Experts, as most of the points referred to do not appear in the draft Provisions. In a general way, the Portuguese Permanent Commission accepts the draft, subject to the following remarks, which it submits for the attention of the Committee of Experts.

Article 1. — Add after the words “the high sea” the words “or on the coasts”.

Article 2. — Add at the end: “and accordingly the right to continue to fly that flag”.

Article 4, paragraph 2. — The application of the second part of this paragraph: “unless these acts are inspired by purely political motives”, might give rise to awkward discussions; perhaps it would be better to omit these words.

Article 6. — Omit the words “if after examination the suspicions are proved to be unfounded, the captain of the suspected ship will be entitled to reparation or to an indemnity as the case may be”. If this omission is adopted, the words “on the contrary” in the paragraph following will have to be omitted.

QUESTIONNAIRE NO. 4. — RESPONSIBILITY OF STATES.

Letter of March 14th, 1927.

[Translation.]

The Faculty of Law at Lisbon has carefully studied M. Guerrero's report on the important problem of the responsibility of States for damage done in their territories to the person or property of foreigners. This report was communicated to the Portuguese Government by the League of Nations Committee of Experts for the Progressive Codification of International Law, and was forwarded by that Government to the Faculty of Law with a request for an opinion thereon; and the Faculty, having completed its task, desires to submit the following considerations:

In communicating its report the Committee of Experts puts the following question:— "Whether, and, if so, in what terms, it would be possible to frame an international convention whereby facts which might involve the responsibility of States could be established, and prohibiting in such cases recourse to measures of coercion until all possible means of pacific settlement have been exhausted."

The Faculty's reply to the first part of this question is in the affirmative, and — to use the terms employed in the circular letter of the Chairman of the Committee — it is of opinion that the settlement of this problem by means of an international convention is desirable and realisable.

The main difficulty of the problem, namely, the definition of the general principle of the responsibility of States, may be regarded to-day as settled, in view of the work of the German and Italian schools and the repeated refutation of the work of the so-called Austrian school.

This principle, as evolved in these recent works, may be still comparatively unknown, and it is even yet possible that erroneous principles may be cited in support of diplomatic claims; nevertheless it is the principle which is undoubtedly predominant to-day, and it may be regarded as having secured international acceptance. In point of fact, Article 34 of the Statute of the Permanent Court of International Justice lays down that "only States or Members of the League of Nations can be parties in cases before the Court", and, according to the preparatory work on the subject, this provision is based on the principle that international law is concerned only with inter-State relations; in other words, States alone and not individuals have international rights and duties.

As Lord Phillimore says, the individual is not *civis mundi*; he must always be a subject of a State, and his rights and duties are circumscribed by and relate to that State alone and are defined by its municipal law. International law deals with the mutual rights and obligations of States, and in consequence States alone are subjects at international law.

This principle having been laid down, it is not difficult to deduce the logical and juridical consequences which ensue from it; this is what M. Guerrero has done, and, generally speaking, his conclusions may be accepted.

The points that require to be modified or supplemented are only of secondary, though by no means of negligible, importance.

Thus, the third conclusion fixes responsibility in the matter of political crimes. But what is a political crime?

Theories and definitions of the subject are legion, and agreement is far from having been reached. Nevertheless, in order to remove the doubts, difficulties and disputes which, as the past history of the subject testifies, will inevitably ensue, it is essential that this definition should be given either in the Convention in question or in some other Convention dealing with political crimes, such as, for example, the Convention on Extradition.

In point of fact, a report on the subject of extradition has been submitted to the French group of the International Law Association, containing a proposal to adopt the definition of a political crime given by the Institute of International Law at its Geneva Session of 1892 (Articles 13 and 14). This definition is by no means perfect, but it is nevertheless the definition which has secured the greatest measure of support, and that is a reason in favour of its acceptance.

The sixth conclusion lays down that the duty of the State as regards legal protection must be held to have been fulfilled if it has allowed foreigners access to the national Courts and freedom to institute the necessary proceedings whenever they need to defend their rights.

In our view, this provision is inadequate, and its lack of precision might give rise to abuses. We think that the right of access to the national Courts and the right to appear therein, as plaintiff or defendant, should be granted to foreigners on the same terms as to nationals, without restrictions and including the benefit of judicial assistance, which, if embodied in a convention, would ensure reciprocity for all the signatory Powers.

A provision of this kind should be specially framed to prevent the possibility of some State subsequently, though not depriving foreigners of the right of access to the courts of First Instance or of Appeal, rendering the exercise of this right difficult, or so circumscribing it, as to render it valueless.

Similarly, as regards the judicial protection which a State owes to foreigners, and as a consequence of the clause we have just examined, the sixth conclusion lays down that "a judicial decision, whatever it may be, and even if vitiated by error or injustice, does not involve the international responsibility of the State".

Under some systems of law, however, such as the Portuguese (Constitution, Article 3, No. 34), the State is bound to compensate victims of judicial errors in criminal cases, whether they are nationals or foreigners.

We think it only right that a clause of this kind should be included in an international convention on the subject, particularly as foreigners who are being tried for criminal offences have, as a rule, fewer facilities for organising and ensuring their defence than nationals of the country in question.

Lastly, the eleventh conclusion lays down that "any dispute which may arise between two States regarding damage suffered by foreigners within the territory of one of the States must be submitted to an international commission of enquiry appointed to examine the facts", and that "if the report of the commissioners adopted by a majority vote does not result in the incident being closed, the parties concerned must submit the dispute to decision by arbitration or some other means of pacific settlement".

We agree as regards the first part; but, as regards the second, we would prefer that the dispute should be submitted to the Permanent Court of International Justice at The Hague.

Since this Court is in existence, every occasion should be taken to extend its powers, and thereby increase its authority and prestige. Moreover, if we accord to it exclusive jurisdiction in these questions, we shall more easily secure that uniformity in legal practice which is so highly desirable.

Such are the observations suggested to the Faculty of Law at Lisbon by M. Guerrero's admirable report on a very difficult problem, and it has the honour to submit them for consideration to the Government.

(Certified true copy.)

(Signed) Al. Fr. d'ANDRADE,

Attaché, Secretary General of the Portuguese
League of Nations Office.

March 14th, 1927.

Roumania.

Letter of November 20th, 1926.

QUESTIONNAIRE NO. 1.— NATIONALITY.

[Translation.]

Roumania is prepared to sign any convention on nationality: (1) because the political side of the question has been settled by the Treaties of Peace concluded after the Great War; (2) because our population is continually increasing; and (3) because, as Roumania possesses sufficient resources to nourish her whole population, the problem of emigration gives no ground for anxiety.

The main point of interest at the present time is the case of foreigners living in Roumania whom we cannot transform into Roumanians until we have assimilated the new Roumanian population which we received after the war.

Faithful to the system of *jus sanguinis*, it is not in the interests of Roumanians to make any concessions to the system of "the place of birth" other than those imposed by force of circumstances; we do not, therefore, think we can accept either Article 3 in its entirety or Article 4 of M. Rundstein's preliminary draft.

The Roumanian Law of February 23rd, 1924, on Nationality attributes Roumanian nationality to foundlings—rightly so, we think; for the solution is a natural one admitted all over the world, and there is a very strong presumption that such children have been born of Roumanian parents, since the vast majority of the country's inhabitants are Roumanians.

Children born of parents without any nationality also continue to be foreigners, and the Royal Government could not accept them as Roumanians by reason of their place of birth in view of the fact that their parents ought themselves to have taken the necessary steps to acquire either Roumanian citizenship or a foreign nationality. There is no connection between such children and foundlings. In Article 3, therefore, we feel that we can only accept the part in which it is stated that "a child born of parents unknown... acquires the nationality of the State in which it is found"—a principle which is also sanctioned by Roumanian law.

Article 4 of the preliminary draft is merely a case of the application of the system of "place of birth" (*jus soli*), and as such it is contrary to the principles of our legislation, which is based on the *jus sanguinis*. The Royal Government is therefore unable to agree to this article.

We have no objection to the provisions of Article 5, which provide a fairly satisfactory solution for the case of an individual possessing two or more nationalities.

The principle laid down in the first part of Article 6 is absolutely sound. We also hold that the second part of Article 6 is acceptable, because we think that a State which grants naturalisation to an individual has no need to ascertain whether the foreigner's own laws allow him to change his nationality or not.

Article 7 of the above-mentioned Roumanian law has adopted a contrary solution, since it includes, among the conditions imposed on the foreigner, a proviso that he must have lost or loses his original nationality. This condition gives rise to a whole host of difficulties and can only be justified on the ground of an urgent desire to avoid a conflict of nationalities.

The granting of nationality by way of naturalisation is an act of sovereignty which need not in the least be influenced by the provisions of a foreign law; that is a point which is almost universally admitted.

Article 7 makes provision for a case which may arise under the terms of the Roumanian law (Article 7, paragraph 6), which lays down that a foreigner may only become a Roumanian if he has lost his former nationality or loses it immediately he becomes Roumanian by naturalisation. It is possible, however, that, after obtaining his country's permission to change his nationality, the foreigner might, for some reason or other, be unable to acquire Roumanian nationality. He would then be left without any nationality at all.

Article 7 of the preliminary draft puts an end to this situation: "A release from allegiance (permit of expatriation) shall produce loss of the original nationality only at a moment when naturalisation is actually obtained in one of the contracting States. Such release shall become null and void if the naturalisation is not actually granted within a period to be determined".

Articles 8, 9 and 10 refer to the situation of a woman who marries a foreigner, and Article 9 lays down the principle, which is admitted in most legislations: "A married woman loses her original nationality in virtue of marriage only if at the moment of marriage she is regarded by the law of the State to which her husband belongs as having acquired the latter's nationality". Paragraph 2 of this article rightly extends the principle to cases in which "change in the husband's nationality occurs during the marriage": "the wife loses her husband's nationality only if the law of her husband's new State regards her as having acquired the latter's nationality".

This, of course, is logical, but the formula does not dispose of every difficulty, since there are laws similar to ours, which allow a Roumanian woman who has married a foreigner to retain her Roumanian nationality and the wife of a foreigner who becomes a naturalised Roumanian to retain her original nationality.

As we are discussing the possibility of a convention, why should not the contracting States undertake always to accord to the wife the nationality of the husband, whether it be his original nationality on marriage or the nationality he acquires by naturalisation? Why, again, should not the wife be allowed to retain her nationality both in the case of marriage with a foreigner or the naturalisation of the husband after marriage? It is in the interest of both husband and wife that they should be of the same nationality as long as they are married.

The solution proposed in Article 9 may cause some difficulty. Take, for instance, the case of a Roumanian woman who marries a Frenchman and thus acquires French nationality, both according to our law and French law. The husband becomes a naturalised British subject after marriage, whereas the wife does not desire or is unable to obtain her husband's nationality, so that she continues to be French. Why, in this case, should she not revert to her Roumanian nationality? She only became French in order to possess the same nationality as her husband. That she should continue to be French after her husband has become British is quite illogical; the situation would be merely the fortuitous outcome of legal rules.

Article 8 deals with the position of a woman who recovers her nationality after the dissolution of her marriage; it lays down that in this case the woman shall *ipso facto* lose the nationality she has acquired by marriage. This is a perfectly just solution, against which no objection can be raised.

Article 12 lays down that an adopted child does not acquire the nationality of the person adopting it but retains its original nationality.

This solution is unanimously accepted. Even should the principles of law incline us to admit that an adopted child acquires the nationality of the person who adopts it, such a solution should be rejected in a convention, because any decision to the contrary would be making adoption a sort of clandestine naturalisation.

Article 11 deals with the situation of illegitimate children who may subsequently be recognised and rendered legitimate by their parents. It lays down that these children shall retain their nationality of origin unless the law of their parent's country accords them their parents' nationality as a result of their recognition or legitimation.

Illegitimate children are always certain to possess some nationality, because either they are foundlings, in which case they acquire the nationality of the place in which they were born, or they are recognised by their mother, thus acquiring the latter's nationality, so that their recognition by the father or their legitimation should result in a change of nationality.

In short, except for the second part of Article 3 and the whole of Article 4, which are only two applied instances of the application of the system of the place of birth which Roumania, being favourable to the strict system of *jus sanguinis* cannot admit, all the other solutions, which are dictated by the principles of law and practical utility, might be accepted by the Roumanian Government.

QUESTIONNAIRE NO. 2. — TERRITORIAL WATERS.

The question of the territorial sea is a complex one ; up to the present, therefore, it has not been possible to establish uniform principles recognised and applied by all States. The need for a portion of the sea along the coast of maritime States over which such States may exercise certain rights is admitted throughout the world.

It may be said that it is the very right of self-preservation which forces States to appropriate this portion of the sea, known as the "territorial sea".

What is the nature of this right ? In our opinion, it is the State's right of sovereignty which extends over this part of the sea. We may therefore admit the beginning of Article 1 of the modified draft Convention, which is worded as follows : "The State possesses sovereign rights over the zone which washes its coast". We think, however, that the second part of the paragraph might be modified, without altering the idea and meaning of the phrase, by inserting the following in place of the present text : "except in cases in which definitely established provisions or customs exist to the contrary".

Thus a general principle would be laid down which would not be limited to the cases enumerated in Article 1 of the draft.

The second paragraph, as it is a consequence of recognising the State's right of sovereignty over its territorial sea, is not open to discussion.

But how far does this territorial sea extend ? OPPENHEIM, in the *Year-Book of the Institute of International Law* for 1913, pages 404 *et seq.*, says that the right of sovereignty which a State is recognised to possess over the territorial sea engenders not only rights but also obligations in time of peace and in time of war.

This means that the right of a State over the sea should obviously extend as far as that State can exercise its authority in the event of that right being infringed ; it has therefore been argued that the limit should coincide with a gun's range. Owing to modern inventions, however, it is recognised that such an area would now be too extensive ; some therefore, have limited it to three nautical miles, as in the modified draft ; others to six miles, as in the primitive draft.

Another question which arises is whether one single zone should be established or several. If States are to adopt uniform provisions, it is to be hoped that the choice will fall on a single zone — all contracting States exercising absolutely similar rights within their own zone. In the draft Convention, as in most treaties, this zone is fixed at three nautical miles, and we think that this ought to be accepted.

Outside this zone the draft provides for another, in which States may exercise jurisdictional and administrative rights, on the ground either of "custom or vital necessity". These expressions are somewhat vague. Almost any right may be regarded as an administrative right or as being of vital necessity. Where, then, are such rights to end ?

Had the proposal for creating an International Waters Office been maintained, the latter might have supervised the application of these rights ; but if the proposal is dropped — as decided in the modified draft Convention — States will be left practically free to multiply their rights and privileges at will.

The International Waters Office would have been very useful, because it might have been instrumental in unifying the rights of States which derive from custom.

As regards bays, Article 4 contains admitted provisions on this subject ; no objections, therefore, can be raised on this point. It may be observed, however, that, according to established rules — and according to Mr. Wickersham also — the line from which the territorial sea begins to be measured is that between the two coasts nearest to the opening from the sea where the distance is twelve nautical miles, and not ten miles, as in the draft.

Article 5, which defines the territorial sea around islands and archipelagos, may be accepted without any observation. As regards straits, the draft Convention lays down that : "straits subject to special conditions shall continue to be subject to these provisions ; consequently, the Dardanelles and the Bosphorus, which interest us particularly, will still be governed by the Straits Convention which forms an Annex to the Treaty of Lausanne".

Other straits are divided into two classes according as to whether their shores belong to only one State or to several. In the first case, the sea is held to be entirely territorial water ; in the second, each State has sovereignty over its side of the sea, which is regarded as a territorial sea up to the median line. These provisions are admitted if the strait at its two extremities is not broader than ten nautical miles, even though, at certain points within the strait, its breadth be greater than the above.

The right of passage through this territorial sea is recognised in the case of vessels, persons and goods.

Roumania is obliged, under existing treaties, to respect this principle. For instance, in the Treaty concluded with the Allied and Associated Powers on December 9th, 1919, she undertakes to accord these Powers the right of free communication and transit through her territorial waters. This is also the case under the Barcelona Convention on Communications and Transit, which Roumania has ratified.

In such cases, naturally, existing rights, such as that of the coast-wise trade, which is usually reserved for nationals, should be respected.

We think that at the end of the second paragraph of Article 7 the following words might be added : "existing rules being duly taken into account".

Right of passage includes the right of sojourn in so far as the latter may be necessary for navigation.

Submarines can only be accorded this right if they navigate on the surface, for otherwise the security of the State might be endangered. Article 9 refers to the jurisdiction to which vessels navigating the territorial sea shall be subject.

If the sea in question is simply a continuation of the territory of the State, as some publicists maintain, persons and things therein should be subject to the jurisdiction of the courts of that State, particularly as regards criminal jurisdiction.

The distinguished Rapporteur for the draft Convention, however, regards this juridical conception — which Oppenheim, by the way, admits — as “monstrous”, in view of its consequences (see report, page 21) ¹.

In civil matters it would certainly be very difficult, in practice, to subject vessels passing through territorial waters to civil jurisdiction, so that the rule laid down in the first paragraph of Article 9, under which such vessels are exempted from civil jurisdiction, is admissible.

As regards offences and crimes, a distinction is usually drawn between offences committed by or against the crew or persons who happen to be aboard and which do not affect public order, and offences against persons who are not members of the crew or who are passengers. The Rapporteur instances the case in which a pilot might be murdered or paid with counterfeit money. In the former case such offences are not subject to the jurisdiction of the local courts; but in the latter case they are subject to such jurisdiction whenever, of course, the acts committed are regarded as offences under the law of the State and the courts of that State are held to be competent.

The same principles are applied in criminal proceedings in general (although they are not everywhere admitted in the case of merchant vessels in foreign ports), though sometimes the courts of the State are competent to deal both with offences which disturb public order and with cases in which the captain of a vessel has requested the local authorities to intervene.

Contrary to the rule which holds good in the case of vessels passing through territorial waters, merchant vessels when in port are subject to civil jurisdiction, for ports form an integral part of the territory of the State. This point is beyond all dispute.

This is the principle which the draft adopts in Articles 9 and 13.

The right of warships to pass freely through the territorial sea is recognised; warships are, however, subject to certain special restrictions.

Warships are regarded as forming an integral part of the sovereign State whose flag they fly; that, however, does not mean that they may act in any way they please in the territorial waters of another State. In particular, they may not commit any acts which could detract from the public security and order of a State. They must also observe the laws and regulations regarding navigation, anchorage, health, etc. (see Article 12 of the draft).

Naturally this list is in no way limitative.

If the vessel does not comply with these provisions or respect the safety of the State, the State must be allowed the right to force the vessel into compliance; consequently the draft is right in defining the methods by which the local authorities may issue a semi-official warning in courteous terms, and, if this is without effect, request, and if necessary compel, the vessel to put to sea.

But in order to avoid incidents of so serious a nature, the draft lays down that such measures, except in urgent cases, can only be taken upon the instructions of the Central Government.

Concurrently with its right of dominion or sovereignty over the territorial sea, a riparian State also possesses the right to legislate over or administer this part of the sea, subject, of course, to the restrictions laid down in this Convention.

Consequently, a State may take the necessary steps to ensure respect for its laws and administrative regulations, and may continue, in the open sea, the pursuit of offending vessels which it has commenced in its territorial waters, but only up to the limit of the territorial waters of another State. Beyond this it cannot continue pursuit, because that would involve a violation of the territorial waters of the other State. The first State may not therefore capture the offending vessel in these foreign waters.

In the case of capture on the high seas, such capture shall be notified to the State to which the vessel belongs.

In conventions between States regarding transit and navigation on international waterways, it has become an admitted principle to treat all States on an equal footing and subject them to equal dues whenever these dues are levied solely for the purpose of meeting expenditure for supervision and administration.

The draft provides for the adoption of the same principles in the territorial sea, with the exception of vessels which have been forced to enter it as the result of *vis major*. As a further consequence of the right of sovereignty of a State over its territorial sea, the State and its nationals are accorded priority rights over the soil, subsoil and products of the sea.

¹ See 47 of the present document.

In view of the fact that the fishery problem is a very complicated one, we must devote a separate chapter to this question.

The provisions of this draft Convention, which has been drawn up with such competence and skill by the distinguished Rapporteur, could be adopted by the Royal Government subject to the observations set out above.

QUESTIONNAIRE No. 3. — DIPLOMATIC PRIVILEGES AND IMMUNITIES.

Towards the diplomatic and consular representatives at Bucarest the Royal Government has always displayed an "international courtesy" highly appreciated by all.

Roumania has almost invariably accorded these diplomatic privileges and immunities not only to the heads of diplomatic missions but also to other members of staff and their families.

It has carried "courtesy" so far as to arrange that, day and night, a constable shall be stationed before each legation and shall be at the service of the legation. It has granted legations first-class travelling permits on all the railways; has sometimes placed saloon wagons and yachts at their disposal for travel and pleasure, and has caused its factories to manufacture articles of a highly superior quality for foreign diplomatic agents.

The Roumanian Government therefore can hardly be suspected of any desire to abolish existing customs and traditions.

It feels, however, that certain principles — especially that of judicial immunity — which are still scrupulously observed at the present time, ought to be modified to a very considerable extent.

Law reviews and summaries show that in most European countries, particularly since the war, there has been a tendency on the part of certain diplomats to take refuge behind diplomatic immunities in order to avoid civil and commercial obligations.

Owing to this immunity, tradesmen, landlords and banks have experienced vast difficulty in asserting their rights, which in several cases have been absolutely incontestable.

Innumerable are the disputes which have arisen. These disputes have placed administrative and judicial authorities in a most embarrassing position, and the Ministries of Foreign Affairs in many countries have had to struggle against serious difficulties.

This unenviable situation of the Government in due time affects the position of the diplomatic and consular corps itself — the prestige and credit of the latter are lowered. As a result of certain notorious cases, diplomats have experienced difficulty in obtaining apartments, the landlords fearing that in case of dispute they may be confronted in their own courts with a plea of incompetence. In several instances diplomats have been obliged to offer bankers' guarantees before they could obtain a house or purchase goods on credit.

For the above reasons, we are inclined to think that some modifications are required in the principle of immunity from civil and commercial jurisdiction which is granted not only to heads of missions but to other diplomats as well, and in the principle that heads of missions are to be accorded immunity in respect of acts other than official acts.

The renunciation of these immunities by a diplomat *expressis verbis* in a contract of private law might also be taken into consideration by an international conference convened to settle these questions. The diplomat would be solely responsible to his Government for the legal effects of this renunciation should he not have obtained his Government's authorisation beforehand. The same would apply if the diplomat came forward spontaneously before the judicial authorities and definitely expressed his desire to submit to local jurisdiction.

* * *

As regards the other questions considered, the Royal Government agrees to most of the Rapporteur's suggestions.

In particular, and in agreement with the Institute and doctrine, it admits that a person on the staff of a foreign legation who exercises a profession in the country — especially a person engaged in business — should not be accorded immunity in respect of acts performed by him in the course of business.

* * *

With regard to the persons who should be entitled to diplomatic prerogatives, the Royal Government is of opinion that these privileges ought to be confined to heads of missions, members of their families actually living with them, and their official staff.

This formula, as the Rapporteur himself observes, would possess the advantage of being so definite as to exclude all further controversy.

* * *

It would also be desirable to consider the question of the service of acts — both in respect of cases in court and other matters — issued by ministerial authorities or local magistrates, such as summonses, subpœnas, etc.

These acts have sometimes been classified as acts the very issue of which can on no account be admitted; but it is quite surely conceivable that such documents might be served through the Ministry for Foreign Affairs. This is the only possible method of communicating these acts to the person concerned with any rapidity, seeing that no officer of the law can enter legation premises or the private dwelling of a diplomat, and that service through the diplomat's own Ministry for Foreign Affairs would be too expensive and lengthy a procedure. Another advantage of this system would be that the Government of the country would be informed of the dispute which had arisen between the diplomat and the national, so that it might sometimes offer to intervene and prevent the affair from assuming large proportions.

* * *

As regards the question of executing judgments delivered by the national courts against a member of a mission, it is clear that executory measures could not be taken inside the legation or the private residence of the diplomat. We might conceive of execution on the agent's private property situated elsewhere than in the above premises (railway stations, warehouses, banks, etc.), or by means of an order for the enforcement of a foreign judgment granted by the courts of the diplomat's own country. This question, which is by no means a simple one, should merit the particular attention of the international conference.

QUESTIONNAIRE No. 4. — RESPONSIBILITY OF STATES.

In general, the Royal Government agrees with the Rapporteur's conclusions. It will, however, propose certain amendments when the suggested international conference takes place.

With regard to illegal action on the part of officials, the Royal Government ventures to draw attention to the wide divergency which exists between the Latin and Anglo-Saxon systems.

It is also of opinion that equality of foreigners and nationals in the eyes of the law should constitute an international dogma. It is also of opinion that the *cautio judicatum solvi* should be abolished.

QUESTIONNAIRE No. 5. — PROCEDURE OF INTERNATIONAL CONFERENCES.

In principle, the Royal Government agrees with the Rapporteur's conclusions. Since, however, the character of international conferences may vary to an infinite degree as regards the body which convenes them, the reasons for which they are convened, the persons who take part therein and the time and place of their meeting, the only acceptable formulæ would be those which could be adapted to all circumstances.

Far from facilitating the work of international gatherings, too rigid a body of rules would engender numerous difficulties and, in particular, disputes regarding the application of the codified provisions.

The Royal Government therefore reserves the right to make numerous suggestions on this subject when the proposed international conference takes place.

QUESTIONNAIRE No. 6. — PIRACY.

1. *Present-day importance of the problem of piracy. Its universally penal nature.*
2. *Treatment of the problem of piracy with a view to the codification of international law.*

1. Is piracy an important problem to-day? That is the essential question which must be answered before we proceed to consider the draft prepared by the Sub-Committee for the Progressive Codification of International Law.

If we simply adopt the traditional conception as accepted in most works and monographs on the subject, we cannot help asking ourselves whether the Committee of Experts ought not rather to have dealt with other problems which are of greater importance to the world to-day but do not appear in the list of subjects of international law which the Committee drew up with a view to their settlement by international agreement.

If, however, we take a broader view of the question, we must admit that, in view of future developments as regards the character of the measures of suppression, the Committee of Experts has shown great foresight in including piracy in this list.

*Absolute piracy (piracy jure gentium)*¹ is regarded to-day as an offence of a special character, because it is *punishable wherever encountered*. We already see here in embryo the principle — which, in future social relations will become the practice — of penalising throughout the world violations of laws which are common to every country.

2. How ought we to treat the problem of piracy to-day in the light of the possibility of an international agreement for its suppression ?

Ought we simply to give conventional form to international usage in the matter, omitting any reference to theoretical controversies ? Or ought we, within reasonable limits, to combine the principles of penal and international law and so prepare a draft showing the specific characteristics of piracy and, at the same time, by the strict application of universally accepted principles, settling all controversies hitherto regarded as insoluble.

If we can evolve, with reference to the suppression of piracy, a new combination of the principles of penal law with those of international law, we shall be able to bring to light hitherto-unsuspected aspects of this question which render an international convention indispensable.

In order, however, to avoid departing from the subject of the present report — which relates to the draft provisions for the suppression of piracy, as drawn up by M. MATSUDA and M. WANG CHUNG-HUI and modified by the Committee of Experts — we shall reveal these new aspects of the question by analysing each of the provisions of the draft in turn and suggesting texts which will bring out the specific characteristic of this offence.

Article 1.

3. Constituent elements of the offence.

3. Article 1 of the draft defines piracy by stating that it occurs only on the high seas and consists in the commission for private ends of depredations upon property or acts of violence against persons.

It is not involved in the notion of piracy that the above-mentioned acts should be committed for the purpose of gain, but acts committed with a purely political object will not be regarded as constituting piracy.

Thus the elements constituting the offence relate to :

(a) *The nature of the material acts* (it is essential that they should be depredations or acts of violence) ;

(b) *The place where the acts of violence or depredations are committed* (this place must be the high seas) ;

(c) *The absence of any State authorisation for the commission of the acts of violence or depredations* (the guilty party must have committed them for private ends) ;

(d) *The motive* (the draft does not regard the motive as a constituent element of the offence, but it states that, if the motive was a purely political one, all the constituent elements of the offence will not be present, *i.e.*, it will not be a case of piracy).

FIRST CONSTITUENT ELEMENT OF THE OFFENCE.

4. *Acts of violence. Physical and moral violence.* 5. *Exceptional cases where piracy is conceivable ven without violence.* 6. *Wrecking.*

4. As regards the nature of the material acts, we agree with the authors of the draft that piracy usually presupposes the commission of acts of violence or depredations.

The expression "violence" applies not only to physical but also to moral violence, *i.e.*, intimidation by threats of murder, physical injury, etc.

Nevertheless, in order to prevent any possible misunderstanding, it would be desirable to state definitely in future reports that the term "violence" includes both physical and moral violence.

¹ In the present report the established classification and terminology are retained, *i.e.*, *absolute piracy* or *piracy jure gentium*, and *relative piracy* (piracy under the terms of a convention or by analogy). This classification is doubtless open to many objections ; in our own view, acts of piracy might, like all other infringements of law, be divided into three main categories : *universal piracy*, *inter-state piracy* and *piracy of a political character*. We decided, however, to omit consideration of this question as lying outside the scope of the report.

We also think, as M. Matsuda points out in his admirable report, that a *wrecker* cannot be regarded as a pirate, because he does not employ violence.

5. There are, however, certain acts which, in our opinion, are clearly acts of piracy despite the absence of violence.

Thus, on the high seas, in places where there are sandbanks or rocks, a band of malefactors might send false signals or information by wireless to mislead ships which are in the neighbourhood and so wreck them in order to plunder the wreck; such an act should obviously be treated as piracy and severely punished accordingly.

In such cases, the guilty parties may not have committed direct acts of violence against persons or depredations against property in order to despoil their victims; they would only have had recourse to fraud. Nevertheless, this act, by its very nature, is undoubtedly closely akin to violence and in any case cannot be placed in the same category as the theft of articles from wrecks.

Property found in the possession of pirates must have fallen into their hands as the result of a positive act having as its object the dispossession of the lawful owner.

Such an act may consist either in physical or in moral violence, or else in *concealed violence*, characterised by the use of fraudulent devices to bring the owners of the property into a situation where they will encounter the violence of the natural elements or into any other circumstances whereby they are obliged to abandon their property.

On the other hand, in the case of the mere stealing of articles from wrecks, the property stolen has not left the possession of its owner through a positive act committed by the person who appropriates it. A wreck or other accidental occurrence is not the result of an act of man but of certain circumstances quite independent of the will of the person who appropriates the wrecked property.

In order to avoid any controversy and to enable acts of concealed violence to be severely punished, we think a text should be drafted to the effect that the act of using fraudulent devices to cause ships to be wrecked with the object of despoiling the victims shall be regarded as an act of piracy.

6. As we have been led to consider the question of the plundering of wrecks — which, as we have seen, can in no case be classed as piracy — we think that the Committee of Experts might also have to consider the preparation of a draft convention for the suppression of the *offence of the appropriation of articles from wrecks*.

In the present position of criminal legislation, the conditions governing the punishment of this offence vary in every country; they can, however, be brought under two main categories:

(a) *Legislation penalising the act of appropriating an article lost or abandoned on account of vis major (flood, fire, wreck, etc.).*

(b) *Legislation inflicting punishment only on persons who conceal articles found when the owner or authorities, knowing such persons, have asked them to return the articles.*

The texts of the laws punishing the theft of articles from wrecks generally come under one or the other of these main classes of legislation, and we therefore think that an international convention should be concluded laying down what *factors* should be commonly recognised as constituting an offence of this kind.

Such a convention might also provide that persons who have found articles from a wreck are obliged, on pain of a specified penalty, to inform the authorities, who will take the necessary steps to preserve such articles or, if they are perishable, to sell them.

If after a certain period the owner of a wreck did not come forward and claim it or the proceeds of its sale, the wreck or the corresponding sum of money would be given to the person who found it, while the State would be allowed the right *in this case only* to claim a share — to be fixed by itself — for its Treasury. If, however, the owner does come forward, the only amount claimable by the State would be a specified sum covering the cost of transporting, preserving or selling the wreck.

SECOND CONSTITUENT ELEMENT OF THE OFFENCE.

7. *Place where the acts of violence are committed; the high seas.* 8. *Refutation of theories attributing an exclusively maritime character to piracy.* 9. *The legal notion of piracy is bound up with the place where the acts of violence are committed.* 10. *Places not subject to the exclusive sovereignty of any State (the high seas, unowned territory and, in the future, the upper regions of the air over the territory of the different countries).*

7. The second element of piracy as laid down in Article 1 of the draft relates to the scene of the acts of violence; according to the draft, a piracy can only be committed on the *high seas*.

On this point we entirely disagree with the authors of the draft. In our opinion, an international agreement on piracy will never be of any real use unless it covers the whole of the problem and deals with all the complexities it involves. We ought not to limit ourselves to the traditional conception of piracy (as a maritime offence); we should examine the reasons why piracy must, from the legal standpoint, be treated as an offence *sui generis*.

8. As criminal legislation stands at present, the punishment of offences of this kind is based on the principles of territoriality and personality. The criminal law applies to all persons who have committed offences in the territory to which its jurisdiction applies (principle of territoriality) and in certain exceptional cases to subjects who have committed offences abroad (principle of personality).

At the same time there is, it is true, a tendency towards the internationalisation of punishment; the offender suffers the penalties prescribed by the laws of the State which apprehends him (irrespective of his nationality or of the place where he committed the offence). This tendency may be observed in the proposed internationalisation of penalties in connection with the traffic in women, the drug traffic and the traffic in obscene publications. Nevertheless, there is to-day only one offence which is universally punishable¹, *i.e.*, *absolute piracy*, or piracy under international law.

This fact that, unlike other offences, piracy is punishable under an international system makes it an offence *sui generis* and shows how extremely important is the work of international codification which has been undertaken in this matter.

9. It is thus quite untrue that the special legal notion of piracy is due to its maritime character.

This notion is due to the fact that it is an offence committed outside the exclusive jurisdiction of any State.

There is no need to emphasise the elementary principle that the application of territorial criminal laws is governed by the notion of sovereignty. The criminal laws of a State are applicable wherever that State's sovereignty extends; consequently no sovereign State can exercise its criminal powers in a territory subject to another sovereign State.

From the territorial point of view, the basic principle in this matter is the *reciprocal self-limitation* of criminal law.

If the limitation of criminal law is contingent upon sovereignty, self-limitation obviously cannot be applied in places which do not come under the exclusive sovereignty of any State.

In such places no State can assume the right to limit or exclude the application of the criminal laws of other States, and *every State* has a *theoretical right* of suppression if its own criminal laws expressly admit an extension of application.

This theoretical right becomes *operative* if the guilty party has committed the offence in a place over which no State has sovereignty and is apprehended by the commander of a warship or military aircraft or any other qualified representative of a State.

The fact of the apprehension of the criminal transforms the theoretical right into an actual right and in principle precludes any other State from claiming thereafter to exercise its punitive rights over the criminal.

It is by reason of these principles that a universal right of suppression exists in regard to piracy.

This fact of the universally criminal nature of the offence is its specific characteristic, and therefore *there is no reason why piracy should not be made to cover all acts of violence when the other factors to which reference will be made are present and when the act is committed in a place which is not subject to the exclusive sovereignty of any State.*

The fact that hitherto certain acts of violence which are universally criminal and have been classed as piracy have almost always been committed on the high seas *does not mean* that piracy is primarily maritime in character.

10. Besides the high seas, there are also *unowned territories*, and though, of course, they are always becoming rarer, they still exist; and until some State acquires exclusive sovereignty over them, every State, in virtue of the principles described above, will naturally have a theoretical right of punitive jurisdiction over them.

Supposing, for example, that a band of brigands in some unowned territory attacks and plunders a convoy or caravan and escapes capture by its victims, what is the difference from the legal point of view between piracy on the high seas and pillage in unowned territory?

Although certain publicists maintain that in such cases the right of suppression may only be exercised by the State to which the victim belongs, or by the States bordering on the unowned territory, this theory is undeniably quite arbitrary and is not founded on any of the principles now underlying the application of criminal law.

¹ In the strict sense of the term (mutual right of search).

If the act was committed in unowned territory, it is universally punishable *in virtue of the same principles* as those which make piracy on the high seas universally punishable. It would therefore be most desirable to substitute for the term "high sea" the words "place not subject to the sovereignty of any State".

By adopting this suggestion, which is based on the actual legal notion and specific characteristic of piracy (*i.e.*, the fact that it is universally punishable), the Committee of Experts might succeed in drawing up a draft convention which would cover a wide field and would be of great importance in the future as regards *acts of piracy which may be committed in the upper regions of the air*.

Already the question of the suppression of offences committed in the upper regions of the air over different territories is giving rise to much controversy, but we must recognise that there are *two main conceptions* of this subject and that they are in conflict with each other. They are the conception of the absolute and exclusive sovereignty of the subjacent State, based on the Paris International Convention of October 13th, 1919, and the conception of the absolute freedom of the air. We must also recognise that these two conflicting conceptions may lead to an intermediate system, and indeed expert opinion generally is tending in this direction.

Such a system would mean neither absolute sovereignty nor absolute freedom.

As regards offences committed in the air, it may be held (and indeed certain publicists take this view) that, since these offences, by their very nature, in no way interfere with the interests or public order of the subjacent State, since they do not affect its security or harm its nationals, the subjacent State *has no interest* in claiming an exclusive right of suppression.

Moreover, even though the theory of the sovereignty of the subjacent State seems for the moment to have been generally adopted in recent conventions and laws on this subject, there can be no denying the weight of the arguments in favour of the theory that the air (and particularly the upper regions) is not amenable to sovereignty. It is quite possible that, as the theories on this subject¹ are at present tending strongly towards the recognition of the sole right of a subjacent State to take measures of self-preservation², the outcome may be at the least an intermediate system by which States would agree to regard certain of the higher air zones above their territory *as free and exempt from all sovereignty*.

Acts of a piratical nature committed in these zones could, of course, be regarded as absolute piracy.

Further, this theory cannot be regarded as likely to upset the present position or the existing rules for the suppression of piracy.

Whenever an act of piracy is perpetrated in a place (at sea, on land or in the air) which is subject to *the sovereignty of some State*, it will be punished in virtue of the principles of territoriality and personality, and these cases of piracy will not come within the scope of the international convention.

On the other hand, whenever piracy is committed on the high seas or in unowned territory, or in the upper regions of the air, assuming these to be universally regarded as free and not amenable to sovereignty, I cannot see any serious objection to making such acts universally punishable.

The adoption of the term "*place not subject to the sovereignty of any State*" would also have the advantage of marking still more clearly the difference between absolute piracy and certain cases of piracy by analogy, as, for example, acts of piracy committed in territorial waters or on rivers or, again, piratical raids from the sea with the object of plundering territory belonging to a specific State. According to the principles at present covering the application of criminal law, cases such as these could not possibly be regarded as universally punishable.

Then again, if the notion of piracy is combined with that of a place lying outside the sovereignty of any State, the controversy regarding *robbery with violence on board ships on the high seas* is automatically settled.

If a ship on the high seas is regarded as a floating part of the territory of the State whose flag it flies, such acts obviously cannot be regarded as committed in a place not coming under any sovereignty but as committed on the territory of a specific State, and they will be suppressed in virtue of the recognised principles of territoriality. Accordingly such cases will not be recognised as piracy under the law of nations, and indeed this view is accepted by the majority of publicists.

On the other hand, if the guilty parties succeed in seizing the vessel and overpowering the crew, the vessel will *no longer be subject to any authority* and will therefore be regarded as unowned territory, and accordingly it would be unanimously recognised that the principles of universal penalty would apply.

¹ Cf. FAUCHILLE : *Traité de droit international*, Vol. I, § II, pages 588-589. Cf. CHRÉTIEN : *Principes de droit international public*, N° 119 ; RIVIER : *Principes du droit des gens*, Vol. I, pages 140-141.

² Cf. resolutions of the Institute of International Law, sessions held at Ghent (1906) and Madrid (1911).

The case is the same when the perpetrators of the crime, having committed robbery with violence on board a ship, succeed in escaping. Since they are no longer under the exclusive authority of the master of the ship attacked, they will clearly be liable to punishment by any other State.

THIRD CONSTITUENT ELEMENT OF THE OFFENCE.

11. *Absence of any State authorisation for the commission of acts of violence. Importance, particularly as regards the future, of drawing a distinction between privateering and piracy.*
12. *Possible revival of privateering as a result of the reduction of naval armaments.* 13. *Situations which may arise when privateering degenerates into piracy. The draft does not make any provision for these contingencies.*

11. The third element of the offence relates to the absence of any State authorisation for the perpetration of acts of violence.

The authors of the draft were very wise to retain the clause distinguishing between *privateering* and *piracy*. This difference ought to be maintained, since the abolition of privateering is not a universal rule of international law.

12. The retention of this clause may become particularly important in the future, as privateering may be revived as a result of the reduction of naval armaments.

If a war breaks out in the future, States which have reduced their armaments will resort to every possible means of increasing their fighting power, and at sea they will resort to the use of volunteer naval forces and privateering.

Difficulties arise, however, as regards volunteer naval forces, owing to the possibility of a shortage of crews and equipment for volunteer vessels, and it is clear that the more practical course will be to fall back on private initiative, *i.e.*, privateering. The State will be able at little expense to transform its merchant ships, which formerly represented its economic strength in time of peace, into a destructive belligerent force.

Thus, if we fail to foresee all the consequences of the *denunciation of a war of aggression as an international crime*; if we continue to reduce armaments without at the same time perfecting the present system of executing international police measures and measures of constraint and punishment directed against aggressor States; if war is unhappily still destined to remain a normal means of settling international disputes, then privateering will certainly acquire a new lease of life.

Piracy, again, though it may only be of secondary importance at present, may become widespread in the future in connection with privateering.

13. When in Article 1 it specified that acts of violence must have been committed "for private ends", the Committee of Experts clearly had in mind the common case of the degeneration of privateering into piracy, *i.e.*, attack without letters of marque.

Moreover, in a draft with general provisions such as those we are now analysing, it was not possible to go further.

Nevertheless, the problem of the development of privateering into piracy cannot be treated from this point of view alone.

There are a number of different situations in which privateering becomes piracy. This is the case when the attacker :

- (a) *Has no letters of marque ;*
- (b) *Has letters of marque, which, however, do not fulfil the conditions necessary for validity ;*
- (c) *Has a number of letters of marque.*

The Committee of Experts should not confine its attention to the first case ; it should also study the other two, especially as they have already given rise to a number of controversies.

Thus, hitherto, in every single case in which these three categories have been involved, no agreement has been reached either in theory or in practice as to whether the acts in question constitute absolute piracy or piracy by analogy. For example, in the case where the attacking ship has letters of marque which do not fulfil all the conditions of validity, a whole series of questions must be answered before a sharp line of demarcation can be drawn between privateering and piracy. We will simply mention these questions and show in a few words how important they are :

- (a) What authority has power to issue letters of marque ?
- (b) Against whom can these letters be issued ?
- (c) Who is entitled to receive them ?
- (d) For how long are letters of marque valid and what is their nature ?

What authority has power to issue letters of marque ?

The right of any responsible Government to issue letters of marque may be undisputed; the same right may be recognised even when the State's sovereignty is divided, as in the case of civil war, for example; revolutionary Governments may be allowed the same right, no matter whether they have been recognised by other Powers or not, and simply because they possess *de facto* authority. But the problem becomes much more complex when *letters of marque are issued by persons having none of the prerogatives of national sovereignty*, such as dethroned sovereigns, claimants to the throne, or Governments which have been overthrown through a revolution.

If such persons (who represent nothing at all) regard themselves as still at war with third Powers, even though the Government of their country (which, of course, they refuse to recognise) has made peace, and if they issue letters of marque, would attacks made in virtue of such letters be regarded as attacks *jure belli* or as mere acts of piracy ?

Could not the persons attacking in virtue of such letters claim at any rate that the attack was not made "for private ends" ?

Against what States can letters of marque be issued ?

It is universally recognised that letters of marque cannot be issued except against Powers which are at war with the State issuing them.

If, however, letters are issued against a neutral Power — and such a case has actually occurred — it would be interesting to know what attitude would be adopted towards acts of violence committed in virtue of letters such as these.

We should, however, be careful not to place this case in the same category as that of privateers who have received letters of marque against an enemy Power but also attack ships of neutral Powers, either wrongly or, in exceptional cases, when the so-called "right of war" allows attacks upon neutrals.

Who is entitled to receive letters of marque ?

On this question also authors disagree. Many maintain that no ship can be legitimately and regularly commissioned except by the State to which it belongs, that is to say, the State whose flag it flies.

In this connection, it may be observed that there is a strong tendency towards preventing the practice of privateering by the nationals of neutral Powers.

Many States have, by special laws or private treaties, declared such acts to be acts of piracy.

Since there is no unanimous agreement among States to regard such acts as piracy, the controversy still remains unsettled, and these acts cannot be regarded as universally punishable.

This question, however, raises another very serious problem regarding *blank letters of marque*. These letters have led to a great deal of speculation, because they confer the right to wage *privileged piracy*. Purchased by unscrupulous neutral shipowners and carried out with the sole object of gain, these commissions extend naval warfare to seas far distant from the actual theatre of war.

Some countries have tried to check this system by requiring that the ship should be equipped as a privateer at one of the ports of the belligerent States issuing the letters of marque, and that the captain and either two-thirds or one-third of the crew should be subjects of that State.

This regulation, however, has not received the approval of all civilised States, and accordingly this deplorable practice is still possible, and attacks by vessels carrying blank letters of marque purchased by the shipowner in order to wage privileged piracy are not regarded as acts of absolute piracy.

There is, however, an even more serious and deplorable practice, whereby subjects receive commissions against their own country or its allies.

This act, which is classed as piracy under the laws of a number of States, should be penalised by the draft international Convention whenever the letters of marque were not taken out for a purely political object but solely with the object of gain. The penalty imposed might be made the same as that for piracy.

This question is simply raised here, and it is recognised that it will not be settled by international agreement without some difficulty. Since it involves the relations between States and their nationals, it might be objected that the suppression of acts of this kind falls within the exclusive competence of the injured State. Nevertheless, an international solution might be reached for cases where, the acceptance of the commission being determined purely and simply in a spirit of gain, the guilty party takes refuge in another country and seeks to escape punishment by pleading a pretended political object, since in present circumstances such a plea would prevent his extradition.

Lastly, another question which should be studied relates to the *period of validity and the nature of letters of marque*.

All letters of marque are issued for a limited period. If a privateer attacks a vessel after the expiration of the term of his letters of marque or after the conclusion of peace, or

after his letters of marque have been expressly withdrawn or during an armistice, should his attack be regarded as an act of piracy or not? We think it should. Nevertheless, this view is not unanimously held, and we think the problem must be solved by means of an international convention.

Then there is another point. All letters of marque, by their very nature, are *personal and not transferable*. If an attack is made by a vessel carrying letters ceded without the approval of the State which issued them, should such an act be regarded as piracy or not?

Lastly, any act committed by a privateer outside the terms of his commission and in excess of the powers conferred upon him may be regarded as an act of piracy.

They are treated as acts of piracy in some modern penal codes, *e.g.*, the Argentine Code (Article 198, Section 2), to quote one of the most recent.

Hitherto, as no unanimous agreement on this question has been reached by civilised States, this act, reprehensible though it may be, is classed as piracy by analogy.

We will now briefly review the last case, where the privateer holds *a number of letters of marque*.

The case of a privateer receiving letters of marque from his own country and a neutral country or from his own country and its allies may give rise to discussion, but the question becomes much simpler when the privateer receives *letters of marque from two enemy States* and thus has the privilege of plundering in their turn the ships of the very countries which commission him.

There can be no difference of opinion in this case. It would be most desirable that any future convention should contain a precise text to the effect that an attack by a ship carrying two or more letters of marque from two States or a group of States at war with each other constitutes an act of absolute piracy.

We think that there can be no objection to classing such acts as piracy.

FOURTH CONSTITUENT ELEMENT OF THE OFFENCE.

14. *Motive of acts of violence. The system adopted in the draft. A purely political object in itself precludes qualification as piracy.* 15. *Objections to this system.* 16. *Piracy is an offence against property. The desire for gain.* 17. *An independent convention might be concluded in regard to other serious offences which are universally punishable, but they must not be included in the notion of piracy.*

14. The fourth constituent element of the offence, as shown in Article 1 of the draft, relates to the object for which the offence was committed. According to the draft, however, the object need not be precisely determined for acts of violence to be classed as piratical. It simply stipulates that the object must be other than a political one. Acts committed with a purely political object will not be regarded as constituting piracy.

15. In our opinion, there are serious objections to the system adopted in the draft.

In the first place, the wording of the second paragraph of Article 1 is too vague and is not in accordance with the true spirit of a criminal clause. Precision is an essential condition of criminal clauses, which, by their very nature, must be interpretable with absolute exactness.

According to the second paragraph of Article 1, it would appear that all acts of violence committed on the high seas and without a purely political object fall into the category of piracy.

Accordingly, piracy would cover not only acts committed *animo furandi* but also other acts of violence inspired by a desire for vengeance, by rivalry, etc., and anarchistic acts of violence.

However wrong we consider such acts to be, they cannot be regarded as piratical.

16. Piracy, by its very nature, is a crime against property.

As regards etymology, the word is derived from the Greek *peirates*, from the verb *peiran*, meaning "to venture", "to take risks", "to try to get rich".

Thus the *desire for gain* is an essential element of piracy. This characteristic, indeed, is recognised by M. Matsuda in his report, where he states that pirates are "sea-robbers".

M. Matsuda, however, maintains in his report that it is not necessary to premise explicitly the existence of a desire for gain, because the "desire for gain" is contained in the larger qualification: "for private ends". In our view, the act of attacking "for private ends" does not necessarily mean that the attack is inspired by a desire for gain.

It is quite possible to attack without authorisation from any State and "for private ends", not with a desire for gain but for vengeance or for anarchistic or other ends.

If we adopt as a negative criterion "acts committed with a purely political object, we necessarily include under piracy many acts which by their very nature can never be so

classified, and, further, we are using an expression which will give rise to many serious disputes.

Indeed, no precise definition of a political offence has ever yet been given in the theory of penal law.

Thus, if a controversy arises even over the meaning of the term "political offence", it is obvious that a whole series of controversies will result from the application of a text such as the second paragraph of Article 1 of the draft.

In order, therefore, to avoid all discussion even as to the theory of the matter, we think it would be preferable to take the *desire for gain* as a constituent element of piracy.

This view is consistent, too, with the essential characteristic of piracy as an offence against property, and it also avoids all disputes, because there is general agreement as to the meaning of the term "desire for gain".

Other crimes committed in places not subject to the sovereignty of any State, such as murder, vindictive destruction, etc., might be made universally punishable by another convention defining their exact constituent elements. A convention might also be made the vehicle for the universal suppression of *terrorism* (vandalism, criminal syndicalism) employed in order to impose certain social doctrines by force or intimidation. It is clear that a wide formula has been used in Article 1 of the draft in order to bring under piracy acts of terrorism perpetrated on the high seas.

We agree with the authors of the draft as regards the object in view; in other words, we consider it absolutely necessary that *acts of terrorism should unfailingly be visited with severe punishment*. But we cannot agree with the somewhat circuitous methods they propose for the purpose of bringing about this universal penalty.

Terrorism is quite different in character from piracy, and its suppression should be brought about not by including it in a convention on piracy but by means of a *special convention*.

Moreover, as terrorism is not anti-governmental, but rather anti-social in character, and as it does not aim at subverting the political order of any specific country but the public law and order of all civilised States, it is evident that the *ubiquity of the danger* inherent in such practices calls for *universal suppression*, and this apart from the question whether the place where the acts were committed was or was not subject to the sovereignty of any State.

All countries must act together in the struggle against the forces of social disruption, which find their outlet in criminal activities; and this solidarity will never be effectively realised until all countries agree upon a special convention quite independent of the convention for the suppression of piracy.

NECESSITY OF ADMITTING ANOTHER CONSTITUENT ELEMENT OF PIRACY.

18. *Under the system proposed in the draft, the slave trade appears to be assimilated to piracy. 19. Acts of violence must be such as to endanger traffic in places not situated within the jurisdiction of any State.*

18. Before proceeding to analyse the other provisions of the draft, we think it necessary to draw attention to another question which appears to have remained a controversial one, even after the draft was drawn up. We refer to the slave trade.

As legislation stands at present, some States have placed the slave trade in the same category as piracy. Other States, however, object to this assimilation because they do not wish to extend the right of search by warships on the high seas.

According to the wording of the draft, it might be maintained that the slave trade is assimilated to piracy.

Anyone who transports slaves renders himself guilty on the high seas of acts of violence against persons. What greater violence could be offered than to take away a person's liberty and carry him, against his will, from one place to another?

It constitutes *continuous violence* against persons, *it is committed on the high seas, for private ends*, and is *not inspired by any purely political object*. It is a clear act of piracy, therefore, according to the definition given in Article 1 of the draft. This means that, under the terms of the draft, if it is adopted, any warship may search the ships of other States which may be carrying slaves and punish the captain and crew as pirates.

19. If, however, the Committee of Experts did not intend to assimilate the slave trade to piracy, then Article 1 must be altered by stating that *the acts of violence must be such as to endanger traffic in places which are not subject to the exclusive sovereignty of any State*.

The introduction of this new constituent element of piracy will prevent any possible confusion between piracy and the slave trade. Indeed, so far from being pirates, who

attack ships¹ on the high seas, slave-traders or persons transporting coolies, although guilty of continuous violence against the persons they are carrying, nevertheless pursue their way peaceably and do not attack the vessels they meet or endanger traffic in places not subject to any sovereignty. Hence they are not pirates.

If, on the other hand, the Committee of Experts aims at the universal suppression of the slave trade, it would be preferable, instead of bringing this subject into a draft convention on piracy, to state *their intention explicitly* by drawing up an international convention independent of the convention on the suppression of piracy².

Article 2.

20. *Piracy and the theory of denationalisation. The practice of piracy is not confined to ships.* 21. *Uselessness of Article 2.*

20. The object of Article 2 is to provide a solution for the question of the denationalisation of pirates. It rightly shows that denationalisation is not an essential characteristic of piracy but that the authors of piratical acts *ipso facto* lose the protection of the State whose flag their vessel flies.

Although the idea underlying this article is wholly unobjectionable, the article itself seems to have been drafted on the assumption that piracy is only possible in connection with ships and is essentially of the sea. But, as we have seen, the specific characteristic of piracy really lies in the nature of the locality where it takes place (*i. e.*, a place lying outside the exclusive sovereignty of any State).

As we have shown, such a place may be situated in unknown territory or in the upper regions of the air. *Thus piracy may conceivably take place elsewhere than in a ship.*

21. Further, taking into account the principles underlying the methods of suppression at present in force, we may affirm that the provisions of Article 2 are quite useless.

A pirate is really an offender against ordinary law and order, and in the punishment of such offences nationality is of no importance. From the territorial point of view, the penal laws for offences against law and order do not recognise subjects but only *persons*.

The same argument applies to piracy. The pirate is not punished as a subject of a State but as a man who is unsuited to the conditions of social life.

Just as an alien who commits robbery with violence in a certain territory is punished irrespective of his nationality, so an individual who is guilty of robbery with violence on the high seas or in any other place not situated within the exclusive jurisdiction of any State, and therefore in a place where all States have the right of suppression, will be punished in virtue of that right of suppression by the State whose warships, war aircraft, or other forces have seized him.

Just as a State cannot extend its protection to any of its subjects who, being in a foreign country, violate the public order of a third country, so there can be no question of protection for pirates.

A pirate ship may have a nationality and keep it even after it has committed acts of piracy, but this nationality would make no difference, and would not affect the exercise of measures of suppression.

Moreover, if it is intended to prepare a convention for the suppression of piracy, and if this convention is to secure universal, or almost universal, approval; if it is to define piracy, if it lays down the principle that the State making the capture has a right of jurisdiction over the pirates taken, and if it is also to specify when another State has jurisdiction,

¹ Aircraft also and caravans, convoys, etc., if the notion of piracy is connected not specifically with the high seas but with any place not subject to individual sovereignty.

² This problem is so important that a large number of congresses and conferences have been held to deal with it, and they have drawn up declarations, conventions and expert reports for submission to the competent international institutions. Obviously the work done in this field, however valuable, does not always fulfil requirements as regards the universalisation of the suppression of piracy. Nevertheless, the suggestions they contain might profitably be used for the preparation of a general convention by which the slave trade would be rendered penal in every country and in all its forms (the trade in black slaves and coolies, the traffic in women and children, and similar practices, such as domestic and agrarian slavery, etc.).

In point of fact, behind all the differences between the various forms of the slave trade there are common features, such as the method of *obtaining* slaves (by raids, by false pretences or by forced prostitution), *embarkation*, *transportation* and *direct sale* or *speculative purchase*.

Accordingly the convention should state explicitly that all *warships have the right to search vessels believed to be carrying victims of the slave trade, whatever flag the vessel may be flying.*

As regards the material to be used for the preparation of the general convention which we propose, mention may be made of the following: *prohibition*: Congress of Vienna: Declaration of February 8th, 1815; General Act of the African Conference held at Berlin in 1884. *Formula of suppression*: declaration by the Powers which met at Berlin in 1885; see also the Brussels Conference of July 1890; Convention of St.-Germain-en-Laye of September 10th, 1919. *As regards the traffic in black slaves and the mutual right of search*, see Convention of London, 1842. See more particularly report of the Temporary Slavery Commission (League of Nations, July 1925). *Traffic in women and children*: see the Paris Agreement of 1904; Convention of May 4th, 1910, and Geneva Convention of September 30th, 1921.

why should there be any need to add in Article 2 that the pirate ship loses the protection of the State whose flag it flies ? The States acceding to the convention for the suppression of piracy and thereby recognising the competence established by that convention *would ipso facto refuse to protect vessels flying their flag* if they were guilty of acts of piracy. For all these reasons we consider that Article 2 might be omitted altogether.

Article 3.

22. *Acceptance, in the present stage of international law, of the principle that private ships alone may commit acts of piracy. Necessity of completing Article 3 by extending its application to private aircraft or to any other organised group of pirates operating in places not subject to the sovereignty of any State.* 23. *Article 3 and modern developments in international law. Notion of a pirate State. Future punitive powers of the Permanent Court of International Justice at The Hague.* 24. *Cases where warships, war aircraft, etc., lose their character as public vessels. Necessity of completing the provisions of the second part of Article 3.*

To the first part of Article 3, which lays down that only private ships can commit acts of piracy, we have no objection, in view of the present position of international law.

Nevertheless, the word "aircraft" might be added, especially as it is quite possible that piracy may be practised in the future by means of hydroplanes. Though confined at present to *the high seas and unowned territory*, the notion of piracy by aircraft may find a new application in the future if certain regions of the air above State territory are ultimately to be regarded as free. Moreover, since acts of piracy may, according to the legal definition of that offence, be committed also in unowned territory, it is essential to add in Article 3 the following: "... or any individual who, not representing the authority of any State and as a private person, is in a place which is not subject to the sovereignty of any State".

If an expeditionary force or State army committed acts of violence *animo furandi* in such places, it would not be committing piracy, just as similar acts if committed by a warship on the high seas are not regarded as constituting piracy. If, however, a number of private persons organised a band of robbers and committed such acts, they could then be termed acts of piracy, just as acts of violence committed *animo furandi* by private ships on the high seas are classed as piracy.

23. In another connection, and while not as yet calling for a modification of the principle contained in Article 3, we would raise the question whether, in the light of modern developments in public international law, which will bring about far-reaching changes in that field, it would not also be possible to conceive of a *pirate State*. An instance of this has already occurred in the past (the piracy organised by the Barbary States), and such a case may occur again in the future.

What would happen, for instance, if a State, ignoring the principles of international morality, organised piracy in time of peace, or at any rate allowed its warships to attack the merchant ships of other States ?

Could these warships be regarded as having committed acts of piracy ? It would obviously be quite useless simply to claim reparations and indemnities from the State whose flag was flown by the warships guilty of the act. In the first place, it is highly unlikely that a State which had committed such acts would agree to pay the compensation claimed ; and in the second place, if the trial of the guilty parties were left to that State, they would surely acquire a somewhat dangerous impunity.

Nevertheless, this question comes within the field to be covered by the proposed codification, and we hope that if, in accordance with the various recommendations adopted last year by the *Inter-Parliamentary Union*, and this year by the *International Criminal Law Association* and the *International Law Association*, the Permanent Court of International Justice at The Hague is given punitive powers, the question of the pirate State may be solved by having the guilty parties arraigned before that Court.

24. We have no objection to the second part of Article 3, except in so far as that article refers to Article 1.

As regards drafting, we think that the text should be brought into line with the juridical notion of piracy as not being essentially maritime in character. It should state that, where the crew of a warship or war-aircraft, or even an expeditionary army or corps, being in a place not subject to any sovereignty, mutinies and conducts operations on its own account and commits acts of the kind mentioned in Article 1, it thereby loses its public character.

Article 4.

25. *Modification of this article with the object of extending its application to aircraft and insurgent forces operating in places not subject to any sovereignty.* 26. *The need for a fundamental distinction between acts of piracy directed by insurgents against the regular Government with whom they are fighting and acts of piracy directed against third Powers.*

25. We have no fundamental objection to the first paragraph of Article 4. Nevertheless, its wording should be completed by the extension of its application to aircraft and insurgent forces conducting operations in places not subject to the sovereignty of any State.

26. As regards the second paragraph, however, we think that the actual idea which it expresses should be modified, because it makes no distinction between acts committed by insurgents against the *vessels of third Powers* and acts committed against *vessels of the Government against whom they are fighting*.

This paragraph is open to the interpretation that insurgents should be regarded as pirates¹ if they commit acts of violence against third parties. We must recognise, however, that, unlike the text of the second paragraph of Article 4, which does not go into detail, M. Matsuda's admirable report itself clearly shows that "third Powers may regard insurgent vessels as pirates if such vessels commit acts of violence or depredations against vessels belonging to these Powers themselves".

Thus the report only refers to acts of violence directed against ships of third Powers, and not against ships of the Government which is fighting the insurgents.

As regards acts of violence committed by insurgents against ships, aircraft, etc., of the regular Government with whom they are in conflict, we hold, contrary to the second paragraph of Article 4, that, even if such acts are not committed with a political object, *it is dangerous* to regard them as acts of absolute piracy, otherwise the consequence would be to make such acts universally punishable, *i.e.*, to allow other States to punish the insurgents as pirates because they have attacked the ships of the Government they are trying to overthrow.

Such punishment might appear to be in the nature of interference on the part of foreign Powers in the domestic political conflicts of another State. If any foreign State were allowed to determine whether an attack caused by the action of insurgents against the regular Government were of a political nature or not, it would be tantamount to an infringement of the sovereignty of the State itself.

Article 5.

PURSUIT OF PIRATES.

27. *Not only warships but aircraft and any public authority of a State may pursue and arrest pirates.* 28. *Exceptional case of flagrant and quasi-flagrant piracy. Right which might be granted to private vessels and aircraft or any private individual to place pirates under provisional arrest.* 29. *The special case of pursuit-begun on the high seas, continued in territorial waters and terminating in capture on the high seas. Reasons necessitating the alteration of the second paragraph of Article 5 so as to give the littoral State jurisdiction only when the capture takes place in territorial waters.* 30. *The necessity of concluding an international agreement to solve the existing problem of bands of malefactors which are organised in the territory of one State and cross the frontier to commit acts of violence or depredations with the object of gain in the territory of a neighbouring State.*

27. We have no fundamental objection to the idea underlying Article 5. Since *absolute piracy*, by its very nature, implies the commission of acts in a place not subject to any sovereignty, it is evident that every State has the right by its vessels (or war aircraft or any other authority representing the State which may be in such places) to take police measures against persons who, by certain acts inspired by a desire for gain, have endangered traffic. For the sake of completeness, therefore, Article 5 should grant similar rights to *war aircraft* and other *authorities, representing an individual State*, which may be situated in unowned territory, for example.

28. On the other hand, another question which may be raised is that of the right of *private vessels*² to take urgent police measures in the case of *flagrant or quasi-flagrant piracy*.

According to Article 5, this right is held exclusively by public vessels.

¹ It is unnecessary to retain the sentence "*unless such acts are inspired by purely political motives*", because Article 1 of the draft, by premising that the object of gain is an essential element of piracy, implicitly excludes all acts inspired by political motives.

² Or private aircraft on the high seas and, in the future, in the upper regions of the air, or even private individuals in unowned territory.

It is open to question, however, whether a merchant ship or private aircraft, if it sees another ship (or aircraft) attacked by pirates (flagrant piracy) or if it sees pirates escaping with their booty (quasi-flagrant piracy), has not the right to stop the pirates on the open sea and place them under provisional arrest. We ourselves think that it has this right, and in support of our view we may cite the system accepted in every country in regard to the pursuit of criminals for flagrant or quasi-flagrant crimes.

No country denies that any private individual, if he detects another person in the act of committing a crime (*flagrante delicto*) or sees the criminal fleeing immediately after the commission of the crime (*quasi flagrante delicto*), has the right to seize the culprit and bring him by force before the competent authorities. The recognition of this right is absolutely necessary in order to ensure that malefactors will always be arrested.

There are even stronger grounds for not refusing the help of private persons in the maintenance of public order in places which are not subject to any authority (especially the high seas), since the discovery and apprehension of pirates is a much more difficult matter than in State territory, where there are numerous central and mobile police forces and gendarmerie ready to take drastic measures in any circumstances.

For all these reasons we think it is necessary to draft a text by which, in cases of flagrant and quasi-flagrant piracy, any *private ship or aircraft*, when in a place not subject to any sovereignty, or any *private person* in unowned territory, will be empowered to stop pirates and place them under *temporary* arrest, provided that they are at once taken to the nearest port or handed over to the first warship or other representative of a State public authority which the captor meets.

29. As regards the second part of Article 5, which deals with a pursuit commenced by warships on the high seas and continued within territorial waters, we entirely agree (subject to certain textual amendments to which we will refer later) with the solution which the authors of the draft have adopted and which allows the pursuit to be continued if the littoral State is not in a position to continue the pursuit and take the pirates itself.

Since pursuit of this kind by warships would in no way harm the littoral State, the latter will obviously have no reason to object to the principle underlying the second part of Article 5.

Another reason for the acceptance of this solution is that it fully respects the *principle of sovereignty in territorial waters* as regards the exclusive exercise of punitive jurisdiction, since, according to Article 5, the case would be tried by the competent authorities of the littoral State.

Thus, even if that State were unable to continue in its territorial waters a pursuit begun on the high seas, it will still have the exclusive right of trying pirates pursued and taken in its territorial waters.

We must not forget, however, one special case in which disputes as to competence in regard to the trial of pirates might arise between the State whose ship was pursuing the pirates and the littoral State.

The case in point is that of a pursuit begun on the high seas, continued in territorial waters and terminating in capture on the high seas, after the pirates had succeeded in eluding pursuit in territorial waters and regained the high seas.

According to the second part of Article 5, the littoral State could claim jurisdiction because the pursuit was continued in its *territorial waters*.

On the other hand, the State whose ship pursued the pirate might claim that it alone was entitled to try the pirates, since it captured them *on the high seas*.

In order to avoid any controversy, we think it would be better to *make competence contingent not on the facts of the pursuit but on the place of capture*. Article 5 would then have to be modified as follows: a pursuit commenced on the high seas may be continued even within territorial waters unless the littoral State is in a position to continue such pursuit itself. If the pirates are *captured* in territorial waters they shall be tried by the authorities of the littoral State.

30. The examination of this special case of pursuit continued by the public authorities of one State in places subject to the sovereignty of another leads us to submit to the Committee of Experts a very serious question, which doubtless does not come within the legal scope of absolute piracy but nevertheless calls for a solution on an international scale in order to prevent any possibility of inter-State disputes.

This question is that of the *bands of criminals which are organised in the territory of one State close to the frontier and, crossing the frontier, conduct their operations in the territory of a neighbouring State*.

Acts of violence committed by these bands are in many respects similar to piracy.

Like pirates, the members of these bands form robber communities. They are acting with the *object of gain*. They commit acts of violence *for private ends* and not for the State to which they belong. The feature that distinguishes acts of violence committed by these bands from true piracy is that their operations are not carried on in a place subject to no sovereignty but in the territory of an individual State.

What is to be done supposing that these bands, operating, as they almost always do, close to a frontier, are pursued by the authorities of the victim State and retire within the territory of the State from which they have come, if the authorities of the latter State are unable to continue the pursuit themselves ?

It will, of course, be far from easy to find an immediate solution for this question, because it is essential to pay due regard to the exclusive right of a State to police the territory over which it has sovereignty.

When, however, it is a matter of *international notoriety* that a State is unable to exercise its police rights over bands of malefactors, the situation is very similar to that envisaged in the second paragraph of Article 5.

It is surely arguable that if a pursuit is begun and continued to defend the social order generally and suppress such bands of evil-doers in virtue of the laws common to every country, it is an act which equally renders service to the State unable to continue the pursuit itself.

If the strong arguments contained in M. Matsuda's report are adapted to this case, we may affirm — to echo his own words — that "otherwise, if the State in which the band of malefactors has taken refuge could not take the necessary measures to carry through the pursuit in time, the result would be to facilitate their flight and enable them to escape punishment. In such cases, however, the right to try the malefactors devolves upon the State in whose territory they were arrested. It is the recognition due to its sovereignty."

We do not propose, of course, that this question should be dealt with in the present draft, though its settlement by international agreement is as much to be desired as that of the piracy question. We would go still further, and, although the situation is closely analogous to that envisaged in the second paragraph of Article 5 of the draft, we do not ask that the same solution should be provided.

We merely propose that this problem, which is of such great importance to-day, should be submitted to the Committee of Experts for examination in view of the possibilities of grave international conflicts which may arise if a settlement is not found in the near future.

Article 6.

THE SPECIAL CASE OF PIRACY COMMITTED ON THE HIGH SEAS AND THE RIGHT OF SEARCH.

31. Acceptance of principles laid down in the first part of Article 6. 32. Reservation regarding the absolute right held by the commander of a ship which has made a capture to try the pirates himself. Competence in this matter should as a rule devolve upon the permanent courts of the State to which the vessel making the capture belongs. 33. Exceptional case when the commander of the ship may try the pirates himself. Question of summary executions.

31. We have no serious objection to the first part of Article 6.

We quite agree with the authors of the draft that where suspicions of piracy exist, every warship, on the responsibility of its commander, has authority to ascertain the real character of the ship in question.

If after examination the suspicions are proved to be unfounded, the captain of the suspected ship will be entitled to reparation or to an indemnity, as the case may be.

32. If, on the contrary, the suspicions of piracy are confirmed, the commander of the warship may, according to the draft, *proceed* to try the pirates *himself* if the arrest took place on the high seas.

We do not agree with the authors of the draft, however, as to the method of empowering the commander of the warship making the capture to try his prisoners.

We agree that, if the capture took place on the high seas, jurisdiction belongs to the State under whose flag the warship is sailing.

But which authorities of that State will try the prisoners ? It is essential that this question should be answered.

In our opinion, the commander of the warship should as a rule simply act as a judicial police officer in ordinary procedure (*i.e.*, he should collect evidence, subject the prisoners to a preliminary examination, secure their persons, etc.).

The actual trial, however, should be left to the permanent criminal courts of the State which has jurisdiction in the case. In these courts the regular procedure could be followed and the accused would be assured of the right of defence.

33. The right to try prisoners should only be conferred upon the commander of the ship in exceptional circumstances. These circumstances are generally accepted both in the theory of law and in international usage in regard to the *summary execution of pirates*. In any case, the draft does not deal with these instances of summary execution.

It should therefore be laid down that the commander of the warship may himself proceed to try the accused, and even sink the pirate ship if he cannot take it into port either on account of distance or because he has not sufficient men to keep proper guard over the prisoners.

Article 7.

TRIAL OF PIRATES.

34. *The serious controversies and the possibility of impunity which may arise through the legal nature of the present-day methods of suppressing piracy. The principle of nulla pœna sine lege and international custom.* 35. *The case of States which have no special laws for the suppression of piracy or have no clause in their own criminal code extending the application of that code outside their territory, i.e., to places not subject to any sovereignty.* 36. *The necessity of laying down in the draft that, if the States having jurisdiction have no laws of their own for the suppression of piracy, they shall apply to the pirates the penalties provided by their own laws for robbery with violence.* 37. *Measures of security and prevention of piracy.* 38. *Question of competence.* 39. *Unity of jurisdiction in regard to piracy. Present possibilities of conflicting judgments.*

34. We cannot approve of Article 7 unless certain clauses are added which are necessary to avoid any dispute and also any possibility that pirates may escape punishment.

We would point out at once that there are three important problems connected with Article 7, namely :

(a) *The right of the captor State to try the pirates and the circumstances in which it may exercise that right.*

(b) *The settlement of any disputes which may arise in regard to competence.*

(c) *Unity of jurisdiction in regard to the punishment of acts of piracy.*

34. As regards the right to try pirates, Article 7 of the draft simply confers this right upon the captors (except in the cases provided for in the second paragraph of Article 5 and those where the domestic legislation or an international convention otherwise decides).

As a rule, *the State to which the captor vessel belongs has jurisdiction* as a logical consequence of the fact that piracy by its very nature presupposes the commission of acts of violence in a place situated outside the exclusive jurisdiction of any State, and where, therefore, any State has the right to try pirates if it seizes them; nevertheless, this right can only be exercised if another essential condition is fulfilled, namely, *that the suppression of piracy is authorised by the criminal laws to which the captor vessel itself is subject.*

It has been held that this condition is not necessary, because the suppression of piracy accords with international usage.

It is quite wrong, however, to think that, even in the domain of international criminal law, an offence could conceivably be punishable on the strength of mere usage alone.

Nowadays punishment can only be imposed in virtue of the principle *nulla pœna sine lege*: we find this principle laid down in all the most important existing acts of criminal law, and it has even been embodied in certain constitutions.

According to this rule, which would appear to be a fundamental principle of contemporary public law, criminal laws can only be applied *to offences provided for by that law and committed in places where that law is expressly applicable.*

Thus, although there is nothing to prevent a State from declaring its own criminal laws to be applicable in places not subject to the sovereignty of any other State, it is still necessary before such laws can be actually applied (as, for example, in the case of piracy) that they should expressly provide that they apply either to the offence of piracy or simply that they apply to any offence committed outside the territory of the State in question in any place not subject to the exclusive sovereignty of another State.

35. Some States (including Roumania) have no special laws against piracy. The criminal codes of these States merely lay down that their criminal laws are only applicable to offences committed within their territory or territorial waters or on vessels flying their flag, and to certain offences committed by their subjects abroad.

Further, the codes of these States sometimes contain *limitative lists* of certain punishable offences committed *abroad, whether by aliens or by subjects of the country concerned*, such as crimes endangering the external or internal security of the State, counterfeiting coinage, etc. Thus the *criminal laws of some States do not apply* to any crime or offence not included in their limitative lists if committed by an alien outside the territory of the country or outside places assimilated to its territory.

What would happen if a warship belonging to one of these States seized pirates on the high seas, supposing that these pirates had not attacked a merchant ship flying the same flag as the captor warship, since it could be claimed that the offence was committed in a place assimilated to State territory?

Whatever arguments were adduced, the captor State *certainly could not try the pirates*, since its national laws would, according to their own text, be inapplicable to such offences committed by aliens outside the national territory.

The courts and, indeed, the commander of the ship attempting to apply the penal laws would therefore even be violating the principle of *nulla pœna sine lege*, and any sentence they might pronounce would constitute a flagrant violation of a fundamental principle of contemporary public law. In such a situation, the pirates would certainly escape punishment if the only possible course were that they should be tried and sentenced by the captor State.

36. In order to avoid the consequences of this situation, it is essential that the text should state explicitly that "when the State to which jurisdiction belongs has no legal provisions of its own for the suppression of piracy, it will apply to the pirates the severest penalty provided by its laws for robbery with violence".

This provision will make piracy punishable by any State, even if it has no laws of its own on piracy or no legal provisions making its criminal laws applicable in places not subject to the exclusive sovereignty of any State.

It will also do away with the anachronous practice of basing measures of suppression on legal usage, which is inconceivable in present-day public law.

If, then, the Parliaments of the different countries were to ratify a convention containing the provision we propose, the latter could be incorporated in the laws of States which have no special laws of their own on piracy, and any measures of suppression taken would always be in accordance with the principle of *nulla pœna sine lege*.

37. Our examination of the exercise of the right to punish piracy leads us to raise another important question which will help in the prevention of this crime. If the captor State applies its own criminal laws to pirates, it is essential to introduce into the draft a *measure of security* which does not exist in any code or any special laws on the suppression of piracy.

The measure in question is that *persons who have been punished for piracy shall be prohibited access to the sea*¹.

All modern draft criminal codes (see the German, Polish, Italian, Czechoslovak, Roumanian and other drafts) provide, in addition to penalties, measures of *security* to deprive guilty parties of any opportunity of repeating the offence for which they were sentenced.

Just as many legislative systems still contain a clause "*prohibiting sojourn*"; just as pickpockets are not allowed access to large gatherings and are thereby prevented from carrying on their "profession"; just as, by forbidding access to public-houses to persons who have committed offences when in a state of intoxication (this clause is, in point of fact, suggested for certain draft penal codes), they are prevented from again committing offences in the same circumstances — so, by prohibiting access to the sea² in the case of persons sentenced for piracy, they will no longer be afforded any opportunity to commit acts of piracy.

This prohibition would be backed by criminal provisions. A person who has served a sentence for piracy would be liable to a special penalty simply through the fact of his being found at sea, without prejudice to the application of still severer penalties if he were also found repeating the offence of piracy.

38. The second question connected with Article 7 of the draft relates to the solution of *disputes as to competence* which may arise in connection with the suppression of piracy.

Thus, Article 7 lays down that the captor State has no competence if the pursuit is continued (or, as we prefer it, if the capture takes place) in territorial waters. In this case, no dispute as to non-competence is possible.

The pirates will be tried by the authorities of the littoral State.

But Article 7 goes on to say that the State making the capture has no jurisdiction "in the case where the *domestic legislation* or an *international convention* otherwise decides".

The provision relating to the case of *international conventions* cannot give rise to difficulty, because under the terms of the convention one of the contracting States, in certain circumstances, renounces its right to jurisdiction in favour of the other, and the punishment would be inflicted in any case. But the problem becomes much more intricate where the captor State is *prevented by its own laws* from trying the prisoners. What is to be done if the laws of the captor State do not empower its own courts to try cases of piracy and contain *no definite provisions* vesting such competence in another State ?

Again, what is to be done when the laws of a State grant jurisdiction to another State³ and the latter refuses to accept competence ?

It must be borne in mind that the domestic laws of a State in regard to the international settlement of matters of competence are of a strictly unilateral character and can have no authority over other States.

What will happen if every State refuses to accept competence ?

¹ Or, if the piracy is connected with a place not subject to any sovereignty, the persons punished would be *prohibited from entering places not subject to the sovereignty of any State*.

² Or air routes, etc.

³ E.g., the jurisdiction of the State whose coasts are nearest to the place where the acts of piracy were committed, or the State of which the majority of the pirate crew are subjects, or whose flag is flown by the ship boarded by the pirates, etc.

Who is to settle a dispute of this kind regarding non-competence .

Among the different proposals for the creation of a criminal chamber of the Permanent Court at The Hague, it has been suggested that such a tribunal might also be required to settle disputes as to non-competence in international criminal law.

Pending, however, the creation of such a judicature, which would fulfil the ideal of contemporary legal theory, we must solve the problem by the means afforded by existing institutions.

If we retain the provision of Article 7 which allows any State capturing a pirate to renounce by its domestic legislation the right to try its prisoners, we might find that in certain cases the whole convention for the suppression of piracy would become inoperative.

It would be quite possible for a State to adhere to a convention for the suppression of piracy, but at the same time, profiting by the provisions of Article 7 — which would entitle it, in virtue of its domestic legislation, to renounce competence — to avoid taking any part in applying the convention; in consequence, it would stand aside from the international work of suppressing piracy.

In order to avoid any possibility of a dispute as to non-competence which might result in the pirates escaping punishment, we think it essential to delete from the last sentence of Article 7 the words "*domestic legislation*" so as to prevent any derogation from common principles regarding jurisdiction in matters of piracy except where laid down by international convention.

39. The third question connected with the provisions of Article 7 relates to the necessity of providing for *unity of jurisdiction in matters of piracy*.

What is to be done, for example, if a band of pirates is pursued by a warship and some of the band succeed in eluding pursuit but are afterwards captured by a warship belonging to another State ?

In that case, there would be more than one captor but only one offence.

A similar situation may arise when several warships belonging to different States collaborate in the pursuit of a band of pirates.

If these cases (which, be it noted, are of frequent occurrence) are not taken into consideration, and if no settlement is found for them, they will give rise to *positive disputes as to competence*, or at any rate may be settled in a number of different ways, since the pirates will be tried by different States.

This will mean that a number of disconnected measures will be taken to collect evidence and — a more serious matter — a number of *conflicting judgments* may be passed.

It is quite conceivable that the competent authorities of one captor State may severely punish one or more of the pirates, while others captured by a warship of another State will be acquitted by the authorities of that State.

In order to prevent such a contingency, which would be prejudicial to the order and unity which should characterise the exercise of all criminal measures of suppression, we think it would be necessary to draft a text laying down that, when warships of more than one State are *co-operating* in the capture of a band of pirates, or when the members of one band of pirates are *captured at different times* by a number of warships, the State whose warship makes the *first capture* shall be competent to try all the pirates accused of the same crime.

We must point out that a text of this kind does not, as might be maintained, conflict with the principle of universal obligation to suppress piracy.

Universality in this connection means that every State has a theoretical right to take police measures of its own in regard to acts, such as acts of piracy, which, by their very nature, disturb public order and the safety of traffic in places not subject to the sovereignty of any State.

This theoretical right, however, does not become effective until the pirates are captured, and at the same time it *precludes* the right of other States, which can then no longer claim to try or punish *the particular offence* in question.

In the case referred to above, one State *acquires competence* to try the offence solely by the fact that it was the first to capture any of the pirates. This means that its right to punish the offence becomes effective from that time and precludes the right of other States, even if those States capture others of the pirates or their accomplices in the offence.

Priority of capture determines competence for the punishment of offences and the trial of all persons concerned therein.

This is the only possible solution at the present stage in the development of the theory of universality, and it is bound to remain so until the time — as yet far distant, no doubt — when the punishment of all offences against laws common to every country (irrespective of the territory in which they are committed or of the nationality of the criminal) is rendered universal, the sole determining factor being the actual nature of the offence.

This general universality will naturally supersede the present universality as regards piracy, since the latter is not contingent upon the nature of the act constituting the offence but rather upon the characteristic of the place where it was committed (*i.e.*, a place not subject to any sovereignty).

Article 8.

CONSEQUENCES OF CAPTURE.

40. *Necessity of settling by international agreement the question of the consequences of capture. This question cannot be decided solely by the State to which jurisdiction belongs.*
41. *Establishment of uniform conditions for the recognition and exercise of the right of recovery by lawful owners.* 42. *Fixing of a maximum rate for the reward of the capturing State.*
43. *Question of the allocation of the corpus delicti.*

40. The last article of the draft deals with the consequences of capture. This is a highly controversial question, which urgently requires settlement; but a uniform and equitable settlement can only be obtained by means of an international convention accepted by all civilised States.

The draft leaves the solution of this question to the State to which jurisdiction belongs. In our opinion, it should be divided into two questions, namely, *the validity of prizes*, which should be left to the sovereign decision of the authorities of the State having jurisdiction; and *the question of the right of recovery of the lawful owners*.

41. If the validity of prizes is recognised, articles obtained by piracy must obviously be restored to their lawful owners.

It is clear, then, that this right and the settlement of the conditions in which it will be exercised cannot be left, as the draft prescribes, solely to the domestic laws of the State to which jurisdiction belongs.

Every State is free to enact whatever domestic laws it thinks fit, but it must not be forgotten that publicists have protested against the diversity of existing conditions regarding the recognition and exercise of the right with which we are dealing.

We must remember that the principle *pirata non mutat dominium*, with all the consequences it involves, must be recognised by all civilised States.

If we retain the system prescribed in Article 8, it will mean that a State, acting in virtue of its domestic laws, may quite conceivably — and, indeed, such a case has actually occurred — give the whole of the prize to those who capture it, in virtue of *the principle of public utility*.

We must also remember that, although the large majority of States genuinely recognise the principle *pirata non mutat dominium*, the domestic laws of other States practically nullify this principle.

The laws of some countries lay down that articles obtained by means of piracy will be restored to their lawful owners only if the pirates *have possessed them for less than twenty-four hours*; otherwise they are recoverable from the pirates by the persons effecting the capture (see DE MARTENS: *Essai concernant les Armateurs*, Chap. 3, "Des Reprises"; compare also ORTOLAN: *Diplomatie de la Mer*, I, 269, and SENLY, *La Piraterie*, page 132).

The following example will show all the consequences which may ensue if the system provided for in Article 8 is retained.

Suppose two persons have their goods carried by different ships which are both attacked and captured by pirates on the high seas. If the ships or the goods they are carrying remain in the possession of the pirates for more than twenty-four hours, the ultimate disposal of the goods will depend upon the *nationality of the warship* which captures the pirates.

If the first owner is lucky and the pirates who robbed him are taken by a warship belonging to a State which recognises the principle *pirata non mutat dominium* and all the consequences ensuing therefrom, he may regain possession of his goods.

On the other hand, the second owner will lose his property altogether if he is unfortunate enough to find that the pirates who robbed him have been captured by a warship belonging to a State whose domestic laws lay down the principle that the right of recovery from pirates lies with the captor if the pirates have kept the property for more than twenty-four hours.

Inconsistencies of this kind, which are incompatible with the elementary principles of equity, might still remain if Article 8 is kept in its present form.

The same difficulties may arise if a solution is not also found for the question of the *restoration of articles which were obtained by piracy but which are in the possession of persons who have acquired them in good faith*.

This also is a controversial matter, and there is therefore a possibility that different solutions will be laid down by the laws of different States.

Thus some publicists claim that persons who have *bona fide* acquired possession of articles obtained by piracy have an unchallengeable right to them.

Others, again, claim (and we ourselves fully agree with them) that an owner of property who has been robbed by pirates has an absolute right to recover possession of the articles stolen from him, no matter where they may be.

Even if the third party acquiring the goods has acted in good faith and is unaware that they were obtained by piratical means, his title to them must necessarily be illegal and precarious. That he can never become their owner follows from the absolute character of the principle *pirata non mutat dominium*.

Thus the restoration or non-restoration to the lawful owner of articles stolen from him depends upon the settlement of the question provided in the laws applicable in each particular country. *Here, again, we find a diversity of systems, a situation which it is essential to abolish.*

Another question which may give rise to different systems and wholly unjust consequences relates to *the period within which owners of property must lodge their claims to articles which have been taken from them by piracy*. Under some treaties this period is fixed at a year, but States which are not bound by treaty may so shorten the period within which lawful owners must exercise their rights that the recognition of these rights is reduced to an absurdity.

42. The question of "*rescue rights*" (*droits de rescousse*) (reward due to and re-imbusement of expenses incurred by the captor) must also be settled by means of a general clause fixing a *maximum rate* that the authorities of the State to which jurisdiction belongs can never exceed.

Unless this is done, lawful owners may indirectly be deprived of the exercise of their right of recovery by the fixing of an exorbitant sum by way of "*rescue rights*"; the sum fixed might even be equal to the value of the articles taken from the owner by the act of piracy.

In view of the extremely variable conditions to which the exercise of the right of recovery by the lawful owner is subject in cases of piracy, and in view of the unjust consequences which may ensue on account of this very diversity of laws on the subject, *we think it highly desirable that the desiderata laid down by international jurists on this subject should be given practical effect and that the rules governing recovery should be revised.*

We ought to avail ourselves of the opportunity afforded by the Committee's draft to enable all States, by adopting it, to solve this problem in a uniform manner.

43. Lastly, the draft does not contain any decision as to the disposal of the *corpus delicti*, *i. e.*, the things used for the commission of acts of piracy (the pirate ship, arms, etc.).

The draft still leaves certain cases where competence does not devolve upon the State whose warships have discovered and pursued the pirates. As regards the disposal of the *corpus delicti*, therefore, a dispute may arise between the State which is given jurisdiction and the State whose warships discovered and pursued the pirates (*e. g.*, cases where the dispute was begun on the high seas and continued in territorial waters).

Accordingly, in order to prevent any dispute of this kind, it is essential to lay down that the *corpus delicti* shall belong to the State which has jurisdiction, except where the *corpus delicti* itself was obtained by previous acts of piracy¹, in which case it should be restored to its lawful owner.

CONCLUSIONS.

These are the observations which we think might be made on the draft provisions for the suppression of piracy, drawn up by the special Expert Sub-Committee of the League of Nations.

We are among the first to appreciate the very real value of M. MATSUDA's learned report, which combines in an admirable manner the accepted principles which still govern the suppression of piracy. We also recognise that the Sub-Committee's draft is an interesting attempt to codify international law on the subject, but we think that it is too timid. In concluding our report, we venture to submit our ideas in the concrete form of special draft regulations for the suppression of piracy.

In addition to this draft, we venture to enumerate the other questions which are more or less akin to piracy and which it would be highly desirable to settle by international agreement.

We desire to affirm, with particular reference to our own draft provisions for the suppression of piracy, that the draft is intended solely to serve as a basis for discussions and that accordingly the Committee of Experts need use it only in so far as they may consider that it repairs the omissions which publicists have pointed out in this matter.

At the same time, we feel bound to say that we consider the draft we are submitting to be in absolute accordance with the legal notions of piracy which emerge from the combination of the principles of criminal and international law. As regards the solutions which our draft contains, we may say that they are all dictated by a spirit of prudence. In order to solve this problem by agreement between civilised States, we have borne in mind all the possibilities of agreement, without, however, shutting our eyes to the difficulties which to-day lie before the accomplishment of the complex and difficult task of codifying international law.

¹ *E. g.*, when the ship or arms which the pirates used to commit their crimes were not obtained by lawful means but by previous acts of piracy.

DRAFT PROVISIONS FOR THE SUPPRESSION OF PIRACY.

Article 1. — All acts of violence against persons and depredations upon property committed in a place not subject to the sovereignty of any State¹ by a person acting for private ends shall be deemed to be acts of piracy.

The above-mentioned acts must have been committed with the object of gain and must in themselves constitute a danger to traffic in places situated outside the jurisdiction of any State.

Article 2. — The act of using fraudulent devices in order to cause a ship to be wrecked, with the object of appropriating its cargo or despoiling its passengers, shall also be deemed to be an act of piracy.

Article 3. — Acts of piracy can only be committed by private vessels or aircraft. Individual persons shall also be regarded as pirates if they are guilty, in unowned territory, of the acts referred to in Article 1².

Article 4. — If any warship, war aircraft or regular force of a State, after mutiny, commits on its own account acts of the kind mentioned in Article 1, it shall thereby lose its public character and the immunity attached thereto³.

Article 5. — The fact that a regular Government regards as pirates warships, war aircraft or insurgent forces which during a civil war operate in the places defined in Article 1 shall in no way bind third Powers.

If, however, the acts referred to in Article 1 are committed by insurgents against third Powers, the authors of such acts shall be deemed to be pirates⁴.

Article 6. — Any warship or war aircraft or any public authority of a State shall have the right, in the places indicated in Article 1, to arrest persons who have committed acts of piracy and to seize vessels, aircraft or any other *corpus delicti*⁵.

Article 7. — The pursuit of pirates begun on the high seas may be continued within the territorial waters of a littoral State if the latter is unable to carry on the pursuit itself.

If the pirates are captured in territorial waters, competence as regards the trial of the case shall lie with the authorities of the littoral State⁶.

Article 8. — Private vessels and aircraft, when in places not subject to any sovereignty, or private individuals, when in unowned territory, shall be empowered to stop and provisionally to arrest pirates if taken in the commission of any of the acts mentioned in Article 1 (flagrant piracy), or when fleeing with their booty (quasi-flagrant piracy), provided that such persons convey the pirates immediately to the nearest port or hand them over to the first warship or any other public authority of a State which they meet on their way.

Article 9. — Any warship or war aircraft shall be authorised, on the responsibility of its commander, to ascertain the true character of a vessel or aircraft suspected of piracy. The wrongful search of a suspected vessel or aeroplane shall involve liability for reparation or an indemnity, as the case may be.

If, however, the suspicions of piracy are confirmed, the commander of the warship or war aircraft may immediately proceed to arrest the pirates⁶.

If the capture takes place in territorial waters, the accused shall be delivered to the competent authorities of the littoral State.

If the pirates are arrested in the open sea, they shall be delivered by the commander of the vessel or aircraft which effected the capture to its own national authorities, except in the cases provided for in Article 13.

The commander of the warship or war aircraft may himself try the accused and take all requisite measures if he is unable to proceed in accordance with the provisions of the preceding paragraph, either on account of the distance he would have to travel or of the inadequacy of the forces at his disposal or on account of any other circumstance which would endanger his crew or afford the pirates a possibility of escape.

Article 10. — Jurisdiction in matters of piracy shall belong to the captor State except in the cases of capture in territorial waters which are provided for in Article 7, in the cases provided for in Article 13, or in cases where an international convention otherwise decides⁷.

¹ See Article 1 of the draft of the Sub-Committee of Experts.

² Cf. Article 3 of the draft.

³ Cf. Article 4 of the draft.

⁴ Cf. Article 5, 1st paragraph, of the draft.

⁵ Cf. Article 5, 2nd paragraph, of the draft.

⁶ Cf. Article 6 of the draft.

⁷ Cf. Article 7 of the draft.

Article 11. — If the laws of the State to which jurisdiction belongs contain no criminal provisions relating to the suppression of piracy or providing for the application of those laws in places not subject to any sovereignty, the pirates shall be liable to the maximum punishment inflicted by the criminal law of the competent State for robbery with violence.

Article 12. — The competent authorities shall also be empowered, in addition to the imposition of the penalties prescribed in Article 11, to prohibit access to the sea or to places not subject to the sovereignty of any State. Such prohibition can be either permanent or temporary.

The penalties in connection with this prohibition shall be prescribed by the domestic laws of the individual States and shall be imposed without prejudice to the application of severer penalties in the event of a repetition of the offence of piracy.

Article 13. — Where, apart from cases in which an international convention otherwise decides, warships, war aircraft or other public authorities, collaborating in the capture of an organised band guilty of a specific act of piracy, belong to more than one sovereign State, and where the members of the pirate organisation are captured separately by the representatives of different States, all the persons implicated in the commission of the crime shall be tried by the authorities of the State which makes the first capture.

Article 14. — The validity of prizes shall be decided by the authorities of the State to which jurisdiction belongs.

Property taken from pirates shall be recoverable by the lawful owners even if it is in the possession of a third party, under whatever title the latter holds it.

Perishable articles shall be sold and the proceeds of the sale shall be placed by the competent authorities at the disposal of the lawful owners.

Article 15. — Claims for the recovery of property as indicated above must be lodged by the lawful owners with the authorities of the competent country within a period of . . . (e.g., 360 days) from the date on which the property was produced or found.

Lawful owners shall reward captors of prizes and shall reimburse expenditure incurred by them in taking the property. The sum in question shall be fixed by the authority appointed to give a decision in regard to claims for recovery provided for in the first paragraph of the present article, and may in no case exceed 20 per cent. of the value of the articles restored.

Article 16. — If, within the period provided in Article 15, the lawful owners make no claim for the recovery of property taken from pirates, it shall become the property of the State to which jurisdiction belongs.

That State shall be obliged to reward the captors of the prize; the sum payable shall be fixed as provided in Article 15.

Article 17. — The *corpus delicti*, vessel, aircraft, arms and all other things used by the pirates for the commission of the acts of which they are found guilty shall become the property of the State to which jurisdiction belongs unless such things were themselves obtained by previous acts of piracy, in which case they shall be recoverable by their lawful owners or, in their absence, shall become the property of the above-mentioned State under the conditions laid down in Articles 14, 15 and 16¹.

OTHER QUESTIONS OF INTERNATIONAL LAW WHICH ARE MORE OR LESS DIRECTLY
CONNECTED WITH PIRACY AND WHICH IT WOULD BE HIGHLY DESIRABLE TO
SETTLE BY INTERNATIONAL AGREEMENT.

1. Preparation of a convention annexed to the present convention for the suppression of piracy, and intended to provide for all contingencies which may arise when privateering degenerates into piracy.

2. Preparation of an international convention for the purpose of prescribing uniform conditions for incrimination in regard to wrecking and for the purpose of ensuring the right of recovery by lawful owners of property.

3. Preparation of an international convention with the object of making universally punishable acts of violence against persons or property and other offences under the laws common to all countries, other than piracy, committed in places not subject to the sovereignty of any State.

4. Preparation of an international convention to render terrorism universally punishable in so far as it is a means of imposing certain social doctrines by force or intimidation, irrespective of the place where such acts of violence or depredations are committed or of the nationality of the guilty party.

5. Preparation of a convention for the universal suppression of the slave traffic. (If the Committee of Experts wishes to ensure universal suppression in this matter (assimilation

¹ Cf. Article 8 of the draft of the Sub-Committee of Experts.

of the transport of slaves by sea to an act of piracy), as it seems to do according to Article 1 of its draft, it would be much better to draw up a special draft on this subject.)

(For previous works on this subject which could be used, see note 1, paragraph 19, of the present report).

6. *Preparation of an international convention for the suppression of bands of criminals which are organised in the territory of one State and cross the frontier to commit acts of violence or depredations against persons or property with the object of gain in the territory of a neighbouring State.*

How is the problem of punishment to be solved if such criminal bands, when pursued by the authorities of the State on whose territory they have been operating, retire within the territory of the State from which they came and if the authorities of that State are unable to continue the pursuit themselves?

QUESTIONNAIRE NO. 7. — PRODUCTS OF THE SEA.

The League of Nations Committee of Experts for the Progressive Codification of International Law was certainly most happily inspired in including in the provisional list of subjects of international law the regulation of which by international agreement would seem to be desirable and realisable the question "whether it is possible to establish by way of international agreement rules regarding the exploitation of the products of the sea". The need for such an enquiry has long been manifest.

This is indeed a case in which action is necessary, for the problem is a vast one, is of the highest importance for the future of mankind and can only be solved by international agreement. For certain countries, including some in a very advanced stage of civilisation, the products of the sea constitute the main source of food supplies and revenue, in that they exert a decisive influence on national economy and general prosperity. In other cases, the products of the sea constitute a great reserve of future food supplies. Abundant though they are, these resources are in certain respects threatened by man's rapacity and the destructive methods employed. Certain species of aquatic animals of great utility which provide the raw material for great industries have been almost entirely exterminated.

The case of cetaceans, which M. J. L. Suarez has cited in his excellent report to the League of Nations Committee of Experts, is a conclusive one. Of the ten thousand to twelve thousand whales alive to-day, fifteen hundred are being killed annually — consequently, in ten years' time they will have been completely exterminated. No less conclusive is the case of the herring tribe (*Clupea harengus*), which is also on the decrease owing to modern fishery methods. There can be no doubt as to the importance of herrings from the point of view of food supply and the whole national economy of the Northern European peoples; indeed, the herring industry is so important that years when the shoals do not approach the coasts of Norway are regarded in that country as years of national catastrophe. With a view to avoiding the distress caused by the absence of shoals near the coast, scientists have carefully studied the question of migration and the general conditions under which these fish live, in order to ascertain the place and depth at which they are to be found and direct the fishing fleets accordingly. This intensive fishery, assisted by biological research and continual improvements in fishing apparatus, fishing-boats and the preparation of the products themselves, has now begun to produce results which may well prove disastrous; in any case, it is already causing a continual decrease in production.

The same dangerous symptoms are now appearing among other migratory species — such as the various kinds of cod, sardines, mackerel, tunny, etc., which form into shoals and are encountered at definite periods in certain localities — Newfoundland Bank, Iceland, the banks of the North Sea, etc. As soon as these shoals make their appearance, great fishing expeditions set out, as is well known, in which all the fishing fleets of seafaring folk take part. The preparation of the catch affords employment for a powerful industry, with thousands of factories, cold-storage rooms and costly apparatus of every kind installed along the coasts of every continent. This industry provides work for millions of workpeople and contributes to the food supplies of populations in the interior, even in the remotest districts.

The same is the case with other migratory fish known as anadromes and katadromes, such as the Semionoti, shads, mullet, sturgeon (*Acipenser*), eels, etc., which live in the seas or oceans and enter rivers or inland continental waters for the purpose of reproduction, or *vice versa*. Here, also, we note the progressive diminution of production which, for some time now, has occasioned such alarm in certain countries that the latter have — at least, in so far as internal waters are concerned — embodied protective measures in their legislation, including even artificial re-stocking. All seas have their characteristic species of migratory fish; the activity displayed in catching them is in proportion to their commercial value; consequently, these species are rapidly decreasing.

As a Roumanian, I cannot refrain from quoting the case of sturgeon in the Black Sea (*Acipenser Huso*, *A. Güldenstaedtii*, *A. Glaber*, *A. Sturio*, *A. Ruthenus* and *A. Stellatus*), which, in spite of all the protective measures applied by Roumania in and at the mouth,

of the Danube — measures which, by special conventions, have also been made binding on the four other Danube riparian States — nevertheless display an increasing tendency to disappear. This is proved by the smaller weight and dimensions of the individual fish caught.

Since caviare from the sturgeon of the Black Sea and the Caspian has come to be regarded as such a delicacy throughout the world that no fashionable restaurant in Paris or New York would dare to exclude this article from its menu, the catching of this fish has assumed alarming proportions. Nowadays, fishermen are no longer content with the simple tackle of their fathers or to fish merely in the river estuaries where these animals are strictly protected by Roumanian law — fishing-vessels of other nations engage in the fishery, even in localities where the sturgeon breed. The young sturgeon are being exterminated, because the open seas are international waters where there is no law to prohibit fishery. The result is that the full-grown fish, a single specimen of which may weigh from 400 to 600 kilos, and which were formerly very plentiful in the river estuaries, are becoming increasingly rare, while the old-established fishing colonies engaged in the sturgeon fishery are being slowly ruined. Consequently, fishermen are everywhere complaining that the number of sturgeon is decreasing, while whales, seals and several other aquatic animals have already been exterminated. Nature is therefore sending out a warning to the effect that the vandalistic methods of fishing now being applied can no longer be continued, and must be replaced as soon as possible by rational exploitation based on a system of international protective measures dictated by science in accordance with the results of oceanographical and biological research.

From all these facts and observations we are bound to draw the following conclusions :

1. That the path now being followed in exploiting the products of the sea is a highly dangerous one and may soon lead to the destruction of the greatest natural wealth placed by Providence at the disposal of man — the greatest reserve of foodstuffs and other useful products of every kind which are required by the human race with its rapidly increasing populations. It is therefore in the urgent interests of all mankind to put an end to this state of affairs and discover a new, scientific and practical method of exploiting these products, which belong not to any one country but to the whole world.

2. That the main causes which have produced this disquieting situation are as follows :

(a) The rapid increase of population in the various countries, which is out of proportion to the increase in the production of ordinary food supplies; increased and improved methods of transport; improvements in the refrigerating and preserving industries; the perfection and multiplication of all industries engaged in transforming the products of the sea and rendering them more available for human requirements; and, finally, all the other technical improvements which are perpetually stimulating the consumption of sea products and have led to a considerable rise in their commercial value;

(b) The progress in technique and machinery which have, in a small space of time, so improved fishery methods and apparatus as to make possible the capture and destruction of certain aquatic animals in such vast numbers that the natural forces of reproduction are incapable of repairing the loss;

(c) The progress of biological research, which, by studying the whole migratory cycle of each species of aquatic animal, has made it possible to determine the locality in which it is to be found at any given time of the year, so that it may be caught more easily. This has all happened without science being able, up to the present, to suggest any practical methods for prohibiting fishery in a given locality when such fishery begins to endanger the existence of the species;

(d) Capitalism, which has realised that, by this vandalistic form of exploitation, great profits are to be realised and which endeavours to organise and develop its activities. The example of shareholders' companies for the whale fishery, quoted by M. Suarez in his excellent report, is quite conclusive on this point;

Finally :

(e) The present state of international law, which has as yet discovered no means of safeguarding for the human race one of mankind's most vital interests, from the point of view of the future, or of applying — as in the case of navigation — a regulation with rules for the rational exploitation of the products of the sea and the effective supervision over the open sea.

The few conventions on hunting and fishery hitherto concluded between the various States are not likely to solve the problem, since they refer to special questions or matters of local concern rather than to the real problems of universal interest for the future.

Admitting that this is the present state of affairs and that these are its causes; admitting also the ideal we have in view; we should ask ourselves what attitude, what practical means we are to employ.

I. Above all, we must realise that our efforts cannot be directed solely to preventing the destruction of certain species of animals — quite apart from their relative importance — which man's rapacity threatens with extermination, such as the cetaceans and pinnipeds (whales and seals). Our aim should be a wider one: to preserve intact the whole productive force of the riches of the sea, animal, vegetable and mineral, and, by a rational system of exploitation, to make the sea permanently provide the human race with the quantity and quality of food and economic products of which it is capable. By rational exploitation we mean an exploitation adapted to natural and economic circumstances, to fundamental factors which must never on any account be neglected. This primary stipulation implies previous and profound knowledge of natural and economic conditions throughout the world.

Only on this basis can we subsequently establish a series of measures which could be applied without any danger of producing untoward results or harming legitimate interests or established conditions.

Most of these scientific data are already available. Some are being studied by oceanographical institutes, biological stations and laboratories: they have even formed the subject of great scientific expeditions. Others are scattered throughout the economic, legal, political and social bibliography of the various countries. The scientific data which are still missing, will have to be studied. All available data must be centralised and co-ordinated, the way must be prepared for such further research work as may be necessary and the results systematically dealt with by a special institute created for the purpose by the League of Nations. The problem is too vast and important a one to be treated empirically; it demands careful collaboration between the leading scientific institutes of all countries and the final definition of the problems by the central institute.

II. The aim of world legislation must be carefully determined. In the first place, we have that vast area which is known as the *mare liberum* — that is to say, the whole ocean apart from those portions of the sea which constitute the territorial waters of riparian States. But it is those portions of the territorial waters which are often of decisive importance in the problem of protecting aquatic animals. Similarly, the great rivers and certain lakes along the sea-coast, the lagoons and harbours, are of paramount importance, particularly in the case of salmon, sturgeon, shad, mullet, etc., when it comes to applying a system of official protection at sea. In this connection we are faced with a fundamental question, namely, the system which should be applied on the high seas and in territorial waters, in straits, bays, great rivers, certain lakes along the sea-coast and harbours. These measures will require careful consideration in order to avoid any action derogatory to the great interests of the various countries and their sovereign rights.

III. What measures ought we to adopt? Such measures should, in the first place, supply definite requirements established by scientific investigation, such as encouraging reproduction amongst certain species, protecting fry, defining regions of seasonal protection, prohibiting certain fishery apparatus and methods, prohibiting either absolutely or temporarily the catching of certain threatened species, etc. But these measures, as indicated by science, could not be applied in certain waters unless the interests of the local population were absolutely safeguarded. Such interests, if legitimate, must on no account be sacrificed.

IV. What organisations should be set up to ensure the effective application of the measures adopted? What penalties could be levied on offenders, and in virtue of what right?

V. What are the obligations to which the various States could subscribe by means of an international agreement without, by so doing, sacrificing their legitimate interests, or without shouldering a burden too heavy for them to bear? These, in our opinion, are the questions of principle which the League must solve before any measures can be adopted for establishing a rational exploitation of the products of the sea.

This series of measures, which would be destined to conserve the productivity of a vast source of future wealth and food supplies for mankind, and which must at the same time respect the various special and legitimate interests of the various countries, would be adopted without difficulty as an international agreement concluded between all States, and it would constitute a new body of law. When, therefore, the principles have been laid down and have been harmonised both with the requirements of science and the future, and with actual conditions and existing laws, their codification will present no difficulty.

The stages in the League of Nations work might be as follows :

1. A conference of experts in applied biology, economists and international law experts of all States possessing maritime interests should be convened. This conference would discuss and establish fundamental principles, the programme of detailed enquiries and means of application, the institution of the central research institute, and the manner in which the latter should collaborate with existing institutions of all countries — that is to say, biological and oceanographical institutes, zoological stations, fishery services, institutes of social economy, etc.

2. The organisation of the central research institute with a view to collecting and co-ordinating data, directing the continuation of research work, stating problems and preparing all material for the final solution.

3. A new conference should then be convened to discuss and adapt the final solution.

4. The new body of law thus created would be codified.

We think that in this way the League of Nations would be able, in a relatively short space of time, to solve one of the greatest problems for the future of humanity and achieve, in this respect, the noble aim for which it was created.

Salvador.

QUESTIONNAIRES NOS. 1 TO 6.

Letter of January 18th, 1927.

[*Translation.*]

In reply to your letter C. L. 25. 1926. V. dated March 22nd last to this Department regarding the different questions discussed by the Committee of Legal Experts at the meetings held last January at Geneva, I have the honour to inform you that the only questions in which Salvador is interested are the first six mentioned in the Note of the Chairman of the Committee of Experts for the Progressive Codification of International Law (document C.96.M.47.1926.V, dated February 9th, 1926) and especially the *fourth*, concerning the "responsibilities of States in respect of injury caused in their territories to the person or property of foreigners". As regards this matter, we are in full agreement with the ideas set forth in the report on the subject by the Sub-Committee consisting of Dr. J. Gustavo Guerrero and M. Wang Chung-Hui. In the opinion of the Government of Salvador, the regulation by international agreement of these subjects, both in their general aspects and as regards the specific points studied in the relevant reports of the Sub-Committees, is desirable in the near future.

(Signed) E. Arrieta Rossi.

Kingdom of the Serbs, Croats and Slovenes.

QUESTIONNAIRES NOS. 1 TO 7.

Letter of March 25th, 1927.

[*Translation.*]

With reference to the Questionnaire drawn up by the Committee for the Codification of International Law which you forwarded to the Royal Government, I have the honour to inform you, on behalf of my Government, that it considers that the questions proposed by the Committee should be codified.

Nevertheless, the Royal Government considers that Question No. 5. (Procedure for International Conferences) cannot be codified at present.

(Signed) FOTITCH.

Sweden.

QUESTIONNAIRE NO. 1. — NATIONALITY.

Letter of March 5th, 1927.

Article 1. — This article, the object of which is to restrict, in cases of double nationality the right of a State to take diplomatic action on behalf of its nationals who are at the same time nationals of another State, has not, as now drafted, the same signification as Article 1 in M. Rundstein's original preliminary draft. According to the original proposal, intervention was excluded if the municipal law of the other State allowed the adduction in support of the argument that the person in question possessed its nationality, on "grounds other than mere residence in the country". The definitive preliminary draft, however, lays down that a State may not intervene on behalf of persons who, according to the law of the State to which representations would be made, are to be considered as nationals of that State "from the moment of their birth". This wording restricts very considerably the applicability of Article 1, nor does the rule thus laid down seem to be fully satisfactory.

This can perhaps be best demonstrated by an example. According to the provisions of Swedish Law (Article 2 of the Law of May 23rd, 1924), a foreigner born in Sweden who has been *continuously domiciled* in that country up to the age of 22 acquires Swedish nationality unless he previously signifies a desire to the contrary. Suppose now that this person is a national of a country which, like Germany or Great Britain, does not admit that, by automatically acquiring another nationality, the individual thereby forfeits his nationality of origin. In this case, as the article was first drafted, the country in question would not be entitled to take action in Sweden on his behalf; but, with the present wording, such intervention is possible on the grounds that the person does not possess Swedish nationality from the moment of his birth. Conversely, in the case of a Swede born in Great Britain of Swedish parents and having consequently acquired, under the *jus soli* applied in that country, British nationality in addition to his Swedish nationality, Sweden could take no action on his behalf in Great Britain. Such a provision seems to be all the less reasonable in that an individual who has acquired Swedish nationality under Article 2 of the Swedish Law will in many cases be attached to Sweden by much stronger and more intimate ties than those connecting with Great Britain an individual born in that country who has acquired British nationality under the *jus soli*.

Other examples could be quoted; for instance, the case of a woman a national of the United States of America who, after the adoption in 1922 of the Law on American Nationality, has married a Swede and is now domiciled in Sweden. By her marriage she has acquired Swedish nationality, but under the law of the United States she retains her American nationality. Article 1, as now worded, would allow her — as she is not Swedish by birth — to claim the diplomatic protection of the United States, a consequence which can hardly be regarded as satisfactory.

In cases like the above, where the person concerned is regarded by the law of the country of his domicile as a national of that country and when his nationality does not depend solely on his residence in the country, it seems that the other State whose nationality he also possesses should not be entitled to intervene on his behalf. We therefore consider that the wording in M. Rundstein's original draft is to be preferred.

Article 2. — No observations.

Article 3. — The provision of the Swedish Law on Nationality which corresponds with this article only refers to foundlings. Article 1 of this Law lays down that such children found within the Kingdom shall be regarded as Swedish subjects unless and until the contrary is proved. Article 3 of the preliminary draft, however, refers not only to foundlings but also to any child "born of parents who are unknown or whose nationality cannot be ascertained". Though the application of this rule to "children born of unknown parents" as well as to "children found" does not give rise to any serious objection, we cannot possibly agree to its extension to children born of parents "whose nationality cannot be ascertained". It could hardly be admitted that the children of numerous foreigners who reside in the country temporarily or for short periods only and whose nationality cannot be definitely ascertained should all be regarded, owing to the mere circumstance of their birth, as nationals of the country. The consequence of this would be that a child of this category, even if he left the country when still a minor, would retain the country's nationality for ever, or at any rate until the real nationality of his parents was established, and might therefore claim abroad the diplomatic protection of the State in which he was born. The provision of Swedish law which makes the granting of Swedish nationality to children born in Sweden of foreign parents dependent on a certain period of residence — up to the age of 22 — in the country, seems to be founded on a more equitable principle.

Consequently, the Swedish Government does not feel that it can approve an article so worded as to make its provisions also apply to a child "born of parents whose nationality cannot be ascertained". It also considers this expression to be too vague, since it does not explain what action is to be taken, if the Statelessness of the parents at the time of the child's birth is duly established.

Article 4. — The observations regarding Article 3 also apply to Article 4, which lays down that "a child born outside the State of which its parents are nationals has the nationality of the State where it was born, if the State of origin does not give the parents' nationality to such child."

The principle contained in this provision seems to be a concession to the very few countries — one or two South American States — who still adhere to the rule of the *jus soli* in its entirety. It is true that children of nationals of these States born abroad have no nationality, but the present proposal contains so many drawbacks that we think it would be preferable for the States in question to be good enough to contemplate a revision of their laws in such a way as to secure, for the children of their nationals born abroad, the nationality of the parents.

The Swedish Government therefore feels bound definitely to oppose the adoption of this article.

* * *

While on this subject, we may mention a case of conflict of laws in connection with double nationality which the preliminary draft has not taken into account. As stated above, Swedish law lays down that a foreigner born in Sweden who has resided there continuously up to the age of 22 thereby acquires Swedish nationality unless he formally renounces it.

In most other countries the law does not recognise that this mode of acquiring nationality involves loss of the nationality of the person's country of origin. It may be asked whether a case of double nationality of this kind — in which the new nationality is based not only on the circumstance of birth but also on the person's absorption into the country of residence — is not a matter which might be settled in a convention. It would be extremely desirable to obtain such a settlement because at present there is every risk of numerous cases of double nationality being perpetuated from generation to generation. The Swedish Government therefore ventures to suggest that it might be well to insert in the Convention a provision to the effect that a person who has, by the circumstance of his birth and by a certain period of residence, acquired the nationality of another country, shall thereby forfeit the nationality of the State of which he was until then a national.

Article 5. — The provision in the first sentence of paragraph 1 is apparently in conformity with the law now in force in all countries. With regard to the other provisions, it is not certain that the rules they embody are really satisfactory in all cases. When one of the two nationalities is anterior to the other, and has been acquired without the consent of the person concerned (*e.g.*, by reason of birth or of the fact that the individual has had to follow the nationality of his parents), while the subsequent nationality is a result of the express desire of the person concerned to become a national of the State which eventually grants him its nationality (by option or naturalisation), it may be asked whether it would not be strictly incumbent on a third State to regard him as possessing the nationality of the second State rather than of the first, even though he may latterly have been domiciled in the first for some time.

We think that the provision in the last paragraph should, at any rate, be supplemented. It makes no provision for the case in which the person concerned has never been domiciled in either of the States whose nationality he possesses. The hypothesis is by no means, however, an impossible one. A person might quite well, by the circumstance of his birth, have acquired simultaneously German nationality (under the *jus sanguinis*) and British nationality (under the *jus soli*): domiciled in France he may become the father of a child in that country. Of what State would this child, if he never established his domicile either in Germany or Great Britain, be considered a national, either by France or by any other country in which he may establish himself subsequently?

Article 6. — Since the Committee considers that the problems referred to in this article are not yet ripe for settlement, the Swedish Government will merely offer a few short observations on this subject.

It is not very clear whether the expression "naturalisation" is here employed in its ordinary and restricted sense, namely the act by which, after enquiry, a State confers its nationality on an individual, or whether it should be understood to have a wider signification so as to include the case in which, by mere action of the law, a person acquires a nationality other than his nationality of origin. The wording of paragraph 1 would seem to indicate the latter interpretation.

If the rule laid down in paragraph 1 is also meant to apply to cases in which a person is to be regarded as having *automatically* — by circumstance of birth, for instance, or a certain period of residence — become the national of a given State, the Swedish Government feels bound to point out that it would undoubtedly lead to serious complications in practice.

Paragraph 2 of this article is not necessarily connected with the first paragraph and, as far as we can see, there can be no objection to its inclusion in the Convention. The provision seems to be satisfactory and is in concordance with Article 1.

Article 7. — There are no objections to raise to this provision. The article should, however, be so worded as to apply to the case in which the person who requests release from allegiance already possesses the nationality of another State. In this connection, Article 10 of the Swedish Law lays down that, if a person requests release from his Swedish allegiance, this person, if he has not yet acquired another nationality, must show that he is entitled to be regarded as the national of another State.

Article 8. — Under Swedish Law any person who — by naturalisation, marriage or in any other manner — becomes a national of another State, loses his Swedish nationality provided he has, or establishes, his domicile in the territory of the State in question. Although the law in most countries lays down that a married woman can, after dissolution of marriage, recover the nationality of her country of origin only when she re-establishes her domicile there, Article 8 of the Preliminary Draft has been so worded that nationality acquired by marriage will be lost even when the law of the country whose nationality the woman recovers does not stipulate that she must again take up her residence in the country. In cases where — as the law of certain countries allows — a widow or divorced woman has the right to recover, by petition, her original nationality, the suggested rule will doubtless give rise to no objections, even if the exercise of such a right is not bound up with residence in the country. But if, after dissolution of marriage, a woman thereby and without further formality is to recover her nationality of origin without being afforded an opportunity to express her wishes in the matter, we think it would be desirable to stipulate that the woman will only lose the nationality acquired by marriage if she has, or establishes, her domicile in the country whose nationality she recovers, or if at any rate she expressly states that she wishes to be released from her allegiance by the State whose nationality she acquired by marriage.

Article 9. — In order to make clear the Swedish point of view with regard to the matters referred to in this article, we must explain the provisions of Swedish Law concerning the nationality of married women.

A. A Swedish woman who marries a foreigner forfeits Swedish nationality provided, on the one hand that her marriage procures her the nationality of her husband and, on the other, that she already has at the time of the celebration of the marriage, or does subsequently establish, her domicile in her husband's country (Article 8 of the Swedish Law of 1924 on Nationality). If either of these conditions is not fulfilled, she retains her Swedish nationality in spite of her marriage. A Swedish woman who marries a citizen of the United States of America and does not, according to American Law (Cable Act 1922) thereby acquire American nationality, retains her Swedish nationality whether she establishes her domicile in Sweden, the United States or elsewhere. On the other hand, a Swedish woman who marries a German for instance (and thus under German Law acquires German nationality by marriage), forfeits her Swedish nationality as the result of her marriage if she has at the time of her marriage, or does subsequently establish, her domicile in Germany. If, however, she continues to reside in Sweden or establishes her residence in a foreign country other than Germany, she retains her Swedish nationality after marriage. In the latter case, therefore, she possesses, at least temporarily, a *double* nationality.

B. A foreign woman who marries a Swede *always* acquires Swedish nationality by her marriage (Article 3 of the Law of 1924 on Nationality).

Here, again, a case of double nationality may arise when, at the time of the celebration of the marriage, the woman in question is a national of a foreign country whose law disposes that she shall, even after her marriage with a foreigner, retain her nationality of origin, in all cases (as in the United States of America) or in certain specified cases (as in Denmark and Norway).

C. When a married Swede becomes a national of another country, the question of his wife's loss of Swedish nationality is settled according to the rule laid down in A.

D. A married foreigner may acquire Swedish nationality in a variety of ways — automatically or by petition.

Under Swedish law, there are two main ways in which Swedish nationality may be acquired automatically: the first is when a foreigner born in Sweden has been domiciled in the country up to the age of 22 (Article 2 of the Law of 1924), and the second, when a person without nationality, who previously possessed Swedish nationality by circumstance of birth, establishes his domicile in Sweden (Article 4 of the Law of 1924). When a man acquires Swedish nationality in one of the above ways, his wife only acquires the same nationality if she has, or does establish, her domicile in Sweden. In the case of a woman judicially separated from her husband, the law also lays down that the acquisition of Swedish nationality by the husband shall have no effect on that of the wife.

In the above cases, therefore, the acquisition of Swedish nationality by the wife is subject to the condition that she shall be *domiciled* in Sweden.

Finally, as regards the naturalisation of foreigners, the Swedish Government is left entirely free, when granting naturalisation, to decide whether the wife shall be included or not. Naturally, the question of the wife's domicile has a paramount influence on this decision. As far as possible the wife's opinion is to be heard. The provision in question, however, is so worded that, unless the wife definitely expresses a wish to the contrary, the naturalisation of the husband will lead to the naturalisation of the wife. •

* * *

The meaning of Article 9 is apparently this: when a woman marries a foreigner or when her husband during the course of married life acquires foreign nationality, the woman does not thereby lose her nationality of origin unless, at the same time, she acquires her husband's nationality; but that when she acquires her husband's nationality she *always* loses her original nationality.

It is obvious that this rule would in several respects clash with the present provisions of Swedish law. This will be seen if we consider the consequences which would follow in the cases mentioned above in A—D.

A. If a Swedish woman marries a foreigner — the law of whose country lays down that, when one of its nationals marries a foreigner, the latter acquires the husband's nationality — she will, according to the preliminary draft and in contradiction to Swedish law, lose her Swedish nationality.

The principle introduced into the Swedish Law of 1924 on Nationality to the effect that a Swedish woman who marries a foreigner loses Swedish nationality only when she establishes her domicile in the husband's country, was adopted after long and careful consideration. It was generally held that the drawbacks attendant on the fact that the woman would, temporarily at least, possess a double nationality were considerably less than those which would attach to a system under which she would necessarily and *ipso facto* forfeit her Swedish nationality even when she maintained her domicile in Sweden or resided in a country other than her husband's.

The Swedish Government does not therefore feel able to subscribe to this provision, which departs from the principles of existing Swedish law on the marriage of a Swedish woman with a foreigner.

B. The rule of Swedish law under which a foreign woman who marries a Swede always thereby acquires Swedish nationality is not in manifest opposition to the provisions of the preliminary draft.

No exception to this rule is allowed, nor was the acquisition of Swedish nationality made conditional on Swedish *domicile* because the effect of such a restriction would, in practice, have been that foreigners married to Swedes would lose all nationality if they had previously been nationals of a country whose law laid down that, when a woman national married a foreigner, she thereby lost her nationality of origin even when she did not by marriage acquire the nationality of her husband. If most States accepted the principle defined in paragraph 1 of Article 9, the reason which has hitherto prevented Sweden from according to married women a more independent situation in this respect would disappear. It would then be possible to apply the rule suggested in various quarters when the Law of 1924 on Nationality was being drawn up, namely that, when a foreign woman married a Swede, the marriage would not necessarily involve acquisition by the woman of her husband's nationality, at any rate so long as she did not establish her domicile in Sweden. For the provision of paragraph 1 of Article 9 to acquire this meaning, it would be sufficient to make it state that a woman married to a foreigner who does not thereby acquire her husband's nationality shall not lose her nationality of origin and shall not consequently remain without nationality.

C. As regards the case of a Swede who, in the course of his married life, acquires foreign nationality, we would refer to the observations above (Section A), the nationality of the wife being in this case subject to the rules set out in that Section. The objections to the proposed rule also apply in this case.

D. The suggested provision in paragraph 2 of this article, applied to the case of a foreigner who in the course of his married life acquires Swedish nationality, is not, we think, likely to conflict with Swedish law. In short, as regards Article 9, the Swedish Government feels bound to state that it cannot accede to the suggested provisions. It would, however, be highly desirable, particularly with a view to avoiding cases of Statelessness, to define in an international convention the status of married women from

the point of view of nationality. Guarantees should be provided to ensure that a woman shall not lose her nationality of origin and consequently be deprived of all nationality, either when she marries a foreigner without thereby acquiring her husband's nationality, or when the man changes his nationality during his married life without there being any concomitant change in the nationality of the woman.

Article 10. — The only observation to be made in connection with this article is that, if Article 9 were adopted, Article 10 would, we think, be pointless, since Article 9 eliminates Statelessness.

Article 11. — In this article, the effects of legitimation are treated in the same way as the effects of marriage in the case of a woman. Consequently, and in view of the fact that the Swedish Law on Nationality contains, with regard to the status of legitimate children, provisions similar to those which concern the nationality of women, our observations in connection with Article 9 apply in this case also.

Article 12. — This article calls for no remarks as far as Sweden is concerned. Under Swedish law a Swede who has been adopted by a foreigner does not for that sole reason lose Swedish nationality. It is only when, according to the law of the adopter's country, the adopted person becomes a national of that country and has, or does subsequently establish, his domicile therein, that he loses his nationality of origin.

Article 13. — No observations.

* * *

MM. Schücking and Rundstein both state that the provisions of the preliminary draft, particularly those which apply to the nationality of married women, will not in any way prejudice the settlement of questions at private law. M. Rundstein even proposes that a clause to this effect, which would refer to Articles 9, 10 and 11 of the preliminary draft, should be included in the Convention. If these statements were open to the interpretation that the rules for the nationality of married women as proposed in the preliminary draft would not apply to questions at private international law, the Swedish Government could not agree with this opinion. Obviously, the provisions of the Convention could have no direct influence on the rules of private law applied by a signatory State. But when it is necessary, in order to settle a question at private international law, previously to determine the nationality of an individual, it is equally clear that nationality must be determined in accordance with the conditions laid down in the Convention. The adoption, so to speak, of two sets of rules one of which would be contained in the Convention, while the other would apply to questions of private law, would be most inconvenient and would greatly diminish the value of a Convention on the lines suggested in the preliminary draft.

QUESTIONNAIRE NO. 2. — TERRITORIAL WATERS.

Letter of November 18th, 1926.

[Translation.]

In a questionnaire dated January 29th, 1926, the League of Nations Committee of Experts for the Progressive Codification of International Law enquired of the Swedish Government whether it considered that there were problems connected with the law of the territorial sea, in its various aspects, which could be settled by means of a convention, and, if so, what these questions were and how they might be solved, and in particular what should be the jurisdictional right of a State over foreign merchant vessels in its territorial waters or ports.

The Swedish Government considers that the conclusion of an international convention on questions connected with territorial waters would be highly desirable. The vagueness of international law on certain points is obviously a source of much inconvenience. The proposed convention, moreover, need not necessarily constitute a schematic and uniform settlement of all these questions. On the contrary, we should endeavour to produce an international agreement so drafted as to take into proper account the acquired rights of and dissimilar conditions existing in the various countries. In any case, the Swedish Government considers that the opportunity afforded the various Governments of expressing their views on the subject — so that the necessary conditions of an international settlement may be more clearly determined — is an excellent preparatory step. It therefore ventures to indicate below, with comments, the attitude of Swedish law towards the questions dealt with in the Draft Convention which figures as an annex to the Questionnaire.

Before proceeding to consider the various proposals in detail, the Swedish Government feels bound to observe that the scope of the proposed convention is not perhaps defined with sufficient clearness. The commentaries which M. Schücking, the Rapporteur of the Sub-

Committee, has appended to the draft seem to imply that the convention will not be applicable to war conditions, although the Convention itself is mute on this point. Possibly the scope of the draft in this direction, as in others, would have been more readily comprehended by the Swedish Government if the latter had been in a position to examine these documents in the light of the Committee's Minutes — which was not the case.

Article 1. — Character and Extent of the Rights of the Riparian State.

This article lays down that "the State shall have the right of dominion over the zone which washes its coast." The Swedish Government is also of opinion that riparian States possess sovereignty over their territorial waters; it may therefore be admitted, particularly in view of the statements made by the Rapporteur in his commentary, that the principle which the Draft Convention would lay down is quite in keeping with Swedish opinion.

Article 2. — Extent of the Rights of the Riparian State.

The draft fixes the extent of territorial waters at three marine miles, adding, however, that "exclusive rights to fisheries continue to be governed by existing practice and conventions", and it reserves to States the possibility of exercising administrative rights in certain circumstances beyond the limit of their territorial waters.

The Swedish Government feels bound to point out in this connection that for over a century the territorial waters of Sweden have been regarded as extending for a distance of four sea miles from the coast. In claiming the four-mile limit, it feels that it has not departed from present-day international usage, and this view is supported by the survey of this question from the point of view of international law, which the Rapporteur embodies in his memorandum. The present Swedish four-mile limit is mentioned for the first time in the "Instructions" issued in 1779 to the Commander of the Fleet; shortly afterwards it was embodied in various official texts regarding neutrality, pilotage, Customs and fishery. The Customs Regulation of 1904, which is still in force, contains provisions to the effect that Swedish territorial waters shall extend for four sea miles from the coast. A similar Ordinance of 1871, concerning fisheries on the west coast of Sweden, fixes at the same distance the extent of the internal waters in which fishery is reserved for Swedish nationals.

From the statements made by various authorities, it would seem that a considerable number of interests are bound up with the maintenance of this limit. Another point in its favour is that Sweden's neighbours — Finland and Norway — also regard their territorial waters as extending for a distance of four sea miles from the coast.

The Swedish Government, has already observed that the conclusion of an international convention on territorial waters would not necessarily imply a rigid settlement of all the related problems. The Draft Convention, which aims at establishing a uniform limit of territorial waters for all countries, still leaves a loophole for exceptions to be allowed in certain important matters — fishery and administrative rights and the jurisdiction attaching thereto — which would obviously vary to an appreciable extent from country to country. Consequently, the uniformity which the draft aims at establishing in principle, as regards the limit of territorial waters, need not, it would seem, be adhered to in practice. If that be so, the Swedish Government esteems that it would be preferable so to word the provisions of the Convention with regard to the actual extent of the zone of sovereignty, as to allow some latitude, within reasonable limits, for the many acquired rights and interests which exist in the various countries. It would be particularly desirable in this connection to take into account rights in favour of which an uninterrupted usage for centuries can be invoked.

While on this point, the Swedish Government ventures to observe that a reservation regarding such rights is to be found, in the case of bays, in Article 4 of the Draft Convention.

The starting-point from which the extent of territorial waters is calculated is stated in the draft to be "low-water mark". In Swedish law this point is "the coast or outermost islets and reefs which are not permanently submerged". These two formulas are not necessarily in opposition, because they both appear to mean that the calculation should be made from the last vestiges of the coast which at low water emerge from the surface.

The Convention, if applied literally, would mean that the territorial water-limit would follow every contour of the coast. The Swedish Government ventures to point out that it would be difficult to apply such a method of calculation along coast-lines which, like those of Scandinavia, are deeply indented by numerous inlets and fringed by many isles and islets. Along such coasts it would perhaps be more rational and practical to draw the limit of territorial waters parallel with the main coast-line — that is to say, to assign to it as limits lines parallel to other lines drawn from one extreme coastal point to another.

The Rapporteur's original draft contained an Article 3 with provisions for the creation of an International Waters Office. States possessing rights with respect to territorial waters outside their "fixed zone" (such as fishery rights in the territorial waters of other States or outside the national territorial waters, administrative rights of various kinds outside the national territorial waters, etc.) might have them registered to ensure their recognition.

Disputes would be submitted for settlement to a mixed commission, appeal against the decisions of this commission lying to the Permanent Court of International Justice. In the Rapporteur's final draft this article has been omitted.

Although it does not wholly endorse all the provisions of the original draft, the Swedish Government is inclined to think that an institution like the one suggested in Article 3 might, if it could be established under suitable conditions, possess a number of advantages. Even under the terms of the Draft Convention, as it is submitted to us to-day, many important exceptions might be made to the general rules laid down in the draft with regard to the territorial waters. This will still be the case if, as the Swedish Government proposes, the future convention allows more latitude as regards existing divergencies as to the extent of these waters. Even should it seem neither necessary nor desirable to create a special commission for the settlement of disputes, it would, in the opinion of the Swedish Government, be useful if an international body were to register and publish the facts regarding the territorial waters of the various countries.

Article 4. — Bays.

In the case of bays, according to the Draft Convention, the territorial sea is measured from a straight line drawn across the bay at the part nearest to the opening towards the sea where the distance between the two shores of the bay is ten marine miles, unless a greater distance has been established by continuous and immemorial usage.

It is true that conventions concluded between various European Powers lay down ten marine miles as a minimum breadth for a bay-line from which the extent of the external territorial waters is to be calculated, but it cannot be said that this method of calculation has acquired the character of a generally recognised usage admitted by international law. In the opinion of the Swedish Government — which is confirmed by the declarations of the Hague Court of Arbitration in the statement of the grounds on which the North Atlantic Fisheries Arbitral Award was given in 1910 — neither the rule fixing at ten marine miles the basic line from which, in the case of bays, the extent of territorial waters is to be measured, nor the twelve-mile rule, can be held to have become a rule of international law, and the method ordinarily followed of delimiting territorial waters as a zone of three, four or six marine miles in breadth following the contours of the coast is not applicable to bays.

According to Swedish law, the whole area of any bay which indents the coast to an appreciable extent is in every case to be regarded as territorial water, and the exterior territorial waters are measured from a line drawn across the bay between the two extreme points where the bay merges into the general coast-line. During the Great War, therefore, the Swedish Government always maintained that the Bays of Laholm and Skelderviken, on the south-west coast of Sweden, were entirely Swedish territorial waters.

In the case of the Bay of Laholm the Swedish argument was singularly strengthened by the provisions of a fisheries convention concluded between Sweden and Denmark. The rule has also been adopted by Swedish jurisprudence.

Of course, the ten-mile line mentioned in a number of fishery conventions as the basic line for calculating the extent of territorial waters in bays was adopted for practical reasons and because the extent of territorial waters had been fixed at three nautical miles. It was held that a free space less than four miles in breadth between two zones of territorial waters, each three miles broad, would be too narrow to allow of fishery without constant risk of fishermen penetrating into waters forbidden to foreigners (see the statement by Mr. John Moore in the *Year-Book of the Institute of International Law*, XIII, page 146). In the case of the bays along the Swedish coast, it would be necessary, in view of the above, to allocate to Swedish internal waters all bays of a width not exceeding twelve nautical miles and to fix the extent of the external territorial waters from a line drawn across the bay at the part nearest to the opening towards the sea where the distance between the two shores of the bay would be twelve nautical miles.

The Swedish Government considers that a basic line of ten nautical miles for the measurement of territorial waters in bays is not sufficient in the case of Sweden, and finds no corroboration in current international law.

Article 5. — Islands.

One observation is necessary with regard to the wording of this article. If the centre of an archipelago is regarded as the point for determining the isles from which the calculation of territorial waters is to commence, the provision regarding archipelagos would seem to apply only to those which are situated in the open sea; it could not, for instance, apply to groups which, like the Swedish coastal archipelagos (*skärgård*), fringe the shoreline. To make Article 5 applicable to the conditions of Swedish geography, it would therefore be necessary to add a provision to the effect that when an archipelago fringes the coast, the extent of the territorial waters shall be calculated as commencing from the islands and reefs furthest from the coast.

Article 6. — Straits.

The drafting of Article 6 also calls for an observation on the part of the Swedish Government. In certain respects this article is not quite clear, as, for instance, the provision which lays down "the regime of straits at present subject to special conventions". Does this provision mean that if two States whose coast-line borders certain straits conclude an agreement dividing the whole of the straits between them, this agreement can be invoked against third parties, even when, under the convention now proposed, the straits also include international waters? According to the Rapporteur's original draft, which fixed the extent of the territorial waters at six nautical miles in general, straits not exceeding twelve miles in width were to belong entirely to the riparian States. The extent of territorial waters having been reduced to three nautical miles in the Rapporteur's second draft, the logical consequence would have been to regard as entirely territorial waters only those straits which are less than six nautical miles in breadth, or — when both shores of the straits belong to the same State — those which are not more than six nautical miles wide at their opening towards the sea. The draft, however, fixes at ten miles the maximum width of straits which are to form part of the territorial sea of the coastal States. The meaning of the formula "straits not exceeding ten miles in width" is also somewhat uncertain, for there is nothing to show whether this formula only applies to straits which do not exceed ten miles in width at any point or whether it refers to those parts of straits where the width is ten miles or less, whereas in other parts their width is more than ten miles.

Moreover, as regards the Swedish standpoint in this matter, the Swedish Government would point out that, since the Treaty of Roskilde in 1658, one-half of the Sund has been regarded as a Swedish territorial sea. Similarly the Straits of Kalmar, of which both sides belong to Sweden, are regarded as entirely Swedish territorial waters. At their opening towards the sea these two straits are both slightly over ten nautical miles in width.

Article 7. — Pacific Passage.

With regard to this Article, the Swedish Government ventures to observe that Swedish legislation for the suppression of contraband in spirituous liquors includes certain restrictions on the right of free passage, since it forbids access to Swedish territorial waters to vessels and boats of less than 250 tons coming from international waters with a cargo of wine or spirituous liquors.

Article 9. — Jurisdiction, and

Article 13. — Jurisdiction over Foreign Merchant Vessels in Maritime Ports.

The Swedish Government shares the opinion expressed in these articles that foreign vessels passing through the territorial sea should not thereby become subject to the civil jurisdiction of the sovereign State. It holds that in ports the latter should exercise civil jurisdiction over foreign vessels — as has hitherto been the case under Swedish law — subject to the reservation that disputes between the captain and crew regarding labour conditions are not within this jurisdiction. Offences committed on board foreign vessels in Swedish ports which cannot be regarded as being of a purely disciplinary nature are, according to legal practice, within Swedish jurisdiction — a rule which, in the opinion of the Swedish Government, is entirely in the interests of public order.

Article 10. — Regulations.

With regard to the provision in this article concerning the right of pursuit, it is to be noted that a convention concluded at Helsingfors on August 19th, 1925, between Sweden and the other Baltic riparian States, and Norway, with a view to suppressing contraband in alcoholic goods, includes a provision according the right of pursuit outside the twelve-mile limit within which the convention accords each party the right to apply to vessels of the other signatory Powers its national legislation on contraband.

Article 11. — Riches of the Sea, the Bottom and the Sub-soil.

This Article does not call for any observation on the part of the Swedish Government.

Article 12. — Warships.

In this connection the Swedish Government would repeat its preliminary observation that it should be made clear whether the Draft Convention refers both to war conditions and peace conditions or exclusively to the latter. According to the rules in force in Sweden, submarines of belligerent Powers have no right of passage through the Swedish territorial sea, whereas in peace time such right is accorded to foreign submarines provided they navigate on the surface.

(Signed) Eliel LÖFGREN.

QUESTIONNAIRE NO. 3. — DIPLOMATIC PRIVILEGES AND IMMUNITIES.

Letter of November 12th, 1926.

[Translation.]

In a questionnaire dated February 9th, 1926, the Committee of Experts for the Progressive Codification of International Law enquired whether all or any of the questions connected with diplomatic privileges and immunities enumerated in this questionnaire appeared to the Swedish Government to be questions which might usefully be studied at the present time with a view to concluding a general convention. It was added that the convention might, if necessary, be completed by separate or bilateral agreements.

The Swedish Government considers that the question of diplomatic privileges and immunities is a matter which might well be settled by a general international convention. It also shares the Committee's opinion that the conception of ex-territoriality is not an adequate foundation for the practical solution of the problem as a whole, and that it would be difficult to find a better basis for an enquiry than "the necessity of permitting free and unhampered exercise of the diplomatic function and of maintaining the dignity of the diplomatic representative and the State which he represents and the respect properly due to secular traditions".

We do not propose at present to take up any definite position with regard to the special points mentioned in the Committee's Questionnaire No. 3, since these questions are not likely to give rise to profound divergencies of opinion at a future conference. The Swedish Government ventures to indicate the rules which are applied in Sweden and to draw from these rules certain conclusions with regard to the more important questions.

A. I.

1. The "inviolability of diplomatic agents" is recognised in Sweden in all the cases mentioned in 1 (a) to (e).

2. As regards "immunity in civil or commercial matters", there are no special legislative provisions in Sweden, nor, as regards case law, are there any precedents from which a rule could be drawn. The Swedish Government considers that, in principle, it would be fair to impose by an international convention certain restrictions on the absolute immunity of diplomats from civil jurisdiction. It does not think that such exceptions should be limited *a priori* to "real actions" and "actions connected with the exercise of a commercial calling". We think it would also be desirable to adopt some conciliation or arbitration procedure for disputes at private law to which diplomats may be parties. The right, which now seems to have been definitely accorded to diplomats, of exemption from giving evidence in court in civil matters should, we think, be maintained.

3. As regards the immunity of diplomats from criminal jurisdiction and their exemption from appearing as witnesses in criminal cases, we do not think that existing rules need be changed. It may be observed that Swedish law contains only the following provision with regard to criminal jurisdiction: "In the case of the legations of foreign Powers the rules consecrated by usage or provisions laid down in treaties shall apply." (Penal Code, Chapter I, Article 4.)

As for the special question of the right of granting asylum to persons threatened with penal proceedings, it might perhaps be desirable to consider the possibility of including in a future convention definite provisions to cover the case in which local authorities consider themselves bound to conduct a search for persons suspected of offences committed in the country in premises enjoying immunity.

4. Fiscal immunity: the attached memorandum¹ gives the rules which, in Sweden, govern the obligations of diplomats in the matter of taxation and Customs duties. The Swedish Government agrees with the Sub-Committee's report when it says that "such privileges do not lend themselves to detailed regulation in the form of a collective treaty", and "it is only by means of bi-lateral conventions based on reciprocity that States can conclude any very detailed agreements on this subject." It does not, however, see any objection to embodying in a general convention certain general provisions regarding a fixed minimum of privileges.

At the present time diplomatic agents in Sweden are not required to pay taxes in connection with social insurance. It might, however, be worth while considering whether the proposed convention ought not to lay down that diplomats should pay such taxes in respect of staff and domestics who are natives of the country to which the diplomats are accredited, if the laws of that country require such payment to be made.

¹ Printed below.

A. II.

1. The Swedish Government holds that it would be desirable to adopt a provision to the effect that, generally speaking, only persons whose names have been duly communicated to the Ministry of Foreign Affairs shall enjoy diplomatic privileges. This provision should, however, be so drafted that diplomats proceeding to their posts, or recently arrived, should not be excluded from the benefits of the protection afforded by diplomatic prerogatives. As these prerogatives extend to the members of diplomats' families, it would seem logical that the members should also be included in the list of the staff.

In the opinion of the Swedish Government, the Government of the country concerned should be granted the right to refuse to admit an obviously exaggerated number of diplomatic agents.

2. The Government of the country concerned should have the right to refuse to recognise as diplomatic agents persons whose activities are essentially different from the ordinary activities of diplomatic officials.

3. It does not seem that the personal servants of diplomatic agents should, generally speaking, be accorded a privileged situation. At any rate, they should not receive all the privileges they at present enjoy in various countries. On the other hand, it would seem that the office staff of legations should be included in the privileged class.

4. Persons forming part of a diplomatic mission who are nationals of the country in which they reside should, we think, be granted prerogatives in respect of their official acts but not in respect of their personal status.

(Signed) Eliel LÆFGREN.

Annex.

Memorandum concerning

A. The Customs Exemptions accorded to Members of Foreign Legations in Sweden.

According to the provisions of Swedish law as to the exemption from Customs duties accorded to foreign diplomats, only heads of missions enjoy this privilege. The exemption applies to all consignments of articles for their personal use provided they are addressed direct to the Ministers, Chargés d'Affaires, or legations, and that the addressee claims them in writing from the Minister for Foreign Affairs.

The other members of legation staffs are accordingly not entitled to Customs exemption, and consignments sent to them cannot be claimed by the head of the mission. Consignments addressed to heads of missions and sealed with the seal of the competent central authorities, and consignments the packing or other characteristics of which clearly prove their official nature, and which do not contain articles liable to duty, are, however, delivered direct to the addresses without Customs examination.

The baggage of members of a foreign mission, permanent or extraordinary, who prove their status by producing a diplomatic passport are also exempt from this formality. Exemption is also accorded on the above conditions when the person concerned, without being a member of one of the accredited legations at Stockholm, is merely crossing Sweden on his way to or from his post.

In addition to these provisions, which apply only to diplomatic staff, the Customs regulations allow all persons arriving from abroad to take up their permanent residence in the country, the right to import duty-free all their household goods (furniture and clothing, if not new, etc.) on submitting to the Customs a declaration showing the exact nature of the articles.

B. The Exemption from Taxation accorded to Members of Foreign Legations in Sweden.

I. Income Tax.

Members of foreign legations and their staffs are exempted in Sweden from this tax to the following extent: *if they are not Swedish subjects*, on all income other than that derived from immovable property situated in Sweden, from business carried on in the Kingdom, or from emoluments, salaries and pensions of Swedish origin; *if they are Swedish subjects*, on the income they derive from the foreign Power.

II. Tax on Capital.

Foreign diplomats and their staffs, if they are of foreign nationality, are exempt from taxation on all capital except capital invested in Sweden.

By capital invested in Sweden is meant immovable property situated in the Kingdom, capital invested in the establishment or working funds of undertakings operating in Sweden, and shares of every kind in such undertakings. Premises occupied by a foreign legation and belonging to the foreign State are entirely exempt from such taxation under special agreements concluded in each case.

III. Tax on Motor-cars.

According to the Royal Ordinance of June 2nd regarding the tax on motor-cars, Article 2, the King may, subject to reciprocity, exempt from this tax members of foreign legations who are not Swedish subjects.

IV. Dog Tax.

Swedish legislation includes a compulsory tax on dogs. There is no provision under which foreign diplomats are exempted from this tax, but it is assumed that in practice diplomatic agents of foreign nationality will be exempted as a matter of courtesy.

Stockholm, November 12th, 1926.

QUESTIONNAIRE NO. 4. — RESPONSIBILITY OF STATES.

Letter of November 12th, 1926.

[Translation.]

On March 22nd, 1926, you were good enough to ask me to communicate to you the observations which the Swedish Government might wish to offer with regard to the questionnaire of the Committee of Experts for the Progressive Codification of International Law on the subject of the responsibility of States for damage done in their territories to the person or property of foreigners. In reply, I have the honour to transmit to you the following observations.

The Swedish Government considers that the question raised in the above questionnaire is of high importance and that it can be settled by means of an international agreement. In principle, it is quite prepared to support a convention defining, in strict conformity with the principles already consecrated by international law, the international responsibility of States for damage done in their territory to the person or property of foreigners.

The Swedish Government holds that the points referred to in paragraphs 11 and 12 of the Sub-Committee's conclusions are of particular importance. Should the preparation of detailed rules regarding the extent of the responsibility of States, or the attainment of a general agreement with regard to such rules, be fraught with difficulty, it is to be hoped that in any case disputes which may arise in this connection will be submitted to an impartial international enquiry or judicial settlement on the basis of the existing principles of international law. The Swedish Government is of opinion that the Covenant of the League of Nations already constitutes an obstacle which may prevent States Members from resorting to measures of military coercion against another Member of the League before the dispute has been subjected to procedure with a view to settlement in accordance with one of the methods laid down in the Covenant. From this point of view the provision in paragraph 12 is only an expression of the principles of law which are already in force between the Members of the League. The Swedish Government has had occasion to explain its views on this point in the observations — the text of which is attached¹ — submitted by it in reply to an enquiry of the special Committee of Jurists referred to in the Council resolution of September 28th, 1923. But it would desire to point out in this connection how obviously important a matter it is that the above principle should also be accepted by States which are not at present members of the League.

The Swedish Government feels, moreover, that it would be desirable to consider the extent to which the various States have already bound themselves to submit to commissions of enquiry and conciliation, as proposed in Article 11, all disputes which may arise between them on these points. It seems that commissions of enquiry and conciliation, the institution of which has become increasingly common in recent years, would, generally speaking, also be competent to deal with disputes concerning the responsibility of States for offences committed against the rights of foreigners. I venture to transmit herewith a list of conventions² on the establishment of procedure for enquiry and conciliation which have been concluded by Sweden with other countries.

As regards the other conclusions of the Sub-Committee, the Swedish Government would, for the present, merely observe that it might perhaps be desirable to subdivide this

¹ Annex I.

² Annex II.

problem into two questions: (a) damage done to the person of foreigners; (b) damage done to their property. There would seem to be a greater possibility of reaching an agreement on the first point than on the second.

After comparing the subject with several other subjects examined by the Committee — such as the problem of territorial waters and that of diplomatic immunity — the Swedish Government considers, however, that, from the point of view of reaching international agreement, it would be desirable to place the question of the extent of the responsibility of States for damage done to foreigners in the second rank until the Committee has caused it to receive more careful examination. As more and more States undertake to resort to compulsory procedure for conciliation and arbitration, the principles of international law on this subject will afford a basis for the recommendations of commissions of conciliation and the decisions of courts of arbitration, even before the codification of definite rules of international law has been effective.

(Signed) Eliel LÖFGBEN.

Annex I.

Observations of the Swedish Government on the Report of the Special Committee of Jurists referred to in the Council Resolution of September 28th, 1923.

[Translation.]

Stockholm, January 29th, 1926.

In reply to your letter of October 10th, 1925, in which you asked the Swedish Government to forward to the Secretariat of the League of Nations any observations which it might desire to make on the report of the Special Committee of Jurists appointed under the resolution of the Council of September 28th, 1923, I have the honour to submit to you the following considerations relating to the question dealt with under (4) in that report:

At the meeting of the Council on March 13th, 1924, when the above-mentioned report was examined, the Swedish representative, M. Branting, made the following statements:

“As regards the reply to the fourth question, the Committee of Jurists has not indicated the cases in which coercive measures are legitimate and the cases in which they are not. It is evident that the reply of the Committee might cover different opinions as to the legal character of certain coercive measures. In these circumstances, my Government would have liked this question to be referred to the Permanent Court of International Justice in order that a clearer opinion might be obtained on this extremely important and very delicate problem.

“As, however, this suggestion has not been favourably received by my colleagues, I declare, in accordance with my instructions, that my Government maintains in its integrity the interpretation of the Covenant on this subject, an interpretation which was supported by me during a previous session of the Council, and that it therefore continues to be of opinion that the use of armed forces is not compatible with the Covenant in the circumstances indicated in the fourth question. I accept the fourth reply subject to this declaration.”

May I be allowed to add the following to these statements? The wording of Question 4 as regards measures of coercion which are not meant to constitute acts of war obviously refers only to measures taken by one State against another in order to bring pressure to bear upon it. The point at issue appears therefore to be limited to what international law means by reprisals. Reprisals include not only measures involving the use of armed forces but also other means of pressure, such as financial measures, etc.

The report of the Committee of Jurists confines itself, as regards the fourth question, to stating that certain measures of coercion are consistent with the terms of Articles 12 to 15 of the Covenant and that others are not. But it does not trace any line of demarcation between the two classes of measures, that is, between those which are legitimate and those which are not. It is, however, exceedingly important to draw as clear a distinction between them as possible.

It should be noted in this connection that opinions on this question held prior to the adoption of the Covenant are now of only limited importance in relations between States Members of the League of Nations.

1. The question whether a State which resorts to reprisals is defending a just cause is of no importance at all. According to the Covenant, attempts must in every case be made to settle the dispute by peaceful means before any recourse is had to acts of force. According to Article 12, the parties are bound not to resort to war or to take any other measure constituting a rupture, or likely to be regarded by the other party as being of that nature, before applying to the Council or submitting to arbitration.

2. The question cannot be solved by any such purely subjective standard as the intentions of the Government which takes the measures in question. The system established by the Covenant requires that the question should be settled by an objective standard enabling the Council to determine which State it is that first resorted to acts of war and thus incurred the penalties provided by the Covenant.

3. Nor can the question be settled by a consideration of the attitude adopted by the State to which measures of coercion have been applied. If it were accepted that a pacific attitude on its part would remove from the measures in question their warlike character, it would follow that the State attacked would have a reason for offering armed resistance, since the measure of reprisal would thus appear as having created a state of war and as therefore entitling it to appeal for help to the League of Nations. Such an interpretation of the Covenant would, however, be directly harmful to the maintenance of peace.

The conclusion which follows from the above arguments is that measures of coercion which involve the use of armed forces must be considered incompatible with the provisions of the Covenant in the circumstances indicated in the fourth question. This conclusion seems also to accord with the attitude adopted by the Council in settling the conflict between Greece and Bulgaria.

(Signed) Östen UNDÉN.

Annex II.

[Translation.]

Conventions concluded by Sweden with regard to Procedure of Enquiry and Conciliation.

Contracting State	Date of signature	Date of the exchange of ratifications
<i>I. Treaties of Conciliation.</i>		
United States of America	October 13th, 1914	January 11th, 1915
Chile	March 26th, 1920	May 3rd, 1921
Uruguay	February 24th, 1923	¹
Switzerland	June 2nd, 1924	February 14th, 1925
Denmark	June 27th, 1924	March 7th, 1925
Norway	June 27th, 1924	August 30th, 1924
Finland	June 27th, 1924	September 13th, 1924
Latvia	March 28th, 1925	September 24th, 1925
Estonia	May 29th, 1925	February 25th, 1926
Lithuania	June 11th, 1925	October 29th, 1926
<i>II. Treaties of Conciliation and Arbitration.</i>		
Germany	August 29th, 1924	November 21st, 1925
Poland	November 3rd, 1925	¹
Czechoslovakia	January 2nd, 1926	April 29th, 1926
Belgium	April 30th, 1926	¹
Austria	May 28th, 1926	¹

QUESTIONNAIRE NO. 5. — PROCEDURE OF INTERNATIONAL CONFERENCES.

Letter of November 12th, 1926.

[Translation.]

In a questionnaire dated February 9th, 1926, the Committee of Experts for the Progressive Codification of International Law expressed a desire to learn whether the Swedish Government held that it was possible to formulate rules which could be recommended for the procedure of international conferences and for the conclusion and drafting of treaties.

As regards the procedure to be followed at international conferences, the Swedish Government is not absolutely certain that it would at present be desirable to undertake a codification of rules. As certain definite customs are now growing up in connection with the conferences convened by the League of Nations, the need for uniform rules, embodied in an international convention, does not seem to be as great to-day as it was in the past.

On the other hand, the Swedish Government holds that it would be highly desirable to attain a greater measure of uniformity in the rules for the conclusion and drafting of treaties. It may, however, be asked whether, at the present time, it would be desirable to aim at obtaining such uniformity by means of an international conference. The Swedish

¹ The exchange of ratifications has not yet taken place.

Government is inclined to think that the best method, for the present, would be for the Committee to prepare drafts which might then be used as models by the various States. There can be no doubt that the object in view would thus, to a considerable degree, be attained.

In the opinion of the Swedish Government, therefore, it would be desirable for the Committee to draw up a project concerning the drafting of international conventions and a draft formula for the clauses which are usually to be found in these conventions, as mentioned by the Committee in its list. These drafts would be submitted for examination to the various Governments, whose observations would then enable the Committee to make the necessary alterations. Even after the final draft of the text and its communication to the Governments, the various States would still be free to employ these models or not, as they chose.

In this connection the Swedish Government feels bound to observe that the Constitution of Sweden contains the following provision :

“The King shall have the right, after consulting the Council of Ministers, to conclude agreements with foreign Powers. When these agreements are concerned with questions which the Riksdag is, under the terms of the present Constitution, entitled to decide either alone or in conjunction with the King, or when the questions are not such, but are nevertheless of real importance, they shall be submitted to the Riksdag for approval, and must contain a reservation to the effect that they shall not come into force until such approval has been obtained.

“If, in any particular case, the interests of the Kingdom require that an agreement of real importance, but unconnected with any question which it is within the domain of the Riksdag to determine, be concluded without the approval of the Riksdag, such agreement may be concluded provided the Commission for Foreign Affairs has previously been afforded opportunity to give its opinion, as laid down in the Article in question.” (Constitutional Law, Article 12.)

(Signed) Eliel LÖFGREN.

QUESTIONNAIRE NO. 6. — PIRACY.

Letter of November 18th, 1926.

[Translation.]

In a questionnaire dated March 22nd last, which you were good enough to communicate to me, the Committee of Experts for the Progressive Codification of International Law ask to be informed whether the Swedish Government considered that it would be possible to establish in an international convention provisions for the suppression of piracy.

In reply to this request, the Swedish Government has the honour to state that it does not consider the question of piracy to be one of the most urgent matters requiring settlement by international agreement. Should other Powers, however, desire such an agreement, the Swedish Government would not have any objection to this question being dealt with, with a view to the establishment of international rules.

(Signed) Eliel LÖFGREN.

QUESTIONNAIRE NO. 7. — PRODUCTS OF THE SEA.

Letter of November 18th, 1926.

[Translation.]

In a questionnaire dated February 9th, which you were good enough to communicate to me, the Committee of Experts for the Progressive Codification of International Law asked to be informed whether the Swedish Government held that it would be possible, by means of an international agreement, to establish rules for the exploitation of the products of the sea.

In reply to this request, the Swedish Government would venture to point out that there has been in existence, since 1902, a Permanent International Council for the Exploration of the Sea, and that fourteen European States, including Sweden, have adhered to this organisation. This Council was created on the assumption that it would be impossible to establish international rules for the fishing or catching of certain maritime species until careful scientific research had shown that fishing or catching so seriously affected the existence of these species as to warrant their protection by international measures. It is admitted that the decrease of certain species is not necessarily due to excessive catching; it may be ascribed to purely natural circumstances which affect their existence to a greater extent than any action on the part of man. The aim of this international exploration of the sea is precisely to secure the rational economic exploitation of marine

fauna. At the present time, we do not think it can be said, that, on the whole, the useful maritime species are threatened with extinction unless their exploitation is regulated by international agreement. Such a danger would seem to exist only in regions in which fishery and catching are conducted on a particularly intensive scale.

The enquiry of the Committee of Experts seems, however, to have shown that a real danger threatens whales in the Antarctic seas — the only waters in which these cetaceans are still encountered in considerable numbers. The extermination of this species would certainly adversely affect the legitimate interests of many countries. It would, therefore, be desirable to regulate its exploitation as soon as possible by convening an international conference of experts as suggested by the Rapporteur of the Committee for the Progressive Codification of International Law.

Research work carried out by the Permanent International Council for the Exploration of the Sea would also seem to prove that plaice require protection, in the North Sea, against over-intensive fishing.

The data at present available on this subject do not enable us to determine with certainty what other useful maritime species are threatened with extermination by fishing or catching, and whether they should receive international protection. It might well, however, be desirable to afford wider and more effective protection to pinnipedia, though these are already protected to a certain extent.

Consequently, the Swedish Government holds that there are various reasons in favour of convening an international conference of experts to examine the question of the protection of the above-mentioned species in regions where they are threatened with extermination. In conformity with the conclusions of the Committee's Rapporteur, it will not be necessary from the outset to limit the programme of this conference to the above question nor, generally, to certain States, regions or maritime species. The Swedish Government is of opinion that it would be desirable to lay down a general rule to the effect that the conference would only draw up draft international rules in cases where such rules were shown to be obviously and immediately necessary. It does not therefore think, as the Rapporteur suggests, that the conference should concern itself above all with preparing a draft the object of which would be to organise a system for the supervision of the exploitation of maritime fauna in all its aspects. The Swedish Government does not consider that such a draft is in any way necessary from a practical point of view. It would be preferable for the conference to consider each individual species separately, in the manner indicated above, and study the various geographical regions separately.

(Signed) Eliel LÆFGREN.

Switzerland.

QUESTIONNAIRES NOS 1, 2, 6 AND 7.

Letter of November 4th, 1926.

[Translation.]

You were good enough to communicate to us, as an annex to your letter of March 22nd last, seven questionnaires prepared by the Committee of Experts for the Progressive Codification of International Law on the following subjects :

- (1) Nationality ;
- (2) Territorial Waters ;
- (3) Diplomatic Privileges and Immunities ;
- (4) Responsibility of States in respect of Injury caused in their Territory to the Person or Property of Foreigners ;
- (5) Procedure of International Conferences and Procedure for the Conclusion and Drafting of Treaties ;
- (6) Piracy ;
- (7) Exploitation of the Products of the Sea.

In order to comply with the desire expressed in your letter, we have the honour to transmit to you herewith for the Committee of Experts a few observations giving the views of the Swiss Government concerning the regulation by international agreement of the subject treated in Questionnaire No. 1. We shall duly communicate to you as soon as possible the observations which the Federal authorities may have to offer regarding Questionnaires 3, 4 and 5. As regards the *other* questionnaires, we have noted their contents with interest, but, as the problems with which they deal are of only very indirect concern to our country, the Swiss Government, at least for the present, does not feel itself called upon to express any views concerning them.

(Signed) MOTTA.

Annex.

Questionnaire No. 1. — Nationality.

The fact that the laws of the different countries are very far from uniform in the matter of nationality leads too often to inextricable difficulties, which may in some cases become so serious as to disturb good relations between the States concerned. We therefore regard with every sympathy the proposal to regulate the problems of nationality by means of international agreements.

As regards the possibility of framing a draft convention likely to be accepted by a considerable number of States, the Swiss Government shares the opinion expressed on pages 2 and 3¹ of the report. In view of the fact that there exists practically no uniform international usage in this field, and in view of the reasons which impel most States to maintain their present attitude towards problems of nationality, to attempt to conclude a convention for the settlement of all or even the most important questions relating to nationality would undoubtedly be premature. Even codification on a scale as limited as that proposed in the report will undoubtedly meet with serious difficulties, which it would be wrong to under-estimate and which appear to justify a certain scepticism.

Switzerland could approve — at any rate, in their general outline — several provisions of the preliminary draft Convention in the form it has assumed after the discussions of the Committee of Experts.

For instance, the Swiss authorities approve the principle that a State should refrain from diplomatic intervention on behalf of its nationals if the latter also happen to be nationals of the State in regard to which such intervention would take place. According to the practice which they have always followed in this connection in conformity with Swiss law, they hold that this idea should be given an even wider application than it receives in Article 1 of the preliminary draft, by omitting the words "from the moment of their birth" and adding the words "and consular" between the words "diplomatic" and "protection".

The Swiss Government is equally in favour of the principle on which Article 2 is based. It does not, however, desire to express an opinion on the option which the preliminary draft proposes to allow these persons to exercise ("Nevertheless, they shall have the option of claiming", etc.), because this part of the text does not seem to have been drafted with sufficient clearness. Does it mean that, when the ordinary conditions for acquiring the nationality of the State in which these persons were born have been fulfilled, the State in question will be bound, in spite of the special character of the case, to recognise the person concerned as a national if the latter — or his legal representative in the case of a minor — so requests, and if the law of his State of origin allows him to claim the nationality of the other State? Should that be the intention of the author of the preliminary draft, the provision would not be in keeping with the principles on which the Swiss Government has hitherto always acted.

The rule of Article 3 concerning the nationality of children born of parents who are unknown or whose nationality cannot be ascertained has been given special consideration by the Swiss authorities. They feel that it would be premature at the present juncture to examine whether certain minor alterations would be necessary to bring this provision into entire harmony with the requirements of everyday life; they merely note, for the moment, that the idea on which the rule is based seems to be satisfactory and that the Federal Government would experience no legal difficulty in adhering, if necessary, to a Convention containing a clause on such lines.

In laying down rules to determine what nationality should prevail, from the point of view of a third State in the case of persons possessing double nationality, Article 5 deals with a very thorny and complicated question. The Swiss Government therefore supposes that the short formula which the preliminary draft proposes on this subject is not intended to solve the whole problem but merely to state a general principle, the adaptation of which to actual circumstances will be examined later. So regarded, this provision of Article 5 does not appear unacceptable.

The same applies to the first paragraph of Article 6, which proposes that no foreigner shall be naturalised without his being allowed to refuse naturalisation. The second paragraph of Article 6 would, however, seem to be superfluous in view of Article 1 of the preliminary draft.

Article 10 appears to assume the existence of a situation which it is precisely the object of Article 9 to abolish. The intention of the rapporteur is perhaps that this Article 10 should only apply when the woman's State of origin is not a party to the Convention which will contain the rule laid down in Article 9 of the preliminary draft. It would be desirable to make this clear in the text of Article 10, in order to avoid even a semblance of contradiction between the two articles. Viewed in this light, the provision seems satisfactory; it would, in fact, remove, in the case of one of the categories of persons who have no country, one of the drawbacks attendant on their anomalous situation. This rule would not affect Switzerland directly because, under Swiss law, the wife of a Swiss national acquires the nationality of her husband by marriage.

The Swiss Government has, moreover, no fundamental objection to Articles 7 (expatriation), 9 (maintenance of the original nationality of a woman who does not acquire

¹ See pp. 9 and 10 of the present document.

the nationality of her husband), 11 and 12 (status of illegitimate and adopted children) and 13 (certificate of nationality).

In addition to these rules, the underlying principle of which is excellent, the preliminary draft contains others which it would, on the contrary, be difficult to accept.

Article 4, in particular, lays down a principle which is very open to discussion when it proposes that a child born outside the State of which its parents are nationals has the nationality of the State where it was born if the State of origin does not give the parents' nationality to such child. If this idea were put into practice the consequence would be that the State of origin of the parents of a child born abroad would be quite free to refuse its nationality to this child for any reason, thus at its own discretion obliging the State on whose territory the child was born to confer its nationality upon that child. Such a solution seems to be contrary to all rules of equity.

The rule set out in Article 8, according to which a woman who has married a foreigner and who recovers her nationality of origin after the dissolution of her marriage, loses through such recovery of the original nationality the nationality which she acquired by marriage, certainly offers some advantages. It is, however, in contradiction with one of the fundamental principles of the Swiss law on nationality, namely, that a person cannot lose Swiss nationality unless he or she expressly renounces it. As this principle is embodied in the Swiss Federal Constitution (Article 44, paragraph 2), it would seem to be impossible for Switzerland to agree to this rule.

Finally, it should be observed that the draft Convention, which is the result of conscientious and careful thought, would constitute a very useful basis for any discussion regarding codification of the law on nationality. Switzerland will follow with the greatest interest whatever may be done in this field.

QUESTIONNAIRE NO. 3. — DIPLOMATIC PRIVILEGES AND IMMUNITIES.

Letter dated December 29th, 1926.

[*Translation.*]

I.

The Swiss Government shares the view of the Committee of Experts as to the desirability of securing a greater degree of uniformity in the matter of diplomatic privileges and immunities. The status of diplomatic agents causes frequent difficulties to Ministries of Foreign Affairs. Owing to the personal factors involved and the representative character of those affected, these incidents are always of a delicate nature, and it cannot be denied that very many of them are primarily due to the uncertainty of the situation in this matter.

Is it practicable, however, to arrive at even a partial codification of diplomatic prerogatives? The Swiss authorities are inclined to answer in the affirmative and that in any case it is worth while to attempt it.

The Swiss Government is at one with the Committee of Experts in considering that no detailed arrangement can be reached until the fundamental principle on which prerogatives should be based has been agreed upon. Even now certain writers still adhere to the theory of "ex-territoriality", according to which the diplomatic agent is presumed never to have left his country of origin, and his residence is held to be situated in foreign territory. The general opinion seems, however, to be moving steadily towards the more modern theory that diplomatic immunities are justified by the necessity of securing the independence of diplomatic agents, and are therefore only to be maintained so far as they are warranted by the functions of the official. It is desirable that agreement should be reached on this question of principle, which is at the root of all the rules governing practice.

Further — still with reference to the fundamental principle on which diplomatic immunities should be based — an important distinction must be drawn between privileges and immunities arising out of international law and warranted by the nature of the official's functions, and those whose sole basis is the *comitas gentium*. This distinction is frequently neglected, but is essential, for the rules of pure courtesy are not rules of law. Governments have no legal title to insist upon their observance, and in matters of this kind the only method open to them is the taking of measures of reciprocity. It is not disputed that certain diplomatic privileges are granted purely out of courtesy; but in works upon the subject a line is not always clearly drawn between these courtesy privileges and prerogatives derived from law. The Swiss Government is as careful in the performance of its duties of courtesy as in the discharge of its legal obligations; it appreciates at their true value the usages which, by a tradition already of long standing, are observed in order to uphold the dignity of diplomatic representatives and to secure them that consideration to which they are entitled; but it considers that there would be every advantage in drawing a definite line between two questions that differ widely both in origin and in nature.

II.

Extent of Diplomatic Privileges and Immunities.

1. *Inviolability of the Person.* — The "inviolability of ambassadors" is one of the most ancient rules of diplomatic law, and the Sub-Committee is quite right in regarding it as undisputed. There appears to be general agreement as to the right of diplomatic agents.

implied by this rule, to have complete freedom of movement and to have their persons and personalities respected by the authorities. On the other hand, practice varies as regards the special protection to be given to the official against the acts of private persons. The criminal clauses on this point, which are to be found in most legislations, display wide differences. In some cases only attacks upon the honour of the official (slander, defamation and insults) are covered by the law; in others, common assault is also punishable. Here, proceedings are taken by the authorities of their own accord; there, only on a complaint. Such complaints ("requests" or "demands") must come, in some cases, from the head of the State; in others, from the Government of the injured official; in others, again, from the official himself. Frequently, also, the demand for proceedings must be accompanied by assurances of reciprocity, or cannot be complied with unless reciprocity — legal or diplomatic — is assured. Certain legislations deal only with public insults, others only with outrages committed upon the diplomatic agent "in his official capacity", and so on. As regards inviolability, therefore, different States interpret their international obligations in very different ways. It would be desirable to eliminate these discrepancies.

The obligation — imposed on the authorities of the country by the principle of inviolability — not to lay hands upon the person of the diplomatic agent (arrest) is not disputed in principle. There are, however, exceptions to the inviolability of ambassadors. M. Diena calls attention in his report to this point, and makes reference to the list tentatively given by the Institute of International Law in Article 6 of its Draft Regulations, drawn up in 1895. The defect of this list is that it does not distinguish clearly between cases in which the diplomatic agent may not invoke the laws which protect him against outrage or objectionable treatment, and those much more serious cases in which the actual arrests of the Minister becomes possible. It would be well to investigate these two classes of exception separately, and at the same time to decide whether the list made by the Institute of International Law can be regarded as complete. So far as concerns the special protection due to diplomatic agents, the exceptions will, of course, depend on the scope given to that protection (*e.g.*, cases of outrage not committed in public, assault not having the character of insult, etc.).

2. *Inviolability of the Premises of Diplomatic Missions.* — The doubts which still subsist as to the inviolability of diplomatic premises are largely due to the fact that these premises, like ships (floating territories), were long regarded as portions of foreign territory. In Article 9 of its Draft Regulations the Institute of International Law has clearly laid down that the "ex-territoriality" of diplomatic premises confers on the diplomatic representative merely the right to refuse admittance to officers of the public authority in the performance of their duty. If we take it that the basis of diplomatic prerogatives is the necessity of securing the independence of the public Minister, we must admit that the rule embodied in Article 9 of the Draft Regulations of the Institute of International Law — a rule which is observed in practice by the Swiss Government — is very reasonable. It might, however, be well to define certain cases in which an official should not be refused admittance to the inviolable premises of a diplomatic mission (*e.g.*, inspections by the fire brigade, technical inspections by officials of the telegraph and wireless services, visits of examination in connection with serious offences committed on the premises by persons not possessing ex-territoriality, etc.).

The current practice of the Swiss authorities is to extend inviolability to the private residence as well as the official premises.

The right of asylum is not mentioned in the Draft Regulations of the Institute of International Law. It is expressly excluded, so far as concerns relations with the local authorities, by the Pan-American Project of Convention of March 2nd, 1925 (Article 22). The question of asylum is closely bound up with that of the status of diplomatic premises; in practice, when disturbances occur, it forms a delicate problem which can hardly be neglected. If the premises of the diplomatic mission are not to be regarded as situated on foreign soil, the harbouring of criminals or political refugees seems, generally speaking, to be an abuse of inviolability. On the other hand, it would be difficult to impose on a diplomatic agent the obligation of promptly expelling a person who has taken refuge on his premises to escape the violence of the mob; and in times of revolutionary disturbances it is always possible that there may, for the moment, be no "local authority" (Article 22 of the Pan-American project) to which to surrender the refugee. On this point it might be desirable to seek a solution which would respect the principle of non-interference, but would not expose the refugee to assassination.

The inviolability of the premises, like that of the Minister's person, is subject to exceptions. These special cases seem to have been contemplated — though not specified — in Article 6, paragraph 3, of the Draft of the Institute of International Law. In addition to the case of an ordinary offence being committed on the premises, reference is made to the contingency of a violation by the diplomatic agent of the principle of non-intervention in internal affairs (harbouring political refugees or conspirators, etc.). The Institute of International Law, in its Draft, is quite right in not contemplating the possibility of an entry into the premises except when other measures, such as the guarding or surrounding of the premises, have proved inadequate, or when the case is urgent.

Granted that the inviolability of the premises is no longer based upon the fiction of "ex-territoriality", it should have no influence on the personal status (inviolability)

of persons living on those premises or entering them. It would be desirable to define clearly the position as regards this point, since the Draft of the Institute of International Law, Article 2, paragraph 3, seems to leave some room for doubt.

Where the diplomatic premises are owned by the foreign Government, or by the head of the mission privately, the further question arises whether measures of execution (seizure or sequestration) are allowable. This is a particular aspect of the inviolability question which deserves consideration.

3. *Inviolability of Correspondence.* — For diplomatic agents the right of free correspondence is indisputably essential to the performance of their official functions, but only within certain limits. These limits should be defined, in view of the known abuses which take place in this connection. At the same time, the question of the supervision of mails is a very difficult one; for, while it is easy to verify the addresses on the envelopes, it is generally impossible to ascertain the destinations of their contents. It is conceivable that, where there appears to be a clear case of abuse, "protective or precautionary measures", such as the opening of the suspected envelope in the presence of a member of the diplomatic mission, would be justified. In normal times, when ordinary correspondence is not censored and exports are free, abuses seldom occur except in regard to the Customs. A possible case, however, is that of the diplomatic mission introducing, under cover of diplomatic inviolability, seditious literature, propaganda pamphlets, etc. The post-war period, with its attendant currency fluctuations, has given rise to a special case — the conveyance of correspondence by diplomatic bag from a country with a high to a country with a low exchange, the mail being posted in the latter country in order to take advantage of the difference in postal rates.

It has not yet been established in practice whether a diplomatic mission can at any time possess and use a wireless station — either a receiving station only or a transmitting station. It would seem that this right can hardly be admitted unconditionally and permanently, on account of the impossibility of ascertaining the origin and destination of messages.

4. *Inviolability of Property.* — Both in theory and in practice it seems to be admitted that measures of execution (seizure, sequestration) may not be carried out in the country of residence upon property which is indispensable to the diplomatic agent for the discharge of his duties (the inviolability of diplomatic premises in this respect has been referred to above). This applies primarily to household furniture, "carriages" (motor-cars) and salary. On the other hand, opinions differ as to how far the private property of the diplomatic agent — particularly any immovable property which he may own in the country — should be exempt from distraint. Is all such property indispensable to him for the discharge of his duties? On this point, the Committee of Experts will have to choose between the more restrictive modern tendency and the very liberal practice which has generally been followed hitherto.

Whatever solution may be reached, it would be desirable to avoid the confusion which has frequently arisen in practice between the inviolability of property and the immunity of its owner from jurisdiction. Immunity from jurisdiction does not prevent the diplomatic agent from having judgments delivered and set in motion against him abroad — for example, in his country of origin — the execution of which on goods indispensable for the discharge of his duties in the country to which he is accredited should not be allowable.

5. *Domicile and Legislation applicable.* — In its list of questions requiring consideration, after "inviolability" the Committee of Experts places the question of "immunities" (jurisdictional and fiscal). Certain of the questions which arise in connection with the status of diplomatic agents can hardly be linked with inviolability, but, at the same time, are not necessarily bound up with the question of jurisdiction. Among these questions, that of the definition of the diplomatic agent's domicile, and that of the legislation applicable to him, might with advantage be studied by the Committee of Experts.

Does the diplomatic agent retain his domicile for purposes of civil law in his country of origin? Now that the idea of "ex-territoriality" as the foundation of diplomatic prerogatives has been abandoned, this point is in dispute. It is, however, of considerable practical importance, on account of the influence of domicile, in all legislations, upon a number of legal relations (personal law, family law, law of succession) and upon the question of jurisdiction. Legally, in public law, domicile is an essential criterion, particularly in fiscal matters, as the basis of tax assessment. The Swiss authorities have recently had to decide whether members of the Swiss diplomatic service have retained in Switzerland a civil-law domicile, on the ground of which they could be assessed for income tax.

Apart from the question of jurisdiction, what is the legislation applicable to the diplomatic agent in civil and in criminal matters? If we fix the legal domicile of the diplomatic agent, we have at once answered this question, so far as it concerns the legal relations subject to the *lex domicilii*. As regards other matters, is the diplomatic agent to be regarded, for the purpose of specifying the legislation applicable, as an ordinary resident? In civil matters, do the rules of international private law apply normally to his legal acts, such as contracts (leases, contracts of employment, etc.)? Numerous disputes between diplomatic agents and other persons (trades-people, lessors, servants, etc.) would be avoided if the law applying to contractual relations of diplomats were perfectly clear.

With regard to criminal cases, the legislation applicable to the diplomatic agent is dealt with in a special clause of the Draft of the Institute of International Law (Article 13), which makes him subject to the criminal law of his own country. M. Diena, in his report, regards this clause as a rule for jurisdiction, inadequately formulated; this view may be disputed, inasmuch as the question of jurisdiction is dealt with and settled by the Institute in Article 12. The Pan-American project ignores the question, which deserves the attention of the Committee of Experts. The solution found by the Institute of International Law, which would allow the diplomatic agent to commit with impunity acts which are regarded as criminal by the local law, if the law of his own country did not punish them, seems too hard and fast. Moreover, the Institute's rule refers only to "crimes"; what rule is to be followed in regard to misdemeanours or minor offences? Must we here also deny any binding force to local law? This solution would be incompatible with the undisputed rule that a diplomatic agent must observe, in the country of his residence, the regulations for the maintenance of public order and safety (regulations concerning fire, the maintenance of order in streets and public places, traffic, etc.). The limits of this special duty, however, are ill-defined. Does it refer only to police laws and regulations, or does it cover other laws concerning "public order", which would include the entire body of criminal law and many statutes of civil and administrative law (civil status)? M. Mastny seems to have had these difficulties more particularly in mind when he said in his additional report that "it would be very useful to determine, more or less in detail, the duties of public Ministers, and especially their obligations in regard to local laws, and this would at the same time to some extent define the limits of their privileges".

The question of the law applicable to the diplomatic agent arises also in the domain of public law, particularly in connection with nationality. Are the laws governing the acquisition of nationality *jure soli* in the country of residence applicable to the diplomatic agent and his family? The old fiction of "ex-territoriality" gave a simple and definite answer to this question. Now that that fiction has been abandoned, guidance must be sought in the necessity for the independence of the Minister and in the practice commonly followed. The Institute of International Law interested itself in the question in 1895 (see its *Annuaire*, Volume XIV, page 219, where there is a draft article on the subject), but postponed consideration of it. It seems reasonable that, as regards nationality, the local law should have no binding force upon the diplomat. The question whether he should nevertheless be entitled to invoke that law requires consideration. The present practice of the Swiss authorities is to ignore any years which an applicant for naturalisation may have spent in Switzerland as an official of a foreign Power (see the Swiss Government's reply to Questionnaire No. 1).

6. *Immunity from Civil Jurisdiction.* — When separated from the question of the law applicable, immunity from jurisdiction appears as a question of judicial competence. Just as he remains subject to a law, so the diplomatic agent must always be amenable to a jurisdiction, and there can be no question of freeing him entirely from the authority of the courts.

In ordinary law, judicial competence is, as a rule, determined by the nature of the case. In cases concerning personal or movable property, the competent judge is the judge competent in the place of domicile of the defendant; in cases concerning immovable property, it is the judge within whose district the property in dispute is situated. The immunity of diplomatic agents from jurisdiction is an exception to these principles, due to the necessity of the diplomatic agent being independent of the authorities of the country in which he resides. In accordance with these rules, the Swiss Government has hitherto recognised that immunity from civil jurisdiction gives the diplomatic agent a jurisdictional domicile in his country of origin for all civil actions concerning movable property. At the same time, both in theory and in jurisprudence, a tendency to restrict the privilege of immunity from civil jurisdiction is making itself felt. It is illustrated in Article 27 of the Pan-American project, and in the Italian and South American jurisprudence of recent years. Concessions in this direction may, of course, be contemplated. It should not, however, be forgotten that the diplomatic agent — as also, indeed, the consular agent — is not personally responsible for acts done in his official capacity and within the limits of his powers. This irresponsibility must be clearly distinguished from immunity from jurisdiction, which is a diplomatic privilege. Thus the maintenance of immunity from jurisdiction in respect of official acts only would amount to the complete abolition of the privilege.

It ought to be possible to reach some agreement as to the right of the diplomatic agent to waive his immunity from civil jurisdiction, and as to the consequences of such a decision. The right of the defendant to make a counterclaim can scarcely be disputed. At the same time, it should be made subject to certain limits; for, generally speaking, immunity is only waived in respect of a specified legal act, and the defendant should not be allowed to bring other disputes before the Court by means of his counterclaim.

7. *Immunity from Criminal Jurisdiction.* — Widely as it has been discussed in theory, immunity from criminal jurisdiction — that is to say, the right of a diplomatic agent to be tried before the courts of his country of origin only — is generally recognised in existing practice. It would therefore seem possible to establish it by convention. This again is a question of jurisdictional domicile and must not be confused with the question

of the law applicable, or with inviolability, which protects the diplomatic agent from arrest and imprisonment.

The possibility of the diplomatic agent waiving his immunity from criminal jurisdiction (with or without the permission of his Government) should be investigated, together with the question whether such an act could automatically terminate the inviolability of his person.

8. *Giving of Evidence.* — International practice seems uniform as regards the necessity of applying for evidence through the diplomatic channel, the diplomatic agent having the right to depose in his own house before a magistrate delegated for that purpose or in writing. These forms have perhaps less to do with immunity from jurisdiction, in the true sense of the expression, than with the diplomatic agent's necessary independence of the *jus imperii*. It is this same independence which enables the Minister to ignore any writs or summonses served upon him direct by the local authorities — whether judicial, police, administrative or fiscal. The right to refuse entirely to give evidence is a question in dispute and deserves the attention of the Committee of Experts. It seems obvious that evidence cannot be insisted upon where official acts are concerned.

9. *Fiscal Immunities (exemption from Taxes and Customs Duties).* — The first question that arises in connection with fiscal immunities is that of their justification. Are they legal privileges, or prerogatives granted out of pure courtesy? The Swiss Government would be gratified if the Committee of Experts would define its attitude on this point. The fiction of "ex-territoriality" formerly supplied a legal explanation of fiscal immunity. Since this explanation no longer holds, and since fiscal exemption cannot be said to be based on the nature of the official's functions, it can mean nothing but an immunity granted out of courtesy. Although it forms a portion of the *comitas gentium*, the immunity of diplomatic agents from taxation is established by general usage; there is, therefore, no essential reason why it should not be recognised by embodiment in a convention. The extent of the exemption would have to be clearly specified, an accurate definition being given of the criteria adopted. The present practice of the Swiss authorities is to exempt the diplomatic agent from all direct taxes except impersonal duties on immovable property (land tax). The diplomatic agent is therefore required to pay indirect taxes and "dues" only. The expression "direct taxes" means, of course, taxes collected direct from the taxpayer. "Dues" means all payments for definite and specific services rendered by the Government to the person who pays, or payments made to meet special expenditure necessitated by the action of the taxpayer.

The buildings used by diplomatic missions at Berne are exempted from tax as a purely exceptional measure, on a basis of reciprocity.

The Customs exemptions and facilities granted to diplomatic agents in different countries vary considerably in extent and form. It would seem difficult to reach a general agreement on uniform principles; but it might be well to make it clear that these are prerogatives granted out of pure courtesy, and that their extent is in the discretion of the Governments concerned, subject to reciprocity.

III.

Persons entitled to Privileges and Immunities.

The prerogatives designed to ensure the independence of diplomatic officials would in most cases be useless if granted only to the official himself. Although this principle is everywhere accepted, it is not applied consistently in practice — a fact that leads to frequent misunderstandings. On this point it is most desirable that international usage should be made more uniform. As M. Diena rightly observes in his report, the modern tendency in this matter points definitely towards greater restriction, and in the search for a solution this tendency should be borne in mind. Inviolability and the various forms of diplomatic immunity do not constitute an indivisible whole, to be refused or granted *en bloc*, under the comprehensive name of exterritoriality. They may be granted only partially, and in varying degrees, to the subordinates of the official.

A fundamental distinction should be drawn between prerogatives based on law, which are required in order to meet the needs involved by certain functions, and immunities granted by courtesy, to which there is in theory no necessary limit.

The present practice of the Federal Government is to grant the privilege of full inviolability to heads of diplomatic missions only, and it is to them alone that the following clause of Article 43 of the Federal Criminal Code applies:

"Outrage or improper treatment of a representative of a foreign Power accredited to the Confederation is punishable by imprisonment for not less than two years, and a fine not exceeding Frs. 2,000."

Personal inviolability in the narrower sense of the term, together with immunity from jurisdiction (civil and criminal) and fiscal immunity, is granted to the following persons:

(a) Members of a diplomatic agent's family (ascendants, wife and children), if they are living with him and have no occupation;

(b) Members of the diplomatic staff of a mission (if they are on the list of the diplomatic corps) and their families (wife and children), and the head of the secretarial staff of the mission ;

(c) The household servants of the head of a diplomatic mission.

The rest of the staff (technical officials, office employees, archivists, copyists, typists, etc.) enjoy fiscal immunity. They also receive full facilities in regard to establishment (exemption from registration of papers, etc.). They are not, however, granted inviolability or immunity from jurisdiction.

As regards Customs, exemption in the full sense of the term is granted to the head of a mission in respect of all articles for his personal use and that of his family. The other members of the diplomatic corps are only granted exemption in respect of their effects on their first installation.

The Federal Council never grants diplomatic privileges or immunities to Swiss nationals.

The system briefly outlined above for purposes of information is not regarded as constituting a minimum. The Federal Government considers that it might be further restricted in certain respects, particularly as regards domestic staffs.

The Committee of Experts rightly draws attention in its questionnaire to the importance of laying down principles to govern the preparation of lists of staff. In practice these lists (diplomatic corps, ex-territorial personnel, technical and manual staff, servants, etc.) are drawn up by the Ministry of Foreign Affairs on the basis of particulars officially supplied by the diplomatic missions. The inclusion of a person in these lists would not seem to imply any legal consequences ; it is simply a formality connoting that the position claimed for the person concerned is recognised. The category of personnel to which an official or employee belongs should depend essentially on the actual nature of his duties ; consequently, the Ministry of Foreign Affairs should have the right to question the lists drawn up by diplomatic missions. The list of diplomatic personnel (diplomatic corps) should include only officials who share in the actual diplomatic work of the head of the mission or are concerned in inter-governmental relations.

The recognition of diplomatic status being inseparable from the exercise of functions which inherently necessitate personal dealings with a Government, the Government to which a diplomatic mission is accredited should retain the right to refuse to recognise as a member of the mission any official not ordinarily resident in the capital itself or its environs.

IV.

Duration of Diplomatic Prerogatives.

1. *As regards the Privileged Person and His Personal Effects.* — The question to be settled here is how far practical application should be given to the general principle that diplomatic privileges and immunities begin and end with the functions for which they are granted.

The Institute of International Law has already pointed out, at its session held at Vienna in 1924, that where immunity in respect of any official act outlasts the act itself, it is not diplomatic immunity, because it arises out of the intrinsic character of the act for which the diplomatic official is not personally responsible.

In practice, a Minister is allowed diplomatic privileges and immunities immediately on his arrival at the frontier and before he has presented his credentials. Further, the privileged position of a Minister does not terminate immediately he receives letters recalling him, but is preserved until he leaves the country. If a diplomatic agent remains in a country after the end of his mission, a reasonable period should be allowed to elapse before he becomes a foreigner in ordinary residence. Similar rules might be applied to the official staff and the family of a privileged person.

Nevertheless, the conclusion of a diplomatic mission raises certain difficulties to which the Committee of Experts might usefully give its attention. The important question of the law and jurisdiction applicable to the estate of a deceased ex-territorial person has already been referred to. A further question to be considered is how far and how long inviolability should continue after death to protect heritable property either against measures of precaution (taking of an inventory, affixing of seals) or against executive measures (sequestration by creditors, right of retention by a lessor or bondholder, etc.). As regards executive measures, a "reasonable period" should be allowed ; as regards precautionary measures, the local authority might be allowed to act in the absence of a qualified colleague of the deceased. Even when a diplomatic agent is only recalled, the question of the duration of the inviolability of property also arises in connection with such movable property as he may have left in the country or any real estate he may possess there.

As regards immunity from criminal jurisdiction there is the question what should be done if a diplomatic agent commits an offence and his recall is demanded. The fact that his functions have suddenly terminated can hardly affect his right to leave the country without interference. Again, what course may be taken if, subsequently, no proceedings are taken in his country of origin and he settles as a private individual in a third country? Could his extradition be demanded?

2. *As regards Premises and Archives.* — Since a Minister is personally inviolable, the Government to which he is accredited is under a special obligation to afford him protection. Although there is no explicit rule to that effect, it seems reasonable to admit that this special protection should cover premises and archives, and that it imposes upon the Government an obligation not only to respect archives, which are inviolable, but also to protect them from third parties. This special protection is particularly necessary in the cases mentioned in the Committee's questionnaire, *i.e.*, when a diplomatic agent dies and none of his colleagues is present to safeguard the archives, or when a revolution breaks out in the State represented, and in consequence the diplomatic mission of the Government which has been overthrown is no longer recognised. Thus, in 1918, the Swiss Government felt bound to take measures to safeguard the archives of the former Imperial Russian Legation, the property of the Russian State, as the former Russian chargé d'affaires and the unofficial Soviet agent were disputing possession of them and they were threatened with destruction. These archives are still under seal and have, of course, never been examined.

V.

Position of a Diplomatic Agent within the Territory of a State to which He is not Accredited.

Since diplomatic privileges and immunities are granted in order to meet the needs involved by certain functions, a distinction should be drawn between diplomatic agents staying for pleasure in a country to which they are not accredited and those passing through such a country on their way to or from their posts. The practice adopted by the Swiss Government in the former case is to grant only a diplomatic visa when required, and certain facilities in regard to Customs inspection. On the other hand, it would seem quite reasonable to grant diplomatic privileges and immunities to an agent passing through a country on an official journey.

Other Persons entitled to enjoy Diplomatic Privileges and Immunities.

(Section B of Questionnaire).

In Section A of its questionnaire, the Committee of Experts appears to have had in mind only the status to be granted to diplomatic agents *in the strict sense of the term, i.e.*, those *permanently* accredited by one Government to another. Section B calls for the examination of the question whether persons "other than those dealt with under A" may enjoy diplomatic privileges and immunities. In this connection the questionnaire relates only to persons whose privileges are derived from treaties (Covenant of the League of Nations, international unions, etc). In the Swiss Government's opinion, it would be desirable, in examining these special cases, to study in addition the status to be given to a large number of foreign agents, who, though not actually holding permanent credentials like diplomatic agents, nevertheless have a diplomatic standing and may accordingly claim diplomatic prerogatives independently of any treaty. In regard to this class of agents there exists a little uncertainty, for which some Governments are themselves, perhaps, partly responsible through being somewhat liberal in the issuing of diplomatic passports. The first step should be to ascertain which of the persons entrusted with a mission to a foreign country should be recognised as having diplomatic status (delegates of Governments to a diplomatic congress or conference, envoys on political missions, special negotiators, envoys sent on ceremonial occasions, Government delegates to non-diplomatic conferences, civil or military missions of enquiry, missions for purposes of purchase, etc., etc.). The next point to be considered would be the extent of the privileges to be granted, particularly as regards inviolability.

The proposals of the Committee of Experts regarding the officials of the League of Nations and the representatives of the Members of the League will be examined by the Swiss authorities with particular attention, since the question is one which directly affects them. Although not in principle opposed to the conclusion of fresh agreements, the Swiss Government would be very glad to know what privileges may, in the Committee's opinion, be claimed by the parties in question on the basis of the present conventional situation. The essential point is the interpretation to be placed upon Article 7 of the Covenant, under which "representatives of the Members of the League and officials of the League, when engaged on the business of the League, shall enjoy diplomatic privileges and immunities".

As this article would appear to constitute a reference to ordinary diplomatic usage, its interpretation will be facilitated, particularly as regards immunity from jurisdiction and fiscal immunity, by the Committee's proposed study of the scope of diplomatic prerogatives in general. It is also important to ascertain what persons should be regarded as "representatives of the Members" or as "officials of the League", within the meaning of Article 7 of the Covenant. A number of exchanges of view have taken place between the Secretariat of the League and the Federal Political Department on the subject of the League of Nations personnel of Swiss nationality, and on this question we would refer to the memorandum of February 16th, 1926, from the Head of the Federal Political Department to Sir Eric Drummond.

As regards the existing *de facto* situation in general, the Swiss Government would refer to the *modus vivendi* established in July 1921 by exchange of correspondence between the Federal Political Department and the Secretariat of the League. The essential clauses of this *modus vivendi*, supplemented and adjusted, were issued in September 1926 in a summary consisting of 14 articles.

The position of the judges and staff of the Permanent Court of International Justice raises, in the legal field, the same problems as those of the officials and staff of the League of Nations, and is equally deserving of consideration. In this connection the Swiss Government would refer to the observations at the end of the above-mentioned memorandum of February 16th, 1926.

It is possible that the term "representatives of Members of the League" employed in Article 7 of the Covenant should, strictly speaking, apply only to the Members of the Assembly and the Council mentioned in Articles 3 and 4 of the Covenant. If this is so, the position of "permanent representatives specially attached to the League of Nations by various States" will have to be determined in the light of the general principles of diplomatic law. As the League of Nations possesses international personality, the status of "diplomatic official", in the strict sense of the term, would seem in this case to depend primarily upon the presentation of regular credentials to the competent organ of the League. That is a point which certainly merits the attention of the Committee of Experts. The present practice of the Swiss Government is to grant permanent representatives accredited to the League of Nations the benefit of diplomatic prerogatives and immunities, and to apply to their staffs the same rules as those applicable to members of diplomatic missions at Berne. This practice, which is based on a liberal interpretation of Article 7 of the Covenant, does not prejudice the question whether these representatives actually possess the status of diplomatic agents. Thus, the Customs exemption granted to heads of diplomatic missions at Berne is not allowed in the case of representatives accredited to the organisations of the League, unless they combine with these permanent functions those of representatives in the Assembly or Council, or unless they personally possess the title of Minister Plenipotentiary or Resident, or an equivalent administrative title.

The last position which, according to the questionnaire of the Committee of Experts, requires consideration is that of "members of international bureaux and commission not invested by treaty with diplomatic privileges and immunities". In the absence of any conventional clauses conferring an exceptional status upon such persons, the Swiss authorities have always regarded officials of international bureaux as subject to the ordinary laws of the land. That being so, the granting of diplomatic prerogatives does not appear to be necessitated by the functions of the official, since those functions may be freely exercised in the country of residence, the latter being a member of the Union. Moreover, even if we reason *de lege ferenda*, there does not seem to be any essential parallel between the position of the personnel of international bureaux, which are created for the sole purpose of providing an international service, and that of the officials of the League of Nations, which is a legal person in international law. The Swiss Government will be interested to examine any proposals which the Committee may make, but does not for the present commit itself in any way in regard to them.

QUESTIONNAIRE NO. 4. — RESPONSIBILITY OF STATES.

Letter of November 8th, 1926.

[Translation.]

Question 1. Whether and in what cases a State is responsible for damage suffered by foreigners within the territories under its jurisdiction?

It would seem to be desirable that some rules as to the responsibility of States for damage done in their territories to the person or property of foreigners should be embodied in an international convention. The existence of definite rules on the subject would doubtless help to lessen the possibility of international conflict.

Could such a codification be brought about? We think it might. True, the question of the responsibility of States for damage done in their territories to the person or property of foreigners has given rise to much controversy. But at the present time it would seem that the fundamental rules applicable to the case have been accepted by practically all countries, so that there should be no insuperable difficulty in the way of their codification. The points

still open to discussion are on the whole of secondary importance; if they were examined in a conciliatory spirit, there should be little difficulty in formulating a body of generally accepted provisions to cover them.

The report of the Sub-Committee established by the Committee of Experts for the Progressive Codification of International Law to study the problem of the responsibility of States for the above-mentioned damage constitutes, we think, a very useful basis for discussion. The Swiss Government is in agreement with most of the views put forward therein; certainly it approves, in their main outline, the conclusions reached. These latter will be extremely helpful when the moment arrives to prepare a Convention on the subject.

We think it is too early yet to discuss the report in detail. The Committee of Experts for the Codification of International Law may, however, be glad to learn the principal reservations which the various countries have to make regarding the report. We therefore transmit those of the Swiss Government, set out very briefly as follows:

General Observation. — The starting-point of the report seems to be that the only rules which should be embodied in the Convention for the determination of the responsibility of States for damage caused in their territories to the person or property of foreigners are those which are at present universally accepted by all members of the community of nations (see I of the report and the beginning of III and VI). This is rather a limitative conception of the work of codification. The fact that a rule is not yet universally recognised should not in all cases preclude the possibility of examining it, with a view to discovering whether it is in conformity with the ideals of justice and whether it might be embodied in the Convention. Surely one of the objects of codification should be to solve certain difficulties which have hitherto baffled us in practice?

Re II, 2: Treatment of Foreigners. — The report says the "maximum that may be claimed for a foreigner is civil equality with nationals". This principle can only be defended as just on the express reservation that certain rights, such as those to life, liberty and property, to the extent to which they are generally recognised, may be claimed for the foreigner even where the State does not accord them to its own nationals.

Re III: Re Political Crimes committed against Foreigners in the Territory of a State. — We would refer the Committee to League of Nations document C.212.M.72.1926.V. (Replies of the Special Committee of Jurists referred to in the Council Resolution of September 28th, 1923: Observations of the Governments of States Members of the League), wherein (on page 17), the Swiss Government's views on this point are explained¹. The report suggests that States, in case of possible assaults on the representatives of foreign States, should adopt special measures of protection and take strong action, both to pursue the criminals and ensure the proper course of justice. Thus formulated, the rule would seem to be too general. It is only when the official character of such persons involves special risk that a duty of exceptional vigilance can be admitted.

Re Acts of Private Persons. — The report is too absolute in its exclusion of responsibility for the acts of private persons. It is admitted, both in theory and practice, that the responsibility of a State is involved when damage caused in its territories to the person or property of foreigners is due to obvious negligence on its part in ensuring supervision and protection.

Re Acts performed in the exercise of Judicial Functions. — The principles laid down in the report — that the State is not responsible for judicial errors committed by its tribunal — is certainly correct. There is one restriction, however, that should attach to this general rule: a State is responsible for manifestly unjust or erroneous judgments if, by its fault, its tribunals are so organised that they do not correspond to what a civilised State may reasonably be expected to provide.

With regard to abnormal delay in the administration of justice, the report is perhaps over-indulgent. Justice must, of course, be allowed a certain margin for delay. But should the delay exceed a reasonable limit and should there be any default on the part of the State (inadequate legislation or supervision), the same rules should be applied as to a denial of justice — to which indeed such delay is practically equivalent. Naturally the reasonable measure or limit will vary according to the circumstances of each case.

Re Damage caused to Foreigners in Cases of Riot and Civil War. — The remarks made in connection with the acts of private persons apply to this paragraph also. As a matter of fact, this is only a particular instance of damage caused by private persons.

¹ The passage in question has been inserted below by the Secretariat (see Annex on p. 251).

Question II : Whether, and, if so, in what terms it will be possible to frame an international Convention whereby the facts which might involve the responsibility of States could be established, and prohibiting in such cases recourse to measures of coercion until all possible means of pacific settlement have been exhausted ?

The Swiss Government is convinced that the proposals in the report for the ascertainment of facts which might involve the responsibility of States, and for the prohibition of recourse to measures of coercion until all possible means of pacific settlement have been exhausted, would, if they could be put into practice, constitute one of the most effective guarantees for the maintenance of world peace. It would therefore wholeheartedly support any serious effort to ensure that all disputes arising between two States with regard to damage suffered by the nationals of the one State in the territory of the other should be submitted to the procedure recommended by the Sub-Committee. The suggestions of the report are entirely in keeping with the policy which Switzerland has now for many years followed, in this matter by concluding very numerous treaties of conciliation.

A slight amendment should be made in the fourth paragraph of page 16 of the report, which should be worded as follows : "Should a dispute arise which it may not be possible to settle by diplomacy, the parties concerned may demand the appointment of a commission of enquiry." It is desirable to provide that the parties should, before appealing to a commission of enquiry, endeavour to settle the dispute by diplomatic methods.

Annex.

Extract from Document C. 212. M. 72. 1926. V.

"Fifth Question. — In what circumstances and to what extent is the responsibility of a State involved by the commission of a political crime in its territory ?"

"Fifth Reply. — The responsibility of a State is only involved by the commission in its territory of a political crime against the persons of foreigners if the State has neglected to take all reasonable measures for the prevention of the crime and the pursuit, arrest and bringing to justice of the criminal.

"The recognised public character of a foreigner and the circumstances in which he is present in its territory entail upon the State a corresponding duty of special vigilance on his behalf."

The question and the reply refer to "political crimes" without seeking to define them. It may be agreed that a political crime is committed "when crimes against foreigners are obviously inspired by hostility to their nationality, in other words, when they are attacked as nationals of a certain country"; especially, therefore, when — the above conditions being fulfilled — the "victim has a public character and when the attack is made upon him by reason of that character"¹.

Would it not be better to speak more generally of crimes committed against foreigners and not only of political crimes ? It may be said generally that a State is in any case not more, but less, responsible for crimes that are not of a political nature.

As regards the "reasonable measures", the question whether they have or have not been taken can only be settled in concrete cases. At the same time, a few explanations seem possible. Thus, no State is required to grant to foreigners a greater measure of protection than it grants to its own nationals, in so far at least as they are not obviously threatened by reason of their being foreigners. Nor is it the duty of the State to prevent or punish a crime by different methods according as it is committed against a foreigner or a national.

It would appear obvious, although it may be worth stating so explicitly, that a State is not responsible for a judgment given against a criminal, but only for his pursuit, arrest and bringing to justice in conformity with existing laws. To quote M. Ch. De Visscher² : "If criminals brought before the regular courts have been judged according to the procedure laid down by the law of the country, the obligations of the State are discharged."

As regards the cases dealt with in the second paragraph of the reply, the words used by M. Ador at the plenary meeting of the Assembly on September 8th, 1924, again seem perfectly appropriate. M. Ador said that "the only duty of the State is to prevent, so far as possible, crimes against the official representatives of other States when on official business within its territory."

Finally, it would be well to mention certain circumstances which might diminish the responsibility of States in the cases dealt with in paragraphs 1 and 2. For example, any fault committed by the foreigner himself would diminish responsibility. The same would apply if the crime against the foreigner had its origin in events of domestic policy occurring

¹ M. Ch. DE VISSCHER, in the *Revue de droit international et de législation comparée*, Vol. V (1924), page 390.

² *Ibid.*, pages 393 and 394.

in his own country. The international responsibility of a State is clearly diminished if the crime is the result of political tension which has developed without the State on whose territory the crime is committed having been in any way concerned and without it being able to exercise any influence with a view to reducing or removing such tension.

Any reply that might be given to the fifth question must necessarily be so general that its application in concrete cases will lead to differences of opinion. It may be remarked here that the question of the responsibility of States is clearly one of those which lend themselves to a judicial or arbitral settlement. Paragraph 2 of Article 13 of the Covenant, in fact, expressly mentions as such "disputes . . . as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach."

QUESTIONNAIRE No. 5. — PROCEDURE OF INTERNATIONAL CONFERENCES.

Letter of November 11th, 1926.

[*Translation.*]

The questions to which the members of the League of Nations are invited to reply seem to be the following :

A. Does the Government agree with the opinion of the Sub-Committee that it is possible to formulate rules to be recommended for the procedure of international conferences and the conclusion and drafting of treaties ?

B. If so, does it think that the list of subjects drawn up by the Sub-Committee constitutes a satisfactory basis for the attainment of this object ?

Re Question A.—Although at first sight we may wonder whether codification of the rules for the procedure of international conferences and the conclusion and drafting of treaties is really a matter of particular urgency, it should be noted that in this domain a number of uncertain points do exist, the uncertainty being in some instances a result of the valuable contributions which the League of Nations has itself made to international law. The settlement of these questions would facilitate relations between States.

The uncertainty is due in some cases to points of principle, but more often it is due to questions of form, for which it would be desirable to propose solutions, and the Swiss Government will certainly support the efforts of the Committee of Experts in this direction.

It is understood — as the experts' report itself observes — that codification can only be undertaken in the broadest sense of the term, that is to say, by formulating recommendations regarding the rules for the procedure of international conferences and the conclusion and drafting of treaties, and that the adoption of this system in this one particular domain would not exclude the possibility of formulating imperative rules in those branches of international law where other methods ought to prevail.

Re Question B. — The Sub-Committee instructed to report on the question of the procedure of international conferences and the conclusion and drafting of treaties has drawn up a list of subjects which might be examined with a view to solving these two distinct problems.

The two lists, the primary object of which seems to be to determine the extent of possible codification, also constitute a sort of summary of the work to be undertaken by the Committee of Experts. As such, the lists seem to be very complete. They might doubtless be used as a basis for very useful work.

The Swiss Government would therefore, for its part, urge the Committee of Experts to follow the path it has traced, though it reserves the right, after a careful examination of the results obtained, to propose any addition or alteration it may deem necessary.

In addition to a statement of the rules to be applied to the various points mentioned in the list of matters to be examined, the Sub-Committee has suggested the compilation :

(a) Of a collection of specimen-formulas of all the diplomatic instruments employed in practice ;

(b) Of a number of simplified formulas ;

(c) Of a collection of the provisions of constitutions regarding the ratification of treaties.

These suggestions merit special consideration.

(a) The proposal to establish a collection of specimen-formulas of diplomatic instruments is warmly recommended. A guide of this nature would be of great practical use. There would doubtless be no objection to this guide being, in conformity with the proposal of the experts, prepared and published by the Secretariat of the League, without any conventional agreement on the subject between the various States. The latter, however, should be previously invited to give their opinion on the draft because the examples provided by such a manual would, to a certain extent, constitute definite precedents for subsequent codification.

(b) An enquiry into the possible simplification of certain formulas or usages would also, if conducted with prudence, give favourable results. The main endeavour should be to confirm certain simplifications, which are already partially admitted in practice, as, for instance, omission to affix on the originals of international agreements the personal seals of the Plenipotentiaries, a formality which has no longer any real meaning, and which is hardly ever resorted to unless the text of the agreement contains the somewhat archaic formula "in faith whereof, the Plenipotentiaries have signed the present treaty and have affixed their seals thereto".

(c) On the other hand, the Federal Council does not approve the idea of making a collection of the provisions of the constitutions of the States Members of the League regarding the ratification of international agreements. A publication of this kind might — whatever the intention may be — be taken to imply that, in certain cases at least, a Government could plead the non-observance of some part of its Constitution in order to avoid an international obligation to which it had subscribed. The result would be that, in order to make sure of the absolute regularity of the undertaking to be concluded, each of the contracting States would have to ascertain whether the other State or States had proceeded correctly in accordance with their own constitutional law, and they would consequently be entitled to raise objections if, in their opinion, some formality had been omitted. The security of international relations seems to render it necessary for us to maintain the principle, which to-day is generally admitted, that agreements ratified by the executive power of a State are definitely binding on the latter.

Czechoslovakia.

QUESTIONNAIRES NOS. 1, 2, 3, 4, 6 AND 7.

Letter of November 24th, 1926.

[*Translation.*]

Under cover of your Circular Letter No. 25, of March 22nd last, you were good enough to forward to the Czechoslovak Ministry of Foreign Affairs a letter from the Chairman of the Committee of Experts for the Progressive Codification of International Law, together with the questionnaires and reports referred to in the letter and a request that the Czechoslovak Government would send you its opinion as to whether the regulation by international agreement of the subjects treated was desirable and realisable in the near future.

The Government of the Czechoslovak Republic attaches very great importance to the work of the League undertaken in this field. The Government firmly believes that that work will unquestionably result in a very important contribution to the cause of peace, since it will permit of closer collaboration between the countries and forestall many misunderstandings which might otherwise disturb their relations.

In the present state of the preparatory work the Government thinks that it can confine itself to a brief reply in the affirmative to the question enunciated above and that there is no need to submit an extensive analysis of the different factors of which the matters treated are composed. The Government, however, ventures to offer herewith certain suggestions as to various points raised in the questionnaires and reports.

Of the seven questions submitted for the opinion of the Governments, three (Nos. 2, 6 and 7) belong to the field of maritime law. Their solution is accordingly of no direct or immediate interest to a continental State like Czechoslovakia. Czechoslovakia's interest in the codification of this branch of the law is practically confined to the general interest felt in the clarification and regulation of international relations as soon as possible and as far as practicable. Any work undertaken on these subjects should, therefore, at the present stage of the proceedings, conform, first and foremost, to the opinions based on the experience and needs of maritime States. Nevertheless, the Czechoslovak Government would venture to submit herewith the following suggestion for examination by the Committee.

The solution of the questions referred to in the questionnaires would perhaps be simpler, more systematic and more profitable if the work of codification contemplated were undertaken from a more general point of view, that is to say, if the three questions and, if need be, any other questions, were dealt with in a more general Convention, a sort of "Convention on Maritime Laws and Usages." Within these wider limits, the regulations proposed for the different individual questions would be seen to derive from certain general principles of law, a fact which would facilitate not only the interpretation of these rules but also their amendment in course of time. We may take a concrete case: the Convention which the Czechoslovak Government has in mind would start by laying down the principle of "*mare-res communis omnium*", so that the freedom of the use of the sea would invariably be presumed and this general rule would be followed by a statement of exceptions (territorial waters, restrictions on the free exploitation of the products of the sea, etc.). A general Convention of this kind could also include an agreement as to penalties. These latter provisions would be followed in logical sequence by an agreement on the suppression of piracy (police measures to be applied in the special case of illicit use of the sea). Finally, the Convention might be concluded with a revision of the conventions on submarine cables, on wireless telegraphy, and on assistance, life-saving and salvage at sea.

QUESTIONNAIRE No. 6. — PIRACY.

With regard, in particular, to the draft provisions for the suppression of piracy, annexed to the Sub-Committee's report, it might perhaps be advisable, in order to prevent abuse of the powers conferred on commanders of warships, to stipulate that the State which has effected the capture of a pirate shall be bound to notify forthwith the State in whose register the captured ship appears. Arbitration proceedings might be usefully provided for in case of disputes.

QUESTIONNAIRE No. 1. — NATIONALITY.

The Government has no observations to make on the report or the draft annexed to it. We may perhaps, however, express regret at the withdrawal of Article 6 in M. Rundstein's preliminary draft. Again, it would be desirable to complete the principle formulated in Article 10 by a provision that, in the case contemplated, a woman will, if necessary, be entitled to public relief in the State of which her husband is a national.

QUESTIONNAIRE No. 3. — DIPLOMATIC PRIVILEGES AND IMMUNITIES.

The Government wishes to submit the following observations on the various points in this questionnaire:

The inviolability of the official premises of the legation and of the diplomatic agent's private residence does not imply a right of asylum for a person threatened with criminal proceedings. If a criminal takes refuge in the building of the diplomatic mission or in the agent's private residence, he must be handed over to the local authorities and, further, the provisions of the international conventions on extradition will not apply in such cases.

The building in which the legation is housed is subject like all other buildings to the police regulations regarding the safety of the inhabitants of the city, municipal health requirements, etc. Those regulations apply even in cases where the State represented is the owner. They also apply to the agent's private residence.

In countries where social insurance is compulsory, the diplomatic agent should, in the Czechoslovak Government's opinion, comply with the employer's obligations as regards local staff liable to insurance.

Exemption from the obligation of giving evidence should always be granted in cases affecting the exercise of diplomatic functions, *i.e.*, in cases where the giving of evidence would make it necessary for the witness to obtain beforehand release from the obligation of official secrecy. With this exception, however, a diplomatic agent should give evidence, if required, but should be empowered, if he prefer, to do so in writing. This latter power would also be conferred on the diplomatic agent's representative or deputy: we do not, however, recommend its extension to the other members of the legation staff.

With regard to immunity from criminal jurisdiction, the local courts should in all cases be given power to take the necessary precautionary measures in case of emergency.

The Czechoslovak Government agrees with the Committee's view that the details of the question of fiscal immunities should be left for the conclusion of bilateral agreements. Immunity could not in any case be held to cover public taxes and charges on commodities or others which are in the nature of charges levied in respect of public services or advantages furnished by the community or by its undertakings.

The exercise of privileges should be conditional upon the inclusion of the name of the person concerned in a list communicated to the Ministry of Foreign Affairs in the country of residence. The Government of the latter State should be entitled to reject the list, if the number of officials contained in it was obviously excessive.

Official agents of a foreign State who are not assigned to diplomatic posts in the strict sense of the term do not necessarily require diplomatic privileges and immunities in the exercise of their functions. Their case might consequently form the subject of a special study.

The legation staff should only enjoy such privileges and immunities as are indispensable for the exercise of the diplomatic agent's functions. Here, again, a special list similar to that mentioned above is recommended.

Diplomatic privileges and immunities should be granted even in cases where the diplomatic agent is a national of the country to whose Government he is accredited. If a State has agreed to a foreign country entrusting diplomatic functions to one of its own nationals, there is no plausible reason for refusing the latter the facilities which he requires in the exercise of his functions. The situation is, however, somewhat different in the case of other members of the staff, as they can easily be replaced by nationals of the State represented.

With regard to the duration of diplomatic privileges and immunities, the Czechoslovak Government favours the principle formulated in Article 15 of the draft adopted by the Institute of International Law.

In the case of the decease of a diplomatic agent, the immunity from jurisdiction should also include his property (as a general rule, movable property only) pending the liquidation of his estate.

QUESTIONNAIRE NO. 4. — RESPONSIBILITY OF STATES.

In the view of the Czechoslovak Government, material irregularities, and, in particular, unreasonable delay as regards procedure in cases where such could be avoided by the intervention of the authorities responsible for the administration of justice might be held to constitute a denial of justice.

(Signed) PALLIER.

Venezuela.

QUESTIONNAIRES NOS. 1 TO 7.

Letter of October 6th, 1926.

[*Translation.*]

Attached to your letter dated March 22nd last (C.L.25.1926.V) you communicated to me seven questionnaires, which had been drawn up by the Committee of Experts for the Progressive Codification of International Law, and dealt with the following subjects: Nationality, Territorial Waters, Diplomatic Privileges and Immunities, Responsibility of States in respect of Injury caused in their Territory to the Person or Property of Foreigners, Piracy, Exploitation of the Products of the Sea, Procedure of International Conferences.

In your letter you ask whether the regulation of the subjects treated in the above-mentioned questionnaires is desirable and realisable in the near future.

This Ministry has given due consideration to these questions, and has reached the conclusion that, in regard to the following subjects, there exists a body of principles that have definitely secured international acceptance:— Territorial Waters, Piracy, Exploitation of the Products of the Sea, and Diplomatic Privileges and Immunities. These questions would therefore seem to be sufficiently ripe to be considered by international conferences.

(Signed) P. ITRIAGO CHACIN.

Annex II bis.

REPLIES BY GOVERNMENTS TO QUESTIONNAIRES Nos. 1 to 7
RECEIVED AFTER THE COMMITTEE'S SESSION.

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Egypt.

QUESTIONNAIRES Nos. 1 TO 7.

Letter of April 13th, 1927.

[*Translation.*]

Referring to your last communication dated December 3rd, 1926, regarding the questionnaires drawn up by the Committee of Experts for the Progressive Codification of International Law, I have the honour to communicate to you the observations on these questionnaires of the Legal Advisers of the Egyptian Government (Comité du Contentieux de l'État).

I greatly regret that these observations could not be sent you before and within the period indicated in your above-mentioned communication. I hope, however, that they will arrive in sufficient time for consideration by the Committee of Experts.

(*Signed*) A. SARAÏT,
Minister for Foreign Affairs.

The COMITÉ DU CONTENTIEUX DE L'ÉTAT ÉGYPTIEN, to which the Ministry of Foreign Affairs has referred the various questionnaires drawn up by the Committee of Experts for the Progressive Codification of International Law, has the honour to communicate to that Ministry the following observations on these questionnaires.

Questionnaire No. 1. — Nationality.

The Egyptian State Comité du Contentieux agrees with the Committee of Experts that the solution of certain problems arising out of the conflict of laws by way of conventions could be envisaged without encountering political obstacles.

Generally speaking, and subject to the observations set forth below, the Committee is of opinion that the preliminary draft Convention on pages 20 and 21 of the questionnaire¹ would meet with the approval of the Egyptian Government. The observations are as follows :

(1) *Article 8.* — The wording of Article 8 is open to misunderstanding. Is the article meant to refer only to the case of a woman who is a national of the country concerned and has married a foreigner, or does it also apply to a case of a foreign woman marrying a national ?

If the former, Egypt would have no objection to the text proposed.

In the latter case, however, it should be observed that, according to Article 18 of the Law of May 26th, 1926, on Egyptian nationality, "a foreign woman who marries an Egyptian becomes Egyptian. If the marriage is dissolved she does not lose Egyptian nationality unless, being habitually resident abroad, she recovers her nationality of origin under the law governing that nationality". This being the Egyptian law on the subject, the Egyptian Government might be obliged, if the second hypothesis is also to be included in Article 8, to propose an amendment to the text in question.

¹ See pp. 27 and 28 of the present document.

(2) *Article 9, second paragraph.* — As regards the second paragraph of this article, it should be observed that Egyptian law confers Egyptian nationality on the wife of a foreigner who has acquired that nationality unless within a year from its acquirement she declares her desire to retain her foreign nationality. Conversely, Egyptian law confers upon the wife of an Egyptian husband who has acquired a foreign nationality the right to declare within a year her desire to retain her Egyptian nationality (Article 19 of the above-mentioned law). Apart from these cases, a married woman cannot acquire a different nationality from that of her husband.

(3) *Article 13.* — This article, in its present form, does not take into account the fact that in some States there is no organisation competent to issue certificates of nationality. Moreover, under the special conditions existing in Egypt, a certificate of the kind referred to in the article could not always be accepted as conclusive. In Egypt, the question of nationality is of a somewhat peculiar character as regards the competence of tribunals and the law applicable; indeed, special diplomatic arrangements exist by which such a certificate would not be considered as affording sufficient proof.

(4) Generally speaking, the wording of the preliminary draft might be made clearer, and it requires to be revised as regards form and precision of language.

Questionnaire No. 2. — Territorial Waters.

The Comité du Contentieux agrees with the Committee of Experts that some of the questions relating to the rights of States in territorial seas may be settled by means of conventions.

Generally speaking, and subject to the observations set forth below, the Comité du Contentieux has no observations to make on the draft prepared by the Committee of Experts.

(1) *Article 2.* — From the legal point of view, the Litigation Committee has no hesitation in accepting the distance of three miles, with the reservations laid down in Article 2 of the final draft Convention.

The extent of Egyptian territorial waters was fixed at three miles by the Decree-Laws of April 21st, 1926, on Fishing and Sponge-fishing, except in the Bay of El-Arab, the whole of which, according to the Decree-Law on Sponge-fishing, is included in the territorial sea.

The extent of the Customs surveillance zone is at present ten kilometers (Article 2 of the Customs Regulations), but, according to Article 2 of the final draft Convention, States may exercise "administrative rights" beyond the zone of sovereignty on the ground either of custom or of vital necessity. The expression "administrative rights" is somewhat vague and should be re-drafted in such a way as to make clear beyond any doubt that it covers at least Customs supervision.

(2) *Article 5.* — In order to avoid the possibility of a narrow band of free sea existing between the territorial sea of a mainland and the territorial sea of an island situated more than six miles from the mainland, the Litigation Committee suggests that, whenever the distance between the island and the mainland is nine miles or less, the whole zone situated between the island and the mainland should be regarded as territorial sea. On the coasts of the island other than those facing the mainland the territorial sea would have the customary width of three miles.

(3) *Article 11.* — This article might be made a third paragraph of Article 1, which would then read as follows:

"Subject to existing practices as regards fishery rights, the sovereign rights over the territorial sea shall include the sole right to the riches of the sea, the bottom and the subsoil."

(4) *Article 13, second paragraph.* — The Litigation Committee is of opinion that the wording of this paragraph is ambiguous, and therefore proposes the following:

"As regards offences committed on board, the criminal jurisdiction of the riparian State shall only be exercised in respect of offences which are not directed against a member of the crew or against a passenger who is travelling or his property. Its criminal jurisdiction shall apply, however, whenever the peace or public order in the port has been disturbed or when the captain of the vessel has asked the port authorities for assistance."

Questionnaire No. 3. — Diplomatic Privileges and Immunities.

The Comité du Contentieux thinks that the preparation of a draft convention regulating at least some aspects of this question should be given special attention by the Egyptian Government.

As regards the various points of the Expert Committee's questionnaire, the Comité du Contentieux desires to make the following observations with reference to the Sub-Committee's report :

(1) If possible, the Comité du Contentieux would like the word "exterritoriality" to be avoided, as it is not in accordance with legal facts.

(2) *As regards personal inviolability*, the Committee approves the exceptions proposed in the draft drawn up by the Institute of International Law at Cambridge in 1895 (Article 8).

The Committee would further suggest that, as in the American Institute's draft of 1925, diplomatic agents should be under a specific obligation to surrender any persons wanted by the local authorities for crimes or offences.

(3) *As regards fiscal immunities*, the Committee sees no objection to the adoption of the proposals laid down in Articles 9 and 11 of the Cambridge draft.

(4) *As regards immunities from jurisdiction*, the Committee agrees with M. Diena that, as a general principle, the formula contained in the Washington draft is preferable to that of the Cambridge draft.

As regards exceptions, the Committee thinks that the principles laid down in Article 1 of the Egyptian Law of March 1st, 1901, governing the legal status of diplomatic or consular officials and the personnel of consulates (this law was approved by the Powers holding capitulatory privileges in Egypt) might serve as a basis for the exceptions as regards immunity to be included in an international convention.

These principles are as follows :

All diplomatic officials sent by foreign States (*missi*) have the right to take action against third parties in the Courts of the State in which they are carrying out their mission without themselves being justiciable before those Courts as defendants except in the case of a cross-action in reference to the principal action.

If they are engaged in trade or industry, if they possess or use immovable property in the above-mentioned State, they shall be subject to the jurisdiction of the Courts of that State in all matters of trade or industry and in all real actions relating to immovable property in which they are concerned otherwise than in their official capacity.

(5) *As regards the duration of privileges*, the Committee thinks that Article 14 of the Cambridge draft might be adopted.

(6) *As regards transit through or sojourn in the territory of a third State*, the Committee thinks a rule could be laid down that in that State diplomatic agents are entitled to their prerogatives while proceeding to or returning from the country to which they are accredited.

(7) *Persons to whom diplomatic privileges extend*. — The Committee agrees that the whole official staff of the mission and the members of their families living with them should enjoy these prerogatives (with the exception laid down in No. 10 of the present Note).

The Committee considers that the possession of privileges should be subject to the condition that a list containing the names of the officials of the mission should be officially communicated to the Government of the country receiving the mission.

It should, of course, be possible to refuse such a list or to ask for it to be altered, but it would be difficult to lay down any principle on which to base such a refusal or request for alteration. In these circumstances, it would perhaps be best not to attempt to lay down any regulations for this aspect of the question.

(8) *Commercial attachés and attachés dealing with social questions*. — The Committee is of opinion that, apart from persons having diplomatic functions, diplomatic privileges can only be granted to military or naval attachés. Commercial attachés and attachés dealing with social or other questions are not, strictly speaking, carrying out diplomatic duties, and therefore should not, in the Committee's opinion, be granted diplomatic privileges.

(9) *As regards all non-diplomatic personnel*, whether office staff (clerks, shorthand-typists, messengers, etc.) or the domestic staff (servants, cooks, etc.), the Committee thinks they should not be granted privileges, for the same reasons as those which apply to attachés other than military or naval attachés.

(10) *As regards nationals of the countries concerned or persons already domiciled there*, the Committee considers that the State asked to admit them on a diplomatic mission should be authorised only to grant privileges in so far as it may consider suitable in the particular circumstances.

(11) The Committee has no special suggestion to make either as regards Question A 3 or Question B.

Questionnaire No. 4. — Responsibility of States for Damage done in their Territories to the Person or Property of Foreigners.

Subject to the two observations set forth below, the Comité du Contentieux has no objection to the adoption of the conclusions laid down by the Rapporteur on pages 14 (foot of page), 15 and 16 of the questionnaire¹ in so far as the powers on which any responsibilities involved by the conclusions are based are not precluded in Egypt by jurisdictional immunities or by the absence of freedom of legislation as a result of the Capitulations.

(1) *Conclusion 2.* — The Committee is of opinion that no distinction should be drawn between a political crime and a crime under the ordinary law of the land except where the crime is regarded as a political one in view of the public character of the foreigner who is the victim of it. In other words, States are under a general obligation to take suitable measures to prevent any political or other crime and to pursue, arrest and try the criminals. Special vigilance, involving, if need be, international responsibility, is only required in the case of a foreigner having a recognised public character.

(2) *Conclusion 7, last sentence of the second paragraph.* — In considering the responsibility of the State in the case of a denial of justice by a court, no account appears to have been taken of the special procedure of which private individuals may avail themselves in such a case under the municipal law of the State.

Questionnaire No. 5. — Procedure of International Conferences and Procedure for the Conclusion and Drafting of Treaties.

The Committee considers that regulations such as those suggested on page 1 of the report² may be contemplated for questions included in Group A of the two lists.

As regards questions in the other groups — B, C and D — the Committee is of opinion that, if the proposed codification is limited to the formulation of subsidiary rules of procedure, the object which the Committee of Experts has in view, namely, uniformity of practice, would be attained if the Secretariat of the League of Nations were to draw up model regulations for the various questions under these groups without attempting to obtain the acceptance of such rules by the various States. States would always follow these rules unless they had any particular reason for departing from them; and in this way the rules would ultimately become established by dint of constant observance. No better result would be obtained if they were included in an international convention on the understanding that they were purely optional.

As regards, in particular, the conclusion of treaties, we have thought it desirable to reproduce below the provision of Article 46 of the Egyptian Constitution governing the relations between legislative and executive powers in this matter:

“The King shall be the Supreme Commander of the land and sea forces. He shall appoint and dismiss officers. He shall declare war, make peace and conclude treaties and shall notify Parliament thereof as soon as the interest and security of the State permit, and shall add any further communications which may be desirable.

“No offensive war may be declared, however, without the consent of Parliament. Treaties of peace, of alliance, of commerce and of navigation, and any treaties which entail either an alteration of the State territory or a diminution of its sovereign rights or a charge upon the public treasury, or which infringe the public or private rights of Egyptian citizens shall not be valid until they have received the approval of Parliament.

“Secret articles of treaties may in no case invalidate the published articles.”

Questionnaire No. 6. — Piracy.

The Comité du Contentieux sees no objection to the provisions proposed by the Rapporteur.

Questionnaire No. 7. — Exploitation of the Products of the Sea.

The Comité du Contentieux has no observation to make, as the questions dealt with in the report have no special interest for Egypt.

¹ See pages 103 (foot of page) and 104 and 105 of the present document.

² See page 106 of the present document.

Guatemala.

QUESTIONNAIRES Nos. 1 TO 7.

Letter of March 23rd, 1927.

[*Translation.*]

In reply to your circular letter 147.1926.V, of December 3rd, 1926, I have the honour to inform you that, owing to a change of personnel in this office, it was not possible to send the reply to the questionnaire drawn up by the Chairman of the Committee of Experts for the Progressive Codification of International Law.

As the meeting proposed for the present month does not seem to have been held, it is proposed to continue the study of the subjects treated in the above-mentioned questionnaire, to which the desired reply will be forwarded later.

(Signed) José NATOS.

New Zealand.

QUESTIONNAIRES Nos. 1 TO 7.

Letter of February 28th, 1927.

I have the honour to acknowledge the receipt of your communications, C.L.25.1926.V, of March 22nd, 1926, and C.L.147.1926.V, of December 3rd last, with reference to the Progressive Codification of International Law and, in reply, have to say that the New Zealand Government desire to associate themselves in this matter with the replies forwarded to the League on behalf of His Majesty's Government in Great Britain.

(Signed) J. COATES,
Prime Minister.

Turkey.

QUESTIONNAIRES Nos. 1 TO 7.

Letter of April 14th, 1927.

[*Translation.*]

With reference to a communication dated December 3rd, 1926, which you sent to the Minister for Foreign Affairs regarding the Progressive Codification of International Law, I have the honour to inform you that the Government of the Turkish Republic desires at present only to follow the course of the work carried out on this subject; it would be grateful to receive from you any further documents published on the subject.

(Signed) Mehmed MUNIB,
Turkish Minister.

Annex III.

ANALYSES OF REPLIES RECEIVED FROM GOVERNMENTS
TO QUESTIONNAIRES SUBMITTED BY MEMBERS OF THE COMMITTEE

Questionnaire No. 1. — Nationality.

ANALYSIS OF REPLIES SUBMITTED BY M. RUNDSTEIN

The majority of the replies agree that the question of nationality is one suitable for immediate consideration. Naturally, the object in view is codification by stages, by the elimination of problems which might encounter political obstacles and by giving preference to the regulation of matters which are mainly of secondary importance. Generally speaking, there is approval of the view set out in the Committee's report postulating the method of *limited selection* as that best adapted in *statu quo hodie*.

I.

Nine countries are in favour of an immediate codification of questions relating to nationality, though they do not mention details. The first seven of the following countries have *in principle* accepted the views contained in the preliminary draft:

- (1) Australia;
- (2) Brazil;
- (3) Bulgaria;
- (4) Czechoslovakia;
- (5) France (subject to reservations in regard to certain articles);
- (6) Poland;
- (7) Salvador;
- (8) Kingdom of the Serbs, Croats and Slovenes.
- (9) United States (which suggests that the details should be considered in any negotiations which ensue).

II.

Eleven countries¹, while recognising that the subject is suitable for codification and that international regulation may ultimately be undertaken, consider that certain clauses in the preliminary draft are at variance with the provisions of their municipal law.

Accordingly, these States, though not opposed to codification, would have good grounds for reservations in regard to particular provisions. The difficulty is in reality only apparent, since the preliminary draft may be modified and cannot be regarded as a "ne varietur" document. It is, therefore, reasonable to suppose that the States enumerated below should be included among the supporters of codification, especially as some of them are anxious to extend its scope by including problems not dealt with in the preliminary draft.

- (1) Austria;
- (2) Cuba;
- (3) Estonia;
- (4) Finland;
- (5) Greece;
- (6) Japan (subject to further study, on which the competent authorities are at present engaged);
- (7) Norway;
- (8) Roumania;
- (9) Spain;
- (10) Sweden;
- (11) Switzerland.

¹ See also the Egyptian reply, Annex II bis, p. 256.

III.

Venezuela and *Italy* are the only countries which have given definitely negative replies.

The *British Empire* and *India* do not consider that it would be possible to regulate questions of nationality as a whole by international agreement, or desirable at the present time to attempt to do so¹. On the other hand, these States consider that the special questions of dual nationality and statelessness might be regulated forthwith.

IV.

Finally, it should be noted that three countries take up a special point of view, namely :

(1) *Belgium*, which considers that an agreement on questions of nationality is impracticable and that the only possible solution is the conclusion of bilateral conventions ;

(2) *The Netherlands*, which considers that codification by stages, though not easy, nevertheless appears to be possible, and takes the view that an examination of the question should be postponed to allow of its being dealt with at the Sixth and Seventh Hague Conferences ; and

(3) *Italy*, which, emphasising the difficulties arising out of conflicts of the *jus sanguinis* and the *jus soli*, favours rather the settlement through private treaties.

V.

It should be added that the following countries have promised to submit replies, which, however, have not yet been received :

- (1) Denmark ;
- (2) Egypt ;
- (3) Germany (which points out that the consideration of this question has not yet been completed) ;
- (4) Portugal.

As you are aware, the Committee thought that Article 6 of the preliminary draft could not be included among the matters capable of forming the subject at present of international regulation. I must, however, state that the Committee's pessimistic view was not justified, for a number of States think that the provisions of Article 6 are acceptable and even desirable, (*e. g.*, Roumania, Belgium, Switzerland, Austria — Sweden as regards paragraph 2 of Article 6 only).

Questionnaire No. 2. — Territorial Waters.

ANALYSIS OF REPLIES SUBMITTED BY M. SCHÜCKING.

I. STATES WHICH ADMIT THE POSSIBILITY AND DESIRABILITY OF A CONVENTION ON THIS QUESTION.

*The following twenty-one States have replied affirmatively in principle*² :

Germany. — “ The German Government has examined the questionnaires of the Committee of Experts for the Progressive Codification of International Law transmitted with your letter of March 22nd, 1926, with a view to determining whether the regulation of the subjects treated therein is desirable and realisable in the near future. The German Government considers that the following subjects could be so dealt with :

“ 1. Territorial Waters.

“ In the first place, as regards the question of *Territorial Waters*, the German Government starts from the principle that the extent of the territorial sea should continue to be three nautical miles as at present. This is also the view expressed by the Council of the Deutsche Gesellschaft für Völkerrecht in the resolution given in the Annex to the German reply. The German Government further accepts the remainder of this resolution, which corresponds in all essential respects with the principles embodied in the draft

¹ See also the reply of New Zealand, Annex II bis, p. 260.

² See also the replies of Egypt and New Zealand, Annex II bis, pp. 256-259 and 260.

convention of the Committee of Experts. The German Government accordingly considers that the draft in question provides a suitable basis for a first attempt to regulate by international agreement the question of territorial waters. Subject to a final statement of its views, the German Government desires to draw attention to the remarks on certain points of detail in the draft which are given in the attached observations."

Australia. — "I have the honour, by direction of the Prime Minister, to inform you that the Commonwealth Government considers it desirable to endeavour to secure the regulation by international agreement of all the subjects dealt with in the questionnaires which accompanied your letter, viz.:

- " 1.
- " 2. Territorial Waters.
- " 3.

"To what extent agreement is realisable can only be ascertained by a conference for the purpose of formulating rules which are generally acceptable, but it would appear to the Commonwealth Government that agreement on many points, if not on all, ought to be attainable.

"The Commonwealth Government is of opinion that the subjects which might be selected for immediate consideration are:

- " 1.
- " 2. Territorial Waters.
- " 4."

Brazil. — "M. Schücking's draft, as revised by the Committee, realises a recommendation we made in 1911:

"'It would be highly desirable to fix the zone of the jurisdictional sea by international agreement in such a way that States might, without conflict of sovereignty, supervise and police this area for the maintenance of order, the punishment of crime, the regulation of fishing, the prevention of contraband and the establishment of such general rules as may be deemed necessary for navigation and commerce, without prejudice to the rights of international trade.'

"The questions selected as a commencement of the work of codification are, in our opinion, capable of settlement, and their settlement would be desirable."

British Empire. — "I am directed by Secretary Sir Austen Chamberlain to inform you that His Majesty's Government consider the amended draft convention on territorial waters a useful basis for future discussion."

Bulgaria. — "In reply to your letter C.L.25.1926.V, I have the honour to inform you that, in the opinion of the Bulgarian Government, the regulation by international agreement of the subjects treated in the questionnaires is desirable and realisable."

Cuba. — "There would be no difficulty either, in principle, in preparing a convention on territorial waters."

Denmark. — "The Danish Government is of opinion that a settlement of this question by international agreement is desirable and realisable in the near future. It regards the memorandum submitted by the Committee, with the draft convention attached, as an excellent piece of work which might very suitably form the basis of subsequent negotiations for an international convention on the subject."

Estonia. — "The draft convention drawn up by the special Sub-Committee and amended by M. Schücking appears to me to be deserving of Estonia's adhesion."

United States of America. — "It is the view of the Government of the United States that international arrangements on the general subjects of: . . . (2) Territorial Waters . . . would serve a useful purpose and would therefore be desirable, and that there would be no insuperable obstacles to the concluding of agreements on these general subjects. The Government of the United States is not prepared at this time to state whether all the points mentioned in the questionnaires on the subjects referred to would yield to regulation by international agreement, nor does it desire to express an opinion regarding the desirability or possibility of regulating all the points by international agreement until it has had opportunity to make a more intensive study of them than it has as yet done. The details would seem to be proper matters for discussion in any negotiations which may ensue."

Finland. — “The Finnish Government is convinced that the questions relating to territorial waters should be considered as one of the most suitable branches for general regulation. At the same time, the practical need for unification in this branch is making itself felt more and more urgently in view of the multiplicity of the interests it affects in the lives of modern nations.”

Greece. — “In reply to your letter of March 22nd last, I have the honour to transmit to you herewith the observations of the Technical Commission set up to examine the points raised in the questionnaire which accompanied your letter.

“The opinion of the Commission does not, in the main, differ from the conclusions reached by the Committee of Experts.

“The Hellenic Government is of opinion that the settlement of these problems by means of international agreement would, in principle, be desirable.

“It reserves the right, however, to define, enlarge or modify, if necessary, at the proper time and in the proper place, the opinions advanced by the above Commission.

“The Technical Commission agrees with the Committee of Experts that it is necessary to solve by means of an international convention the problems connected with the rights of the riparian State within its territorial waters.”

India. — “I am directed by the Secretary of State for India to inform you that the Government of India consider that the amended draft convention on Territorial Waters is a useful basis for future discussion.”

Irish Free State. — “I have the honour to inform you that the Government of the Irish Free State, having examined the Questionnaire and Draft Convention on Territorial Waters included therein, consider that it offers an acceptable basis for discussion of the subject by an international conference.

Japan. — “The Imperial Government considers that the reports on Questions 2, referring to, territorial waters, respectively, might provide a satisfactory basis for discussion. It would observe, however, that these reports contain certain points which it could not approve in their present form, and would add that the competent Japanese authorities are at present engaged in a very careful study of these problems.”

Portugal. — “Portugal has already explained her point of view in Admiral Vicente de Almeida de Eça's report, which was approved on July 28th, 1925, by the Portuguese Permanent Commission of International Maritime Law, and in the observations recently made by the representatives of that Commission during the Conference of the International Law Association at Vienna. These views were also expressed in a detailed statement made by Dr. Barbosa de Magalhães before the League of Nations Committee of Experts for the Progressive Codification of International Law. Portugal, while valuing the report of the Committee of Experts most highly, and being of opinion that it would be difficult to carry into effect any draft convention which did not conform to the usages and requirements of the different countries,”

(Opinion of the Permanent Commission on International Maritime Law, Lisbon.)

Roumania. — “The provisions of this draft Convention, which has been drawn up with such competence and skill by the distinguished Rapporteur, could be adopted by the Royal Government subject to the observations set out above.”

Salvador. — “In the opinion of the Government of Salvador, the regulation by international agreement of these subjects, both in their general aspects and as regards the specific points studied in the relevant reports of the Sub-Committees, is desirable in the near future.”

Kingdom of the Serbs, Croats and Slovenes. — “The Royal Government considers that the questions proposed by the Committee should be codified.”

Sweden. — “The Swedish Government considers that the conclusion of an international convention on questions connected with territorial waters would be highly desirable. The vagueness of international law on certain points is obviously a source of much inconvenience. The proposed convention, moreover, need not necessarily constitute a schematic and uniform settlement of all these questions. On the contrary, we should endeavour to produce an international agreement so drafted as to take into proper account the acquired rights of and dissimilar conditions existing in the various countries. In any case, the Swedish Government considers that the opportunity afforded the various Governments of expressing their views on the subject — so that the necessary conditions of an international settlement may be more clearly determined — is an excellent preparatory step.”

Czechoslovakia. — “Czechoslovakia’s interest in the codification of this branch of the law is practically confined to the general interest felt in the clarification and regulation of international relations as soon as possible and as far as practicable.”

Venezuela. — “This Ministry has given due consideration to these questions, and has reached the conclusion that, in regard to the following subjects, there exists a body of principles that have definitely secured international acceptance: — Territorial Waters, . . . These questions would therefore seem to be sufficiently ripe to be considered by international conferences.”

II. STATES WHICH DO NOT THINK THAT THE CONCLUSION OF A CONVENTION IS EITHER POSSIBLE OR OPPORTUNE.

These are the following three States :

France. — “On the other hand, the French Government thinks that an agreement on Question 2, . . . : Territorial Waters, . . . would be premature or else would be hardly practicable.

“The regulation of the question of territorial waters is conditioned in the different States by such diverse requirements, due to the geographical, economic and political factors involved, that it would be difficult to regulate in a uniform manner. It has often been proposed to draw up general regulations with regard to territorial waters, and it has never yet been found possible to give practical effect to this proposal. It seems likely that in future difficulties will be encountered similar to those which have prevented success in the past.”

Italy. — “We are of opinion that, in this question also, it will be difficult to secure general international agreement on account of the widely different geographical, economic and political circumstances in the various countries, their divergent needs in the matter of defence and the fact that the requirements of countries which have an ocean seaboard are dissimilar from those of countries whose shores are washed by inland seas. The insuperable difficulties which similar efforts have encountered in the past are bound to re-occur in the near future and frustrate all attempts to formulate uniform rules for this branch of the law.”

Poland. — “With reference to the question of territorial waters, the Government holds that this problem cannot, as a whole, yet form the subject of codification, opinion being still so divided as to the extent of the “territorial sea” and the rights of riparian States over waters situated outside that zone. On the other hand, problems relating to jurisdiction in the matter of commercial ships in maritime ports do not, from the point of view of codification, raise any serious difficulty, and they might thus be solved on a uniform basis.”

III. STATES WHOSE REPLIES ARE NEITHER DEFINITELY AFFIRMATIVE NOR NEGATIVE.

These are the following two States :

Norway. — “The Norwegian Government considers it highly important and desirable that international law, the relative vagueness of which in this matter has caused many difficulties in international relations, should be clarified and defined as far as possible. It feels, however, that the reasons which can be adduced in favour of such action vary so considerably from country to country that it is difficult for a State to reply separately and definitely to the main questions until sufficient data have been obtained regarding the practice followed in other countries and the light in which they regard their own territorial waters. In the opinion of the Norwegian Government, the questionnaire is a first preliminary step towards international agreement on these questions.”

Netherlands. — “Territorial waters also constitute a problem which it would be difficult apparently, in the present state of law, to settle at once and *in toto*. Her Majesty’s Government feels, however, that in this case also an international conference would be useful even if it did nothing more than define the questions on which agreement seemed possible. It would, however, be highly desirable, before the conference met, to set up a preparatory committee which would clear the ground and define the precise scope of the conference’s work.”

IV. STATES WHICH REFRAIN FROM PROPOSING ANY SOLUTION OR WHICH HAVE ABSTAINED FROM REPLYING.

These are the following three States :

Austria. — “As Austria is not a maritime Power, the Federal Government refrains from giving any opinion on the questions dealt with in Questionnaire 2 (Territorial Waters) . . .”

Spain. — “Among the fundamental principles laid down in this questionnaire is one fixing the area of the territorial . . . sea at three marine miles. This is contrary to Spanish law. . .”

Switzerland. — “We shall duly communicate to you as soon as possible the observations which the Federal authorities may have to offer regarding Questionnaires 3, 4 and 5. As regards the *other* questionnaires, we have noted their contents with interest, but, as the problems with which they deal are of only very indirect concern to our country, the Swiss Government, at least for the present, does not feel itself called upon to express any views concerning them.”

Questionnaire No. 3. — Diplomatic Privileges and Immunities.

ANALYSIS OF REPLIES SUBMITTED TO THE COMMITTEE VERBALLY BY M. DIENA.

(Extract from the Minutes of the Seventh Meeting of the Third Session, March 26th, 1927.)

Professor DIENA was glad to note that the replies to the questionnaire No. 3 were very favourable and almost unanimous. Accordingly, the conclusion could at once be drawn that the question was capable of forming the subject of an international conference. There was only one exception, namely, the British Government, which had replied in somewhat discouraging terms. The Indian Government had replied in identical terms.

It was not for the Rapporteur to criticise those replies. This would be a great error. He could not, however, help hoping that the British Government's reply was not final.

The Australian Government had replied in a sense favourable to the solution of the question by an international conference. Now, Australia was entitled to take part in an international conference on her own account, and to assume obligations by adhering to a convention, even though the British Government did not. For the moment, however, Australia had no diplomatic representatives. This situation might be modified in the future. Her interests had been hitherto safeguarded by the British diplomatic agents, but, if the Australian Government were to take part in an international conference at which the British Government was not represented, and supposing that a convention was concluded on the subject of diplomatic immunities and privileges, the diplomatic agents in Great Britain who represented coincidentally Great Britain and Australia would accordingly be in possession of different prerogatives according to whether they represented the one or the other of these countries. Diplomatic prerogatives related at once to the public and private life of the agent. It was difficult to imagine such a situation as this. It should, on the other hand, be pointed out that, in the matter of diplomatic privileges, Great Britain often conferred more than she obtained, and that it could not accordingly be in her interest that such a situation should be permanent.

Hence the reply from the Australian Government, like that from the United States Government, might be considered as favourable in principle.

*Favourable Replies.*¹

The great majority of the replies were favourable to the convening of an international conference on the matter in hand. Certain Governments had even discussed the question with great care and in detail. Among these might be mentioned Germany, Estonia and Switzerland, which in their replies had provided extremely valuable information upon the legislation in force in their countries.

Germany, Austria, Belgium, Brazil, and Cuba had given evidence of their good will in this question. Denmark acquiesced in the summoning of a conference, and proposed that a detailed questionnaire should be prepared in which the Governments would be invited to define their views on the question.

Estonia had also sent many detailed suggestions.

Finland, too, was favourable.

The French reply was in point of form somewhat less encouraging, but it might be inferred that France would consent to take part in a conference.

Bulgaria, Greece, and Japan also were favourable, although Japan had made reservations with regard to certain points in the draft.

Norway, while favourable, reserved the right to submit further suggestions later.

The Netherlands Government did not think that a conference was urgently required, but would consent to attend one if called.

Poland was favourable to the Conference, but foresaw certain difficulties in the matter of fiscal immunity.

¹ See also the reply of Egypt, Annex II bis, p. 257.

Roumania was prepared to take part in an international conference, and suggested certain restrictions to diplomatic privileges. Special attention was called to the difficulty experienced as a result of diplomatic immunities by tradesmen, bankers, landowners and householders in securing their rights.

Switzerland accepted the proposal and made a large number of suggestions.

The replies received from Czechoslovakia, Salvador, the Kingdom of the Serbs, Croats and Slovenes, Sweden, and Venezuela were also favourable.

To sum up, twenty-two¹ States were explicitly in favour of summoning a conference; two others, the United States and Australia, were favourable in principle, while the British Empire and India were opposed.² The great majority of States which had replied to the questionnaire thought that the subject of diplomatic privileges and immunities merited examination by an international conference.

Questionnaire No. 4. — Responsibility of States.

ANALYSIS OF REPLIES SUBMITTED BY M. GUERRERO.

I. STATES THAT ADMIT THE POSSIBILITY AND DESIRABILITY OF A CONVENTION ON THE QUESTION.

A. The following twenty-three States replied affirmatively and without reservations:³

Germany. — "The German Government has examined the questionnaires of the Committee of Experts for the Progressive Codification of International Law transmitted with your letter of March 22nd, 1926, with a view to determining whether the regulation of the subjects treated therein is desirable and realisable in the near future. The German Government considers that the following subjects could be so dealt with:

- " 1.
- " 2.
- " 3. Responsibility of States for Damage done in their Territories to the Person or Property of Foreigners."

Argentine. — "With reference to your book, *La Responsabilidad Internacional*, which you were good enough to send me, I am pleased to inform you that the Ministry of Foreign Affairs, in acknowledging receipt of the copy, which I forwarded in due course, declares that it would view with satisfaction the regulation of this question."

Australia. — "I have the honour, by direction of the Prime Minister, to inform you that the Commonwealth Government considers it desirable to endeavour to secure the regulation by international agreement of all the subjects dealt with in the questionnaires which accompanied your letter, viz.:

- " 1.
- " 2.
- " 3.
- " 4. Responsibility of States in respect of Injury caused in their Territory to the Person or Property of Foreigners";
- " 5.
- " 6.
- " 7.

"To what extent agreement is realisable can only be ascertained by a conference for the purpose of formulating rules which are generally acceptable, but it would appear to the Commonwealth Government that agreement on many points, if not on all, ought to be attainable.

"The Commonwealth Government is of opinion that the subjects which might be selected for immediate consideration are:

- " 1.
- " 2.
- " 4. Responsibility of States in respect of Injuries to Foreigners."

¹ The replies from Egypt and Italy, received after the date of Professor Diena's statement, were also favourable.
² See the reply of New Zealand, Annex II bis, p. 260.

Belgium. — “In continuation of my letter of October 20th, 1926, in which I replied to the questionnaire on nationality prepared by the Committee of Experts for the Progressive Codification of International Law, I have the honour to inform you that the Belgian Government considers that the settlement by international agreement of the following subjects of international law would also be desirable and realisable at no very distant date.

“1.
“2. *Responsibility of States for Damage done in their Territory to the Person and Property of Foreigners* (particular attention should be devoted to defining the grounds on which such responsibility rests to the specifying of the cases in which it is incurred); and to the *settlement of disputes which may arise between two States on account of damage done to foreigners in the territory of one of them.*”

Brazil. — “The questions selected as a commencement of the work of codification are, in our opinion, capable of settlement, and their settlement would be desirable.

“*Responsibility of the State for Injury suffered by Foreigners in its Territory.* — M. Guerrero's conclusions, which have been accepted by the Committee, are excellent on account of the principle they emphasise, namely, that it is the illegal act itself which in international relations creates responsibility, apart from any question of intention.”

British Empire. — “In reply to the enquiry contained in your letter (C.L. 25.1926. V) of March 22nd last in regard to the report of the Committee for the Codification of International Law on the subject of the responsibility of States in respect of injury caused in their territory to the person or property of foreigners, I am directed by Secretary Sir Austen Chamberlain to inform you that His Majesty's Government consider that this is a subject of international law whose regulation, by international agreement, it might be desirable to attempt.”

Bulgaria. — “In reply to your letter C.L.25.1926, I have the honour to inform you that, in the opinion of the Bulgarian Government, the regulation by international agreement of the subjects treated in the questionnaires is desirable and realisable.”

Chile. — “I am directed by my Government to inform you that it has first of all examined Questionnaire No. 4 concerning the responsibility of States for damage done in their territory to the person or property of foreigners. My Government is not yet in a position to forward its replies to the other questions, but instructs me meanwhile to communicate to you the following reply to Questionnaire No. 4, with the request that you will be good enough to transmit it to the Committee of Experts.

“The American doctrine has always been to restrict diplomatic disputes as far as possible, and, since the Fifth Pan-American Conference, conciliation has, in practice, been an essential part of American procedure in international affairs. The Chilean Government, therefore, accepts the conclusions of the report of His Excellency M. Guerrero on the responsibilities of States for damage done in their territories to the person or property of foreigners, with the following explanatory remarks”

Spain. — “In general, we consider the conclusions in Part VI of the report to be excellent, particularly those in No. 6, ‘Legal Protection’, and 7, ‘Denial of Justice’. Spanish law accords legal protection on a very liberal scale and the law of civil procedure lays down that civil actions in Spanish territory, between Spaniards, between foreigners, or between Spaniards and foreigners, shall fall exclusively within the ordinary jurisdiction of the courts. As regards denial of justice, Article 27 of the Civil Code extends to foreigners the rights which the civil laws accord to Spaniards, with the exception of the provisions of Article 2 of the Spanish Constitution.”

Estonia. — “The principles laid down in the report concerning this question appear to me entirely suitable as the basis of an international convention.”

United States of America. — “It is the view of the Government of the United States that international arrangements on the general subjects of : (1) Nationality ; (2) Territorial Waters ; (3) Diplomatic Privileges and Immunities ; (4) Responsibility of States in respect to Injury caused in their Territory to the Person or Property of Foreigners, which are the first four subjects mentioned in the communication of the Secretary-General, would serve a useful purpose and would therefore be desirable, and that there would be no insuperable obstacles to the concluding of agreements on these general subjects.”

Finland. — “If, in regard to the subject dealt with in Questionnaire No. 4, emphasis is laid on the term *damage*, the legislative acts of the State may indeed, as the report assumes, remain outside the limits of the responsibility of States as contemplated in the questionnaire.

“Nevertheless, if we leave out of account the question whether according to domestic law a measure has been rightly or wrongly taken by the public authorities, we may be justified in speaking of the damage done to foreigners even in cases in which the acts of the State that cause this damage come within the province of its legislative functions. According to international law, should acts of expropriation in the widest sense of the term, *i. e.*, acts which infringe an acquired right or render a definitively established situation subject to the effects of a law with retro-active force, be applied indiscriminately to foreigners or do they involve the obligation of paying full compensation to foreigners suffering from the consequences of such acts? The problem is one of tremendous importance and raises questions of great difficulty. This is sufficiently proved by cases such as the agrarian reforms in several countries, the ‘Aufwertung’ legislation in Germany, etc., not to speak of the radical ‘nationalisation’ of private property carried out in Russia under the Bolshevik regime.

“Until recent times, writers have maintained with remarkable unanimity that the State is obliged to pay compensation for damage caused by measures of this kind — in other words, the State becomes responsible for damage caused by such legislative acts, so that the State becomes guilty of a breach of international law if it refuses to grant full compensation to foreigners whose interests are affected by a law of the category in question.

“It is only under the influence of a legislation more or less incompatible with these principles that certain authors have begun to question the duty of a State to accord foreigners more favourable treatment in this respect than its own citizens. Be that as it may, this is an extremely important question which deserves to be studied with the greatest care.”

Greece. — “The Hellenic Government is of opinion that the settlement of these problems by means of international agreement would, in principle, be desirable.”

India. — “I am directed by the Secretary of State for India to inform you that the Government of India consider that the responsibility of States in respect of injury caused in their territory to the person or property of foreigners is a subject of international law whose regulation by international agreement it might be desirable to attempt.”

Norway. — “In answer to your request, I have the honour to inform you that the Norwegian Government agrees in the main with the general principles enunciated in Section VI of the Sub-Committee’s report, which is attached to the questionnaire, subject to the following observations with regard to certain paragraphs of the conclusions. . . .”

Poland. — “With reference to the questions defined in your note, the Polish Government regards nationality, diplomatic privileges and immunities, the responsibility of States in respect of injury caused to the person or property of foreigners, procedure of international conferences and procedure for the drafting of treaties, exploitation of the products of the sea, and, lastly, piracy, as suitable for codification, and considers such codification both desirable and feasible.”

Portugal. — “The Faculty of Law at Lisbon, having been consulted by the Portuguese Government, has replied as follows :

“ ‘The Faculty’s reply to the first part of this question is in the affirmative, and — to use the terms employed in the circular letter of the Chairman of the Committee — it is of opinion that the settlement of this problem by means of an international convention is desirable and realisable’ .”

Roumania. — “In general, the Royal Government agrees with the Rapporteur’s conclusions. It will, however, propose certain amendments when the suggested international conference takes place.”

Salvador. — “In reply to your letter C. L. 25. 1926. V, dated March 22nd last to this Department regarding the different questions discussed by the Committee of Legal Experts at the meetings held last January at Geneva, I have the honour to inform you that the only questions in which Salvador is interested are the first six mentioned in the Note of the Chairman of the Committee of Experts for the Progressive Codification of International Law (document C. 96. M. 47. 1926. V, dated February 9th, 1926) and especially the *fourth*, concerning the ‘responsibilities of States in respect of injury caused in their territories to the person or property of foreigners’. As regards this matter, we are in full agreement with the ideas set forth in the report on the subject by the Sub-Committee

consisting of Dr. J. Gustavo Guerrero and M. Wang Chung-Hui. In the opinion of the Government of Salvador, the regulation by international agreement of these subjects, both in their general aspects and as regards the specific points studied in the relevant reports of the Sub-Committees, is desirable in the near future."

Kingdom of the Serbs, Croats and Slovenes. — "The Royal Government considers that the questions proposed by the Committee should be codified."

Sweden. — "The Swedish Government considers that the question raised in the above questionnaire is of high importance and that it can be settled by means of an international agreement."

Switzerland. — "It would seem to be desirable that some rules as to the responsibility of States for damage done in their territories to the person or property of foreigners should be embodied in an international convention. The existence of definite rules on the subject would doubtless help to lessen the possibility of international conflict."

Czechoslovakia. — "The Government of the Czechoslovak Republic attaches very great importance to the work of the League undertaken in this field. The Government firmly believes that that work will unquestionably result in a very important contribution to the cause of peace, since it will permit of closer collaboration between the countries and forestall many misunderstandings which might otherwise disturb their relations.

"In the present state of the preparatory work the Government thinks that it can confine itself to a brief reply in the affirmative to the question enunciated above and that there is no need to submit an extensive analysis of the different factors of which the matters treated are composed."

B. *Four States have replied affirmatively, with certain reservations:*¹

Austria. — "The Federal Government agrees that this matter calls for urgent settlement by international agreement.

"It feels bound, however, to state its view that the Sub-Committee has in certain respects departed from the principles of international law as recognised in Europe. Before we can contemplate the preparation of a draft Convention, it would therefore be desirable, with a view to obtaining the accession of the greatest possible number of countries, to examine anew, and with meticulous care, the fundamental principles of the problem.

"Moreover, as this matter is at present being discussed by the Institute of International Law, it would perhaps be desirable to await the results of the work of this body, which enjoys such high repute throughout the legal world."

Cuba. — "As this is another of the questions which will presumably be carefully examined by the Committee of Legal Experts at Rio de Janeiro (and later, in all probability, by the Havana Conference) and as it is of exceptional interest to America, we feel that Cuba should not agree to its settlement by the Committee until the American countries have expressed their final opinion at these Conferences."

Denmark. — "This question seems to be as far-reaching as it is complex; the Danish Government is not quite sure whether the existing body of international juridical practice and scientific theory on this subject is as yet sufficient to allow of general codification. It would, however, be very interesting to make the attempt and see to what extent the question could be settled by means of international conventions. It would perhaps be preferable for the present to refrain from exhaustive codification and confine attention to certain questions of a very special nature. The Danish Government therefore thinks that it would be highly desirable and practical, for the purpose of avoiding dangerous international disputes, to conclude international agreements to the effect that...."

Italy. — "We think that, in principle, and subject to certain reservations, it would be possible to lay down certain general rules in an international convention, bearing in mind, however, the discussions which took place at Geneva in the Council of the League as a result of the report of the Committee of Jurists on the interpretation of the relevant Articles of the Covenant."

¹ See also the reply of Egypt, Annex II *bis*, p. 259.

II. STATES WHICH DO NOT THINK THAT THE CONCLUSION OF A CONVENTION IS EITHER POSSIBLE OR OPPORTUNE.

Four States :

France. — "Questionnaire 4 (Responsibility of States in respect of Injury caused in their Territory to the Person or Property of Foreigners) too-closely affects the internal or the external policy of States, their social life and the stability of their institutions for it to be possible, without serious danger, to propose to establish conventional or general stipulations acceptable by every State in its relations with the other States."

Japan. — "With regard to the reports on Questions 4 and 5, which deal respectively with the responsibility of States for damage done in their territory to the person or property of foreigners, and with the procedure for international conferences and for the conclusion and drafting of treaties, the Imperial Government is inclined to think that these questions are not yet sufficiently ripe to allow of the conclusion of an international convention. It feels, however, that it would be very desirable for representatives of the various countries to examine these questions in common, with a possible view to preparing an agreement, which should, however, contain nothing more than recommendations."

Netherlands. — "With regard to the responsibility of States for damage caused in their territories to the person or property of foreigners, the Netherlands Government feels that, in view of the wide divergence of views on the fundamental legal principles at stake, serious difficulties would be encountered in any attempt to solve the problem."

Venezuela. — "This Ministry has given due consideration to these questions, and has reached the conclusion that, in regard to the following subjects, there exists a body of principles that have definitely secured international acceptance: — Territorial Waters, Piracy, Exploitation of the Products of the Sea, and Diplomatic Privileges and Immunities. These questions would therefore seem to be sufficiently ripe to be considered by international conferences."

Reply promised but not yet received: *Egypt.*

Questionnaire No. 5. — Procedure of International Conferences and Procedure for the Drafting and Conclusion of Treaties.

ANALYSIS OF REPLIES SUBMITTED BY M. RUNDSTEIN.

It may perhaps be desirable to refer to the intentions of the Committee, as set out in its letter of January 29th, 1926, regarding the question of the procedure of conferences and the conclusion of treaties.

The Committee pointed out that there was no question of attempting to reach, by way of international agreement, a body of rules which would be binding obligatorily upon the various States.

The object of the Committee's investigation was more modest. It was desired to put at the disposal of States rules in the form of *jus dispositivum*, which they could apply or modify as they chose in each concrete case and the acceptance of which might save them much discussion, doubt and delay.

The report submitted to the Governments did not accordingly contain any draft proposals. The Committee was of opinion that the two lists annexed to the report indicating questions for future regulation and possessing the character of questionnaires might prove useful for the preliminary stage of codification.

We shall now indicate the opinions of Governments on the report which was submitted to them for consideration.

In the first place, the Committee has now received *twenty-five* replies. In addition, four countries (Czechoslovakia, Egypt, Portugal¹ and Spain), which submitted their views on other questions, have not yet defined their attitude to the codification of the rules for the procedure of conferences and the drafting of treaties.

Fourteen of these twenty-five replies are definitely in the *affirmative*. They frequently contain new and important suggestions, extending in some cases beyond the scope of the problems referred to in the report.

*Five States*¹, while expressing a favourable opinion, make certain reservations, relating in part to the handling of a number of problems not suitable for regulation by convention; at the same time, these States desire to put forward further amendments when an

¹ See also reply of Egypt, Annex II *bis*, p. 250.

international conference is convened. This heading includes recommendations regarding the necessity of framing a *preliminary draft convention*.

Lastly, *seven* countries replied in the *negative*¹.

A full analysis brings out the following points :

I.

REPLIES IN THE AFFIRMATIVE AND WITHOUT RESERVATIONS.

Australia ;	Estonia ;	Netherlands ;
Austria ;	Finland ;	Norway ;
Bulgaria ;	France ;	Poland ;
Brazil ;	Greece ;	Salvador ;
Cuba ;		Switzerland.

The following countries declared themselves in favour of immediate codification, but do not make any detailed observations or criticisms :

Bulgaria ;	Netherlands (leaving aside all consideration of the urgency of codification) ;
Brazil ;	
Greece ;	Poland ;
	Salvador.

There is general acceptance of the Committee's view that the rules to be formulated can only be drafted as a *jus dispositivum*, which would not limit the independence of States (*Austria, Estonia, France, Norway, Switzerland*).

Austria points out that it would be desirable to deal with questions relating to direct and delegated representation. The problem of imperfect ratification and, in particular, ratification subject to reservations has been dealt with in a report by M. Fromageot, which has been accepted by our Committee. It is very doubtful if the question of international agreements concluded *orally* can form the subject of regulation.

Cuba points out very justly that certain questions mentioned in the questionnaire, such as the definition of international conferences and treaties, seem to be more suitable for theoretical study than for embodiment in a practical convention.

Estonia, while giving a favourable opinion, would desire more-detailed questionnaires since the brief enumeration of certain problems is inadequate. In addition, it believes that the difficulties of interpretation which occur in cases in which a convention is drafted in two or more languages should be settled in explicit terms.

Finland draws special attention to the well-known subject of reservations, and desires regulation of the question whether an amendment to an international conference requires an absolute majority or whether departures from this strict principle should be allowed.

The Government of the *French Republic* which considers that it is desirable and practicable to draw up a body of rules for the use of international conferences and Foreign Offices, points out that it will be necessary to prepare a *preliminary draft* containing provisions drawn up with some degree of precision.

Switzerland states that the two lists prepared by the Committee appear to be *very complete* and makes very valuable suggestions regarding the collection of specimen formulas of diplomatic instruments and an investigation into the possibility of simplifying certain obsolete forms. On the other hand, the Federal Council does not approve of the idea of making a collection of constitutional provisions governing ratification of international agreements.

II.

REPLIES IN THE AFFIRMATIVE WITH RESERVATIONS.²

Belgium ;	Roumania ;
Denmark ;	Sweden.
Italy ;	

The *Belgian* Government considers that the preparation of a complete code on this subject may perhaps be impossible, but that it should be feasible to draw up a body of rules regarding the drafting of treaties, full powers, signature, ratification, denunciation, etc.

Denmark is of opinion that it would be sufficient, for the time being, to select for regulation certain questions of special practical importance, viz., the right of unilateral

¹ See also reply of New Zealand, Annex II *bis*, p. 280.

² See also the reply from Egypt, Annex II *bis*, p. 259.

denunciation, interpretation of the most-favoured-nation clause and clauses regarding treatment on the same footing as nationals, the right to make reservations when signing or ratifying an international convention, interpretation of the *Alibeteiligungsklausel*, etc.

The Royal Government of *Italy* thinks that it is possible to adhere to the Committee's suggestions, but it believes that this is not an urgent question.

Roumania, considering that too rigid a body of rules might engender difficulties and disputes, is in favour of the adoption of very broad formulas which could be adapted to all circumstances. She therefore reserves her right to make numerous suggestions on this subject when the proposed international conference is held.

The *Swedish* Government considers that a codification of rules for the procedure of international conferences is not at present necessary, as certain definite customs are now growing up in connection with the conferences convened by the League of Nations. On the other hand, it would be highly desirable to attain a greater measure of uniformity in the rules for the conclusion and drafting of treaties.

The Swedish Government is inclined to think that the best method, for the present, would be for the Committee to prepare drafts which might then be used as models by the various States, and desires the Committee to draw up a project concerning the drafting of international conventions and a draft formula for the clauses which are usually to be found in these conventions.

It is understood that such regulations should not be regarded as a body of obligatory rules, and that the various States would still be free to employ these models or not as they chose.

III.

REPLIES IN THE NEGATIVE.¹

British Empire ;
Germany ;
India ;
Japan ;

Kingdom of the Serbs, Croats and Slovenes ;
United States of America ;
Venezuela.

The following countries replied in the negative without giving reasons for their decision :

Kingdom of the Serbs, Croats and Slovenes ;
Venezuela.

Germany believes that it would be exceptionally difficult to regulate the matters in question by means of collective agreements. Difficulties may arise owing to differences in the Constitutions of the contracting parties. In addition, such regulations would appear to be premature, as certain substantive questions of international law would first have to be settled. The German Government therefore suggests that treatment of the questions referred to should be postponed for the time.

The *British Empire* (with whose views the Government of *India* associates itself) does not consider the question to be a subject of international law whose regulation by international agreement is desirable and realisable, especially as the Committee itself has pointed out that there can be no question of a body of rules which will be binding obligatorily.

The Government of the *United States of America* holds a similar view and considers that the determination of the procedure of international conferences and the concluding of treaties might well be left to the parties themselves and to the discretion of the delegates representing the respective Governments.

The Imperial *Japanese* Government holds that these questions are not yet sufficiently ripe to allow of the conclusion of an international convention. It feels, however, that it would be very desirable for representatives of the various countries to examine them with a view to preparing an agreement, which should, however, contain nothing more than recommendations.

Questionnaire No. 6. — Piracy.

ANALYSIS OF REPLIES SUBMITTED BY M. MATSUDA

The varied nature of the replies of the Governments to Questionnaire 6 on Piracy renders the preparation of an accurate analysis somewhat difficult. Following the example of a number of my colleagues when discussing the replies from Governments regarding other subjects, I have proceeded by classifying the replies and indicating their nature.

¹ See also the reply of New Zealand, Annex II *bis*, p. 260.

*Twenty-nine*¹ States replied to the questionnaire. Two States — Egypt and Chile — promised to communicate their views on the question, but their replies have not yet been received.

1. Of these twenty-nine States, eighteen recognised the possibility and desirability of an international convention on the question.

These eighteen States fall into two categories. Nine replied in the affirmative: the British Empire, Bulgaria, Cuba, India, the Kingdom of the Serbs, Croats and Slovenes, the Netherlands, Poland, Salvador, and Venezuela. The nine others, while replying in the affirmative, made reservations or observations: Australia, Belgium, Czechoslovakia, Greece, Italy, Japan, Portugal, Roumania, Spain.

2. Three States did not think the regulation of this question was specially urgent or important; they did not, however, object to its being dealt with by international agreement should other States so desire. These three countries are Germany, Brazil and Sweden. They may therefore be regarded as giving their assent.

3. Six States refrained for various reasons from putting forward any opinion: Austria, Denmark, Estonia, Finland, Norway, and Switzerland.

4. Finally, two countries — the United States of America and France — replied in the negative or what amounts to the negative.

It should be pointed out that certain countries — Czechoslovakia, Portugal, and Spain — submitted highly interesting observations on the Sub-Committee's report on Piracy. I shall not discuss these observations in detail at present, but I should like to mention that Czechoslovakia, in addition to its observations on the report, put forward a definite suggestion. The reply to the questionnaire contains the following passage:

"Of the seven questions submitted for the opinion of the Governments, three (Nos. 2, 6 and 7) belong to the field of maritime law. Their solution is accordingly of no direct or immediate interest to a continental State like Czechoslovakia. Czechoslovakia's interest in the codification of this branch of the law is practically confined to the general interest felt in the clarification and regulation of international relations as soon as possible and as far as practicable. Any work undertaken on these subjects should therefore, at the present stage of the proceedings, conform, first and foremost, to the opinions based on the experience and needs of maritime States. Nevertheless, the Czechoslovak Government would venture to submit herewith the following suggestion for examination by the Committee.

"The solution of the questions referred to in the questionnaires would perhaps be simpler, more systematic and more profitable if the work of codification contemplated were undertaken from a more general point of view, that is to say, if the three questions and, if need be, any other questions were dealt with in a more general convention, a sort of 'Convention on Maritime Laws and Usages'. Within these wider limits, the regulations proposed for the different individual questions would be seen to derive from certain general principles of law, a fact which would facilitate not only the interpretation of these rules but also their amendment in course of time. We may take a concrete case: the Convention which the Czechoslovak Government has in mind would start by laying down the principle of '*mare res communis omnium*', so that the freedom of the use of the sea would invariably be presumed, and this general rule would be followed by a statement of exceptions (territorial waters, restrictions on the free exploitation of the products of the sea, etc.). A general convention of this kind could also include an agreement as to penalties. These latter provisions would be followed in logical sequence by an agreement on the suppression of piracy (police measures to be applied in the special case of illicit use of the sea). Finally, the Convention might be concluded with a revision of the conventions on submarine cables, on wireless telegraphy, and on assistance, life-saving and salvage at sea."

In summing up the replies, it will be seen that twenty-one out of twenty-nine countries approve of regulation by international agreement, two do not approve, and six express no opinion.¹

I beg to submit the foregoing considerations to the Committee, which will decide whether it is desirable under the circumstances to recommend the question of Piracy to the Council as being a subject suitable for regulation by international agreement.

I. STATES WHICH ADMIT THE POSSIBILITY AND DESIRABILITY OF A CONVENTION ON THE QUESTION (EIGHTEEN STATES).

A. States replying affirmatively (nine States):

British Empire. — "I am directed by Secretary Sir Austen Chamberlain to inform you that His Majesty's Government consider that piracy is a subject of international law the regulation of which by international agreement it might be desirable to attempt."

¹ See also the replies of Egypt and New Zealand, Annex II *bis*, pp. 259 and 260.

Bulgaria. — “In reply to your letter C.L.25.1926, I have the honour to inform you that, in the opinion of the Bulgarian Government, the regulation by international agreement of the subjects treated in the questionnaires is desirable and realisable.”

Cuba. — “There can be no objection to the discussion and international settlement of this question, which is of some importance in certain parts of the world.”

India. — “I am directed by the Secretary of State for India to inform you that the Government of India consider that Piracy is a subject of international law the regulation of which by international agreement it might be desirable to attempt.”

Netherlands. — “As regards the three other questions: (1) Diplomatic Privileges and Immunities; (2) Piracy; and (3) the Procedure to be followed at International Conferences and in the Conclusion and Drafting of Treaties, Her Majesty’s Government is of opinion that — leaving aside all consideration of the urgency of codification — these questions have now reached a state at which it should be possible to reach an agreement on the main points.”

Poland. — “With reference to the questions defined in your note, the Polish Government regards nationality, diplomatic privileges and immunities, the responsibility of States in respect of injury caused to the person or property of foreigners, procedure of international conferences and procedure for the drafting of treaties, exploitation of the products of the sea, and, lastly, piracy, as suitable for codification, and considers such codification both desirable and feasible.”

Salvador. — “In the opinion of the Government of Salvador, the regulation by international agreement of these subjects, both in their general aspects and as regards the specific points studied in the relevant reports of the Sub-Committees, is desirable in the near future.”

Kingdom of the Serbs, Croats and Slovenes. — “With reference to the questionnaire drawn up by the Committee for the Codification of International Law which you forwarded to the Royal Government, I have the honour to inform you, on behalf of my Government, that it considers that the questions proposed by the Committee should be codified.”

Venezuela. — “This Ministry has given due consideration to these questions, and has reached the conclusion that, in regard to the following subjects, there exists a body of principles that have definitely secured international acceptance: Territorial Waters, Piracy, Exploitation of the Products of the Sea, and Diplomatic Privileges and Immunities. These questions would therefore seem to be sufficiently ripe to be considered by international conferences.”

B. States replying affirmatively but with reservations (nine States):

Australia. — “I have the honour, by direction of the Prime Minister, to inform you that the Commonwealth Government considers it desirable to endeavour to secure the regulation by international agreement of all the subjects dealt with in the questionnaires which accompanied your letter, viz.:

- “1.
- “2.
- “3.
- “4.
- “5.
- “6. Piracy.
- “7.

“To what extent agreement is realisable can only be ascertained by a conference for the purpose of formulating rules which are generally acceptable, but it would appear to the Commonwealth Government that agreement on many points, if not on all, ought to be attainable.”

Belgium. — “4. *Piracy.* — The definition by international agreement of the rules applicable to piracy seems to be possible if only actual piracy be considered, to the exclusion of privateering or other ventures of a similar political nature.

“The draft prepared by the Sub-Committee of Experts contains a series of suggestions which could be usefully considered by an international conference.”

Spain. — “The rules laid down in the eight articles of the draft Convention for the repression of piracy as modified by M. Matsuda, following on the discussions of the Committee of Experts, are acceptable; but the first of these articles should contain a definition of the term ‘piracy vessel’.

“The deduction to be drawn from the text of Article 1 and the following articles is clearly this: So long as no acts of depredation or violence have been committed, there has been no act of piracy. Consequently, the right of search and capture defined in Articles 6 and 7 may only be exercised in the case of suspected vessels after it has been proved that acts of piracy have been committed; conversely, vessels which have not committed acts of piracy, though they have been fitted out for the purpose, may not be searched.

“It would therefore seem desirable to add to Article 1 a paragraph stating that a vessel flying no flag, or not legitimately entitled to fly the flag of any State, shall be regarded as a pirate.”

Greece. — “The Technical Commission agrees in principle with the Committee of Experts for the Codification of International Law regarding the necessity of establishing an international convention the provisions of which will ensure the suppression of piracy. It also approves the general outline of the Draft Convention drawn up by the Committee, subject to certain observations.”

Italy. — “The Royal Government agrees, subject to certain reservations, and provided no matters of doubtful analogy are discussed.”

Japan. — “The Imperial Government considers that the reports on Questions 1, 2, 3, and 6, referring to nationality, territorial waters, diplomatic privileges and immunities, and piracy respectively, might provide a satisfactory basis for discussion. It would observe, however, that these reports contain certain points which it could not approve in their present form, and would add that the competent Japanese authorities are at present engaged in a very careful study of these problems.”

Portugal. — “The League of Nations Committee of Experts for the Progressive Codification of International Law adopted, at its session held in January 1926, Questionnaire No. 6, comprising among others the following question:

“Whether, and to what extent, it would be possible to establish by an international convention appropriate provisions to secure the suppression of piracy’.

“This question was referred to a sub-committee, whose conclusions were embodied in a report signed by M. Matsuda. The Portuguese Permanent Commission has very carefully considered this report on which it presents the following comments.

“The report shows a thorough knowledge of the general doctrine on the subject. There are, however, certain doubtful points to which the Portuguese Commission thinks it well to draw attention.

“The report (A, I) says that piracy has as its field of operation only the high seas; the inference is that the same acts, committed in the territorial waters of a State, do not fall under international law. But history teaches that the attacks of pirates in ancient times and in the Middle Ages were almost always committed near the coasts, and that, generally, the pirates landed and attacked villages, plundering, looting, and murdering, and kidnapping the inhabitants. It was thus that the Norman pirates acted on the western coasts of Europe, and later the Barbary pirates in the Mediterranean, though the latter, it must be said, preferred to attack on the open sea. It is true that nowadays piracy in either form has become rare. But from time to time piratical acts are still committed, either on the high seas or on the coasts, especially in the Far East, and there appears to be no great difference in the gravity of the offence wherever the scene of the robbery.

“As regards the suppression of piracy, the report quite properly says (Article A, II (2)) that, if a vessel is only under suspicion, a warship is authorised to verify its true character. But it adds that, if the suspicion proves to have been unfounded, the captain of the suspected vessel is entitled to reparation or compensation according to circumstances. This right had perhaps better not be established. It may be assumed that the commander of a warship does not act without due consideration; though doubtless cases may occur in which his suspicions prove to be unfounded. Just as, in time of war, a belligerent searches a neutral vessel, and, that vessel’s neutrality having been established, no reparation is due to it on

account of the delay in the voyage, here also it would seem that the delay of the ship would be sufficiently compensated for by the sense of security afforded by the navy's vigilance.

"The report goes on to deal (B) with acts which it classifies as piracy in accordance with treaties or the laws of individual States.

"Among these acts the report cites (I), in the first place, privateering. It seems to admit the legality of privateering in certain circumstances. But the Declaration of Paris of 1856 expressly lays down: 'Privateering is and shall remain abolished'. Accordingly, privateering is illegal, at any rate for States which signed or adhered to the Declaration. In perhaps the most recent work on international law, *International Law for Naval Officers*, published at Annapolis in 1925, we find (page 96): 'Privateering was abolished by the Declaration of Paris, 1856'. Moreover, the participation of merchantmen in operations of war is regulated by the 7th Convention of the Hague Peace Conference of 1907, which legalised the existence and action of *converted ships*. Such ships, which are placed on exactly the same footing as warships, were largely used in the late war, and therefore the theory of the legal existence of privateers is no longer admissible.

"*A fortiori*, it seems impossible to admit, as is suggested in the report (B, 2), that a vessel which, while its own country remained neutral, had received a commission from a foreign belligerent State, might capture vessels belonging to a Power which, while an enemy of that State, was at peace with the vessel's own country. Obviously such a ship would have to be considered a pirate.

"Quite possibly some of the above objections have already been raised in the Committee of Experts, as most of the points referred to do not appear in the draft Provisions. In a general way, the Portuguese Permanent Commission accepts the draft, subject to the following remarks, which it submits for the attention of the Committee of Experts.

"*Article 1.* — Add after the words 'the high sea' the words 'or on the coasts'.

"*Article 2.* — Add at the end: 'and accordingly the right to continue to fly that flag'.

"*Article 4*, paragraph 2. — The application of the second part of this paragraph: 'unless these acts are inspired by purely political motives', might give rise to awkward discussions; perhaps it would be better to omit these words.

"*Article 6.* — Omit the words 'if after examination the suspicions are proved to be unfounded, the captain of the suspected ship will be entitled to reparation or to an indemnity as the case may be'. If this omission is adopted, the words 'on the contrary' in the paragraph following will have to be omitted."

Roumania. — "1. Is piracy an important problem to-day? That is the essential question which must be answered before we proceed to consider the draft prepared by the Sub-Committee for the Progressive Codification of International Law.

"If we simply adopt the traditional conception as accepted in most works and monographs on the subject, we cannot help asking ourselves whether the Committee of Experts ought not rather to have dealt with other problems which are of greater importance to the world to-day but do not appear in the list of subjects of international law which the Committee drew up with a view to their settlement by international agreement.

"If, however, we take a broader view of the question, we must admit that, in view of future developments as regards the character of the measures of suppression, the Committee of Experts has shown great foresight in including piracy in this list."

Czechoslovakia. — "Of the seven questions submitted for the opinion of the Governments, three (Nos. 2, 6 and 7) belong to the field of maritime law. Their solution is accordingly of no direct or immediate interest to a continental State like Czechoslovakia. Czechoslovakia's interest in the codification of this branch of the law is practically confined to the general interest felt in the clarification and regulation of international relations as soon as possible and as far as practicable. Any work undertaken on these subjects should, therefore, at the present stage of the proceedings, conform, first and foremost, to the opinions based on the experience and needs of maritime States. Nevertheless, the Czechoslovak Government would venture to submit herewith the following suggestion for examination by the Committee.

"The solution of the questions referred to in the questionnaires would perhaps be simpler, more systematic and more profitable if the work of codification contemplated were undertaken from a more general point of view, that is to say, if the three questions and, if need be, any other questions, were dealt with in a more general convention, a sort of 'Convention on Maritime Laws and Usages.' Within these wider limits, the regulations proposed for the different individual questions would be seen to derive from certain general

principles of law, a fact which would facilitate not only the interpretation of these rules but also their amendment in course of time. We may take a concrete case: the convention which the Czechoslovak Government has in mind would start by laying down the principle of '*mare res communis omnium*', so that the freedom of the use of the sea would invariably be presumed and this general rule would be followed by a statement of exceptions (territorial waters, restrictions on the free exploitation of the products of the sea, etc.). A general Convention of this kind could also include an agreement as to penalties. These latter provisions would be followed in logical sequence by an agreement on the suppression of piracy (police measures to be applied in the special case of illicit use of the sea). Finally, the Convention might be concluded with a revision of the conventions on submarine cables, on wireless telegraphy, and on assistance, life-saving and salvage at sea.

"With regard, in particular, to the draft provisions for the suppression of piracy, annexed to the Sub-Committee's report, it might perhaps be advisable, in order to prevent abuse of the powers conferred on commanders of warships, to stipulate that the State which has effected the capture of a pirate shall be bound to notify forthwith the State in whose register the captured ship appears. Arbitration proceedings might be usefully provided for in case of disputes."

II. STATES WHICH, THOUGH NOT OPPOSED TO THE SOLUTION OF THE QUESTION, DO NOT SEE ANY URGENT NECESSITY FOR IT OR FIND THE QUESTION ONE OF LIMITED INTEREST (THREE STATES).

Germany. — "There is, in the opinion of the German Government, no urgent need for at once undertaking the general international regulation of the question of Piracy. Nevertheless, Germany would raise no objections of principle to such regulations being attempted, should the League consider this step necessary. In that case, the German Government would reserve its right to submit its views on the various provisions in the draft of the Committee of Experts."

Brazil. — "Although Piracy, which M. Matsuda has examined and defined as a question of international law, is at present of very limited interest, there is no reason why it should not be suppressed by international action. I must admit that this crime, which is extremely rare in the Western Hemisphere, seems to me to be hardly worth consideration outside the penal codes of each country."

Sweden. — "The Swedish Government has the honour to state that it does not consider the question of piracy to be one of the most urgent matters requiring settlement by international agreement. Should other Powers, however, desire such an agreement, the Swedish Government would not have any objection to this question being dealt with, with a view to the establishment of international rules."

III. STATES HAVING REFRAINED FROM EXPRESSING ANY OPINION (SIX STATES).

Austria. — "As Austria is not a maritime Power, the Federal Government refrains from giving any opinion on the questions dealt with in Questionnaires 2 (Territorial Waters), 6 (Piracy) and 7 (Exploitation of the Products of the Sea)."

Denmark. — "The Danish Government has no observations to offer on this point."

Estonia. — "Estonia has no observations to make on this point, which, as far as she is concerned, is not a question of primary importance."

Finland. — "With regard to Questionnaires Nos. 6 and 7, the Finnish Government has no observations to make."

Norway. — "In pursuance of your request, I have the honour to inform you that, as the question does not directly concern the Royal Government, it does not feel called upon to pronounce upon the desirability of establishing an international convention on the matter."

Switzerland. — "As regards the *other* questionnaires, we have noted their contents with interest, but, as the problems with which they deal are of only very indirect concern to our country, the Swiss Government, at least for the present, does not feel itself called upon to express any views concerning them."

IV. STATES WHICH DO NOT THINK THE CONCLUSION OF A CONVENTION EITHER POSSIBLE OR DESIRABLE (TWO STATES).

United States of America. — “With regard to the sixth subject enumerated in the communication of the Secretary-General, namely, Piracy, it is the view of the Government of the United States that piracy, as that term is known in international law, is so nearly extinct as to render of little importance consideration of that subject as one to be regulated by international agreement.”

France. — “Finally, Piracy, dealt with in document No. 6, would seem at first sight to be a matter on which a general agreement would be desirable and practicable. But if the question is examined from the practical and political point of view, it will be found that the condition of establishing a general regulation on such a matter would be that every contracting State should possess a police organisation and powers of supervision and jurisdiction over its own flag which could be recognised by the other States. No general regulation seems desirable until this condition is everywhere fulfilled.”

Questionnaire No. 7. — Products of the Sea.

ANALYSIS OF REPLIES SUBMITTED BY M. BARBOSA DE MAGALHAES.

Before beginning to classify and co-ordinate the replies from Governments on the subject of the Exploitation of the Products of the Sea, we desire to refer to the conclusions in the admirable report which our colleague, Professor Suarez — whose absence we all regret — submitted to the Committee, and which the Committee transmitted to the Governments.

His conclusions are as follows :

1. That it is possible, by means of adequate regulation, to secure the economical exploitation of the products of the sea.
2. That such regulation could not fail to be in the general interest, since, if the present confusion persists for a few years longer, the extinction of the principal species will be the inevitable consequence of their unrestricted exploitation.
3. That the treaties dealing with the subject apply only to certain species and are for the most part regional in character. They have not always taken into account the point of greatest importance to humanity, which is to find means to prevent the disappearance of species, and not infrequently they concern measures of police or purely commercial measures, without considering the biologico-economic aspect, which is the essential aspect.
4. That the attention of all maritime Powers should be called to the urgency of establishing regulations by holding a conference including experts in applied marine zoology, persons engaged in marine industries, and jurists.
5. That, without prejudice to other matters, the general technical programme of the conference referred to in the previous paragraph might include the following :
 - (a) General and local principles for the organisation of a more rational and uniform control of the exploitation of the aquatic fauna in all its aspects ;
 - (b) Creation of reserved zones, organisation of their exploitation in rotation, close periods and fixed ages at which killing is permitted ;
 - (c) Determination of the most effective method of supervising the execution of the measures adopted and maintaining the control.

In transmitting these conclusions, the Committee, after stating that it had decided to include in the list of subjects the regulation of which by international agreement would seem to be most desirable and realisable at the present moment the question “whether it is possible to establish, by way of international agreement, rules regarding the exploitation of the products of the sea”, drew attention to the following considerations :

“The practical importance of the question appears to be established by this report and is emphasised in the conclusions which are there reached. The Committee considers that the report indicates in broad outline the problems which a conference including experts of various kinds might be called upon to solve, and feels it a duty to emphasise the urgent need of action.”

Generally speaking, the replies from Governments approve the conclusions of the report, and nearly all the replies, including even some of those which are unfavourable, recognise the importance of the question and the necessity of regulation by means of a general international convention.

There are, in addition, a number of replies which are highly encouraging.

Twenty-eight Governments forwarded replies¹. Of these twenty-eight Governments, two — the Austrian and Swiss Governments — stated that they would refrain from expressing their opinion since their countries were not maritime Powers and therefore were only indirectly interested in the solution of the problem.

Twenty-one Governments gave affirmative or favourable answers — those of Australia, Belgium, Brazil, Bulgaria, Cuba, Czechoslovakia, Denmark, Estonia, Finland, France, Greece, India, Italy, Poland, Portugal, Roumania, Kingdom of the Serbs, Croats and Slovenes, Spain, Sweden, the United States and Venezuela.

*Five*² Governments gave replies which are unfavourable or opposed to the conclusions: the British Empire, Germany, Japan, the Netherlands and Norway.

These unfavourable replies express different views.

The German and Norwegian Governments point out that the problem has been dealt with for many years past by the international oceanographical associations, and in particular by the International Council for the Exploration of the Sea, at Copenhagen. The German Government accordingly "would be glad if, in the first place, the Central Committee of the above-mentioned Council and the other international oceanographical organisations were given an opportunity to state their views on the subject". In the opinion of the Norwegian Government, "it would be best to await the results of the researches of the International Council referred to above."

The British and Japanese Governments are opposed to any regulation by general agreement, and the former Government even considers that this is not a subject the regulation of which by international agreement is feasible.

The Netherlands Government, while stating that it "is extremely anxious that an international agreement should be reached on this subject", considers that "the problem is not primarily a legal one, but economic and commercial", and is not sure "whether it would not be preferable to refer this question to the Economic Committee of the League, which might examine it in conjunction with the Permanent International Council for the Exploration of the Sea, at Copenhagen". The Netherlands Government goes on to say: "In this connection, the Netherlands Government ventures to point out the desirability of international legislation for the protection of the pleuronectidæ. The Permanent International Council has already taken up this question, but it does not seem yet to have obtained any tangible results."

Among the affirmative replies, mention should be made of those from the Governments of India and Finland, which merely state that they have no observations to submit; the reply from the Portuguese Government, which "takes the view that, apart from special cases which should be dealt with by the States directly concerned, the only general measure necessary is the extension of territorial waters, for fishery purposes, to twelve or fifteen miles", and has no objection to the summoning of the conference of technical experts suggested in Professor Suarez' report so that there is even reason to believe that it would give its consent, as the conference in question would be the body best fitted to advocate the measure contemplated in the Portuguese Government's reply, and also other measures which that Government, in its statement of reasons, considers might be taken on this question, the importance of which it fully appreciates; the reply of the Belgian Government, which states that it would have no objection to participating in an effort to settle this question by international agreement, on the understanding, however, that an enquiry into this very special question could not be conducted satisfactorily without the assistance of the International Council for the Exploration of the Sea; the reply of the United States Government, which considers: "(1) that international regulation of certain fisheries, such as those for whales, is desirable and should be realisable; (2) that information as to the status of fisheries for most of the true fishes is not sufficiently complete to admit of the formulation of regulations at the present time; (3) that in most cases particular fisheries may best be regulated by treaties between the nations most directly concerned; (4) that investigations to determine the need for and character of regulations to sustain the various fisheries should be encouraged; and (5) that an international conference is desirable to consider the problem of conserving the whale;" and the reply from the Swedish Government, which, while pointing out "that there has been in existence, since 1902, a Permanent International Council for the Exploration of the Sea, and that fourteen European States, including Sweden, have adhered to this organisation, which was created on the assumption that it would be impossible to establish international rules for the fishing or catching of certain maritime species until careful scientific research had shown that fishing or catching so seriously affected the

¹ See also the replies of Egypt and New Zealand, Annex II bis, pp. 259 and 260.

² See also the reply and New Zealand, Annex II bis, p. 260.

existence of these species as to warrant their protection by international measures", holds that "there are various reasons in favour of convening an international conference of experts to examine the question of the protection of the above-mentioned species in regions where they are threatened with extermination".

It adds that :

"In conformity with the conclusions of the Committee's Rapporteur, it will not be necessary from the outset to limit the programme of this conference to the above question nor, generally, to certain States, regions or maritime species. The Swedish Government is of opinion that it would be desirable to lay down a general rule to the effect that the conference would only draw up draft international rules in cases where such rules were shown to be obviously and immediately necessary. It does not, therefore, think, as the Rapporteur suggests, that the conference should concern itself above all with preparing a draft the object of which would be to organise a system for the supervision of the exploitation of maritime fauna in all its aspects. The Swedish Government does not consider that such a draft is in any way necessary from a practical point of view. It would be preferable for the conference to consider each individual species separately, in the manner indicated above, and study the various geographical regions separately".

The reply of the Czechoslovak Government, in referring to the three questions of maritime law submitted to the various Governments (Territorial Waters, Piracy and Products of the Sea), put forward the following suggestion for the consideration of the Committee :

"The solution of the questions referred to in the questionnaires would perhaps be simpler, more systematic and more profitable if the work of codification contemplated were undertaken from a more general point of view, that is to say, if the three questions and, if need be, any other questions were dealt with in a more general convention, a sort of 'Convention on Maritime Laws and Usages'. Within these wider limits, the regulations proposed for the different individual questions would be seen to derive from certain general principles of law, a fact which would facilitate not only the interpretation of these rules but also their amendment in course of time. We may take a concrete case : the convention which the Czechoslovak Government has in mind would start by laying down the principle of *mare res communis omnium*, so that the freedom of the use of the sea would invariably be presumed and this general rule would be followed by a statement of exceptions (territorial waters, restrictions on the free exploitation of the products of the sea, etc.). A general convention of this kind could also include an agreement as to penalties. These latter provisions would be followed in logical sequence by an agreement on the suppression of piracy (police measures to be applied in the special case of illicit use of the sea). Finally, the convention might be concluded with a revision of the conventions on submarine cables, on wireless telegraphy, and on assistance, life-saving and salvage at sea."

In conclusion, the most encouraging replies are from the Danish, French and Roumanian Governments.

The Danish Government states that it "has read the excellent report accompanying this questionnaire with great interest", and "considers that the question dealt with therein is of high practical importance and would be very glad if this question could be satisfactorily settled in an international convention".

The French Government's reply should be examined in its entirety. The letter in which His Excellency the Secretary-General of the Ministry of Foreign Affairs transmitted his Government's reply is as follows :

"You expressed the desire, etc. . . ."

"In conformity with the indications you gave me, I should like to mention first the question of the Exploitation of the Products of the Sea (the subject of Questionnaire No. 7), as, in the French Government's opinion, it is desirable, practicable and urgent to regulate this matter by international agreement. It would seem, moreover, that every country must have the same interest as France in preventing the extinction of marine animals in the near future and in putting an end to the reckless slaughter reported from different quarters, particularly in the South Seas and, more recently, on the coasts of Gaboon. The question is already under serious consideration by our ministries concerned; they agree that a conference convened to study this question could without undue difficulty conclude a general convention, as indeed has already been done in Africa for the protection of the fauna of that continent, in Europe for the protection of birds useful to agriculture, and in the Northern Pacific between the Powers concerned in regard to fur-bearing seals.

"I should therefore be very grateful if you would inform the Committee of Experts that the French Government attaches special importance to this question, and would ask it if the preliminary procedure could not be accelerated in order that a conference may be summoned as soon as possible."

The Roumanian Government concludes its long and very interesting statement as follows :

“The stages in the League of Nations work might be as follows :

“1. A conference of experts in applied biology, economists and international law experts of all States possessing maritime interests should be convened. This conference would discuss and establish fundamental principles, the programme of detailed enquiries and means of application, the institution of the central research institute and the manner in which the latter should collaborate with existing institutions of all countries — that is to say, biological and oceanographical institutes, zoological stations, fishery services, institutes of social economy, etc.

“2. The organisation of the central research institute with a view to collecting and co-ordinating data, directing the continuation of research work, stating problems and preparing all material for the final solution.

“3. A new conference should then be convened to discuss and adopt the final solution.

“4. The new body of law thus created would be codified.

“We think that in this way the League of Nations would be able, in a relatively short space of time, to solve one of the greatest problems for the future of humanity and achieve in this respect the noble aim for which it was created.”

Geneva, November 24th, 1927.

LEAGUE OF NATIONS

PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW

**EXTRACTS FROM THE RECORDS OF THE EIGHTH SESSION
OF THE ASSEMBLY**

**APPOINTMENT OF THE PREPARATORY COMMITTEE FOR THE CODIFICATION
CONFERENCE**

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¹ Document A.18.1927.V.
² Document A.105.1927.V.
³ Document A.111.1927.V.

I. RESOLUTION ADOPTED BY THE COUNCIL ON JUNE 13th, 1927: REPORT PRESENTED TO THE COUNCIL BY THE POLISH REPRESENTATIVE AND MINUTES OF THE PROCEEDINGS IN THE COUNCIL.

Transmitted to the Assembly under the terms of the resolution.

Note by the Secretary-General.

On June 13th, 1927, the Council considered the reports drawn up for submission to it by the Committee of Experts for the Progressive Codification of International Law at the Committee's third session held at Geneva in March - April, 1927, together with a letter dated April 2nd, 1927, from the Chairman to the Secretary-General, and adopted the following resolution:

" The Council of the League of Nations,

" Having considered the reports drawn up for submission to the Council by the Committee of Experts for the Progressive Codification of International Law at its third session held from March 22nd to April 2nd, 1927, and the letter from the Chairman of the Committee to the Secretary-General dated April 2nd, 1927.

" Decides to transmit the above-mentioned documents and the report thereon of the Polish representative, as adopted by the Council at its meeting on June 13th, together with the Minutes of that meeting, to the Assembly and to place the consideration of these documents and report upon the agenda of the Assembly. "

The present document reproduces below the report of the Polish representative, as adopted by the Council, and the Minutes of the Council's proceedings.

The other documents referred to in the resolution of the Council were circulated to the Governments of the Members of the League and other Governments at the same time as they were communicated to the Council and will be placed by the Secretariat at the disposal of the delegates at the Assembly. The complete list of these documents is as follows:

1. Questions which appear ripe for International Regulation. C.196.M.70.1927.V.
2. General Report on the Procedure to be followed. C.197.M.71.1927.V.
3. Procedure to be followed with regard to the Question of the Procedure of International Conferences and the Procedure for the Drafting and Conclusion of Treaties. C.198.M.72.1927.V.
4. Procedure to be followed with regard to the Question of the Products of the Sea. C.199.M.73.1927.V.
5. Recognition of the Legal Personality of Foreign Commercial Corporations. C.206.M.80.1927.V.
6. Nationality of Commercial Corporations and their Diplomatic Protection. C.207.M.81.1927.V.
7. Letter dated April 2nd, 1927, from the Chairman of the Committee to the Secretary-General reporting on the Work of the Third Session of the Committee, held in March-April, 1927, and communicating to the Secretary-General various questionnaires and a report for transmission to Governments. C.200.M.74.1927.V.

The four questionnaires referred to in the section of the Polish representative's report entitled " Present Programme of the Committee " were communicated to the Governments by the Secretary-General with his circular letter No. C.L.57.1927.V. dated June 7th, 1927.

REPORT OF THE POLISH REPRESENTATIVE, M. ZALESKI, APPROVED BY THE COUNCIL
ON JUNE 13TH, 1927¹

"Terms of Reference of the Committee.

" The Committee of Experts for the Progressive Codification of International Law was appointed by the Council in compliance with a resolution adopted by the Assembly on September 22nd, 1924, which laid down the Committee's terms of reference. The resolution was as follows:

" ' The Assembly:

" ' Considering that the experience of five years has demonstrated the valuable services which the League of Nations can render towards rapidly meeting the legislative needs of international relations, and recalling particularly the important conventions already drawn up with respect to international conciliation, communications and transit, the simplification of Customs formalities, the recognition of arbitration clauses in commercial contracts, international labour legislation, the suppression of the traffic in women and children, the protection of minorities, as well as the recent resolutions concerning legal assistance for the poor;

" ' Desirous of increasing the contribution of the League of Nations to the progressive codification of international law;

" ' Requests the Council:

" ' To convene a Committee of Experts not merely possessing individually the required qualifications but also as a body representing the main forms of civilisation and the principal legal systems of the world. This Committee, after eventually consulting the most authoritative organisations which have devoted themselves to the study of international law, and without trespassing in any way upon the official initiative which may have been taken by particular States, shall have the duty:

" ' (1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment;

" ' (2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received; and

" ' (3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.'

" Reports presented by the Committee to the Council.

" At its present session, the Council has before it a report from the Committee recommending seven subjects as being, in certain of their aspects, sufficiently ripe for discussion in international conference; a general report on the procedure which might be followed to prepare for such conference; and two reports on special procedure recommended with regard to two particular subjects. It has also before it a letter from the Chairman of the Committee to the Secretary-General which shows the manner in which the Committee is continuing its work, and two reports explaining why the Committee is not proposing to consult Governments upon two subjects which it considers to merit attention. These seven documents have been communicated to the Council with the Secretary-General's memorandum of May 30th, 1927².

" It is now for the Council to consider the Committee's reports and to form its conclusions as to further action.

" Nature of the Initiative taken by the Assembly and of the Committee's Mandate.

" Before discussing the action which might now be taken in further execution of the Assembly's resolution, it may be desirable that I should say a few words as to the nature of the initiative which was taken by the Assembly in 1924 and the character of the work which has been entrusted to the Committee of Experts. There is a certain danger that the League's attitude in the matter, and the very interesting results achieved by the Committee, may be exposed to mistaken criticism arising from misunderstanding of the nature of the problem towards the solution of which we are attempting to contribute and of the exact character of the contribution which the Assembly has considered it possible to make.

" In adopting its resolution of September 22nd, 1924, the Assembly desired to make a contribution towards meeting a demand, which is widely spread, for the progressive development and consolidation of written law to govern the relations between States. This demand commonly expresses itself as one for the 'codification of international law', and homage to this mode of expression is rendered by the title which has been given to the League's Committee; but the expression is not a strictly accurate one and it is liable to cause misconceptions. The actual terms

¹ Document C.254.1927.V.

² Document C.253.1927.V. This memorandum, which merely informed the Council what were the documents to be considered by it, is not reproduced.

of the Assembly's resolution furnish no justification for thinking that that body considered that any single initiative, or the work of any single body of experts, could be expected to result in the formulation of a corpus of written law governing the more important relations between the members of the international family. On the contrary, the resolution recognises that the establishment of positive rules of law in international relations must be a gradual process, to which contribution is made from every side as the need is felt and the possibility of action presents itself.

"The resolution calls attention in its preamble to a fact which is too often ignored in this connection, namely, the immense contribution which the League has made and is continuing to make towards the end in view through its technical organisations and technical conferences, and which, in the field of labour legislation, is made by the International Labour Organisation. The establishment of the League and the Labour Organisation has in fact created a new and powerful machinery which, in the words of the Assembly's resolution, renders enormous services 'towards rapidly meeting the legislative needs of international relations'. The activities of the League and Labour Organisation in connection with the conclusion of technical conventions are, of course, only a continuation, through a specially convenient and world-wide organisation, of an activity which had been carried on since early in the last century, and which had already resulted in the regulation of many matters of practical international interest (communications, literary, artistic and industrial property, public health and so forth) through the formation of international unions, whose members co-operated in accordance with rules laid down by the convention establishing the union.

"I should add that the more fundamental general questions of international law, which underlie the graver international disputes, questions of the rules and the procedure which should be applied to settle conflicts between the vital activities and interests of States, are constantly under consideration and, I hope, are continually being brought nearer final solution, under the provisions of the Covenant, by the political work of the League, both in its treatment of actual disputes and its discussions of such questions as pacific settlement of disputes and disarmament, and last, but not least, by the work of the Permanent Court of International Justice.

"The resolution also expressly recognises the importance of the initiative taken by Governments which are traditionally interested in some particular branch of international law. I may mention the activities of the Netherlands Government, which not merely enjoys the distinction of having convened the two great Peace Conferences of 1899 and 1907, of whose work the League is in some sense the direct continuer, but which, since more than a quarter of a century, has been continuously active in the field of private international law and has to its credit the holding of a whole series of successful conferences, which, I now understand, it has converted into a permanent machinery for dealing with this branch of the law. I must mention also the long-established and fruitful activities of the Comité maritime international and the Belgian Government in the field of maritime commercial law.

"One must not forget either the great services which various Governments (I may mention, for example, those of Switzerland, France, Belgium and Italy) render through the organisation in their territory, and often with the assistance of their national authorities, of the central bureaux of the various international unions. In this connection, too, one naturally thinks of the interest which has so long been displayed by the nations of the American continent in the development of common principles to regulate their mutual relations. This movement took concrete shape as far back as 1902 and is resulting, in the present year, in the meeting of a Committee of Jurists appointed by the interested Governments to consider a number of draft conventions prepared by the American Institute of International Law at the request of the Governing Board of the Pan-American Union.

"Finally, a tribute is paid by the resolution to the valuable work of the international scientific organisations, such as the Institute of International Law, the International Law Association and others, which have so long devoted themselves to the study and improvement of international law.

"Since the date of the Assembly's resolution, the generosity of the Italian Government has placed at the service of the League and of the world a further institution — the International Institute for the Unification of Private Law — for the purpose of facilitating the treatment of questions relating to the unification, assimilation and co-ordination of private law as between States or groups of States.

"The Assembly would no doubt have performed a popular act if it had disregarded the real nature of the problem presented by the aspiration for the codification of international law, and the importance and extent of the existing agencies through which the needs of nations for the development of rules governing their mutual relations are already being gradually met, and had sought to put the League in the position of an organisation which proposed forthwith to secure the regulation of international relations in general by fixed and written rules, *i.e.*, the immediate codification of international law. In fact, the Assembly took the much more modest decision to employ a Committee of Experts to advise as to whether there were any questions of international law, not forming the object of existing initiatives, in regard to which the conclusion of general agreements could be considered to be immediately desirable and realisable. The work of the Committee shows that this moderation was well judged. Although it has recommended seven subjects as ripe for the conclusion of international agreements, it will be seen that, in several cases, it is only certain aspects of the subject on which agreement is considered realisable and, with some possible exceptions, the matters with which the Committee proposes to deal are not matters in regard to which dangerous international disagreement is likely to result from existing doubts as to the applicable rules.

"Tribute of Thanks to the Committee.

"In the second place, before considering what steps to take in regard to the Committee's reports, I am sure the Council will desire to manifest, on behalf of the League, its appreciation of the great zeal, care and learning with which the Committee has addressed itself to the difficult task entrusted to it. The League owes a debt of gratitude to the Chairman, members and rapporteurs of the Committee to which I would wish to give the most sincere expression.

"I desire also to thank the Committee for having decided to place its Minutes, which have hitherto been confidential and restricted to use by the members of the Committee, at the disposal of the Council. I propose that in these circumstances the Minutes of this year's session should be printed, as the Council will then possess a full printed record of the Committee's proceedings.

"Questions recommended as Ripe for International Agreement.

"Turning now to the proposals of the Committee, the Council has, in the first instance, to deal with its recommendation that seven subjects are, in certain of their aspects, ripe for regulation by international action.

"These seven subjects may be divided into two groups:

"There is, in the first place, a group of five important subjects which, according to its general report on procedure, the Committee considers might be the subject of an international conference or conferences after the necessary additional preparatory work has been performed. These subjects are the following:

"1. *Nationality.* — Those aspects of the subject which are dealt with in the draft convention prepared by M. Rundstein and included in the Committee's Questionnaire No. 1 (Section V).

"2. *Territorial Waters.* — Those aspects of the subject which are dealt with in the draft convention prepared by M. Schücking and included in the Committee's Questionnaire No. 2 (Section IV).

"3. *Diplomatic Privileges and Immunities.* — Those aspects of the subject which are set out in the Committee's questionnaire and discussed in M. Diena's report.

"4. *Responsibility of States for Damage done in their Territory to the Person or Property of Foreigners.* — Those aspects of this subject which are dealt with in the conclusions of M. Guerrero — Section IV of the Committee's Questionnaire No. 4.

"5. *Piracy.* — Those aspects which are dealt with in the draft provisions for the suppression of piracy drawn up by M. Matsuda and printed at the end of the Committee's Questionnaire No. 6.

"Question of Procedure: Proposed Reference to the Assembly.

"It is necessary to point out that the Committee, confining itself quite properly to the strict terms of its mandate, has not, on any of these subjects, recommended specific proposals for inclusion in the contemplated international convention, but has merely reported that in its opinion various aspects of these subjects indicated by it are susceptible of being ultimately regulated by international conventions. The Committee has in fact most carefully guarded against the supposition that it has given the weight of its authority to any of the detailed suggestions for the solution of particular questions which have been made by its rapporteurs. Furthermore, although the Committee has been remarkably successful in obtaining the views of Governments in reply to its questionnaires, and the various Governments which have replied have shown a most welcome desire to further in every way the success of the initiative taken by the Assembly, it is noticeable that, in regard to every subject, most Governments have not yet given any detailed expression of their views as to the provisions which might be inserted in an international convention to solve the various questions raised by the Committee.

"It is clear, therefore, that we have not at present before us material which is ripe for immediate consideration in an international conference or conferences.

"On the contrary, the Committee, in its general report on procedure, indicates that heavy preparatory work must be done, either on the basis of the Committee's own questionnaires and its rapporteurs' proposals or otherwise, before the actual conference or conferences can profitably be convoked.

"In my opinion, the positive and satisfactory result which has been achieved is that it has been shown to be possible to contemplate holding successfully a conference or conferences to deal with some at least of the questions to which the Committee has called attention. Since the active collaboration of all the Members of the League is necessary for this next step, since any expenses involved for the League must be met by a vote of the Assembly, and also for the formal reason that the Assembly has not asked the Council to convene conferences as the result of the Committee's work, it appears to me proper to regard the question of convening conferences, and the question of the methods by which their work is to be prepared, as questions for decision by the Assembly. The Council will therefore, on this view, transmit the Committee's recommendations to the Assembly with any suggestions which it thinks it desirable to make.

"The first question which arises for decision is whether the attempt should be made to deal simultaneously with all of the matters recommended by the Committee of Experts and the closely related question whether one or more conferences should be contemplated.

"There are many considerations in favour of holding a single conference to deal with as many subjects as possible.

"This is the proposal made by the Committee in its general report. It points out that attending international conferences imposes a certain burden upon Governments, and that it might be an economy from their point of view to hold a single conference, which could divide itself into sections for the consideration of different subjects and would be attended by delegations, including the necessary experts for each subject. The Committee also points out that the holding of a single general conference would give greater satisfaction to the public interest in the question of codification than the convening of a number of separate conferences of a more limited scope.

"If the solution of a single conference is adopted, however, it becomes a question whether the programme would not be over charged if all the subjects recommended by the Committee were taken up.

"It is also clear that these subjects are not merely different in character but are also not all of equal importance.

"It is perhaps doubtful whether the question of Piracy is of sufficient real interest in the present state of the world to justify its inclusion in the programme of the Conference, if the scope of the Conference ought to be cut down. The subject is in any case not one of vital interest for every State, or one the treatment of which can be regarded as in any way urgent, and the replies of certain Governments with regard to it indicate that there are difficulties in the way of concluding a universal agreement.

"Somewhat similar considerations apply to the question of Diplomatic Privileges and Immunities, which is also hardly an urgent question. In any case, if this subject is to be dealt with, I feel doubt as to whether the topics mentioned at point B of the Committee's questionnaire, namely, the scope of diplomatic privileges and immunities under Article 7 of the Covenant and in connection with the Permanent Court of International Justice, is really suitable for consideration by an international conference which (it is hoped) will be attended by important States not belonging to the League of Nations. I venture to think that, while any general agreement on the subject of diplomatic privileges and immunities ought to be negotiated with due regard to its effect upon the application of Article 7 of the Covenant, the question of the application of the article ought not to be on the agenda of a general conference, but should be left to be dealt with by the Council and Assembly, the Permanent Court and the Governments whose interests are more particularly concerned in the proper application of the article. As a matter of fact, as regards the League, it will be remembered that, last year, the Council had before it certain difficulties between the Swiss Government and the organisations of the League established at Geneva and that a *modus vivendi* was negotiated, and was approved by it, which is working with satisfaction to all concerned. A satisfactory *modus vivendi* is, I understand, in operation between the Permanent Court established at The Hague and the Government of the Netherlands. There appears to be no need for reopening questions which have thus happily found a practical solution.

"My conclusion is that limitation of the scope of the contemplated general conference might take the form of the exclusion of the subject of Piracy and possibly also that of Diplomatic Privileges and Immunities.

"Method of convening Conferences.

"I come now to the question of the method of convening the conference or conferences and of arranging for the necessary preparatory work. Some public disappointment will, I fear, be caused if action is too long postponed. It would be satisfactory if the Conference could meet not later than 1929. The course adopted may reasonably be influenced by this consideration.

"There appear to be two possibilities.

"One course would be for the Assembly to request the Council to convene the Conference under the auspices and at the expense of the League, when it was satisfied that the preparatory work was completed. It cannot be ignored, however, that the League's programme of work is very full, more particularly in connection with the question of disarmament, which is one of the main duties allotted to it by the Covenant, and that there will be very heavy calls upon its resources in the immediate future.

"The alternative would be for the Conference to be convened by a Government. Should, for instance, a particular Government, possessing a traditional interest in the advancement of international law and the special experience necessary for the task, desire to give its assistance, I see no reason why the Assembly should not invite it to convene the conference as the mandatory of the League, that is to say, at the express invitation and with the full support of the League and with the assistance which it might require from the Secretariat and the technical organisations of the League. I assume that at such a conference the various organs of the League could, so far as necessary, be represented in an appropriate manner, and that the Government concerned would be happy to pay the fullest regard to the views of the Members of the League on questions of procedure. This course, by which one of its Members would act for the League at the League's request, could not be regarded as implying in any way that the Assembly desisted from the

initiative taken by it in 1924 or that the League was ceasing to interest itself in the development of international law.

"The matter is one for decision by the Assembly, which alone can appreciate what work the existing engagements of the League and its resources permit it to assume in the near future.

" Arrangements for Preparatory Work.

"The arrangements made for the preparatory work must depend largely upon the solution of the question who is to convene the conference. A Government which accepted an invitation to convene a conference might naturally wish that the control of the preparatory work should be in its own hands. But the Assembly would doubtless desire the Secretariat and the League's technical organisations to afford all the assistance in their power and would vote any credits necessary to enable this assistance to be given. Should, on the other hand, a conference be convened by the Council, that body should control the preparatory work. It would be necessary to consider whether this work could be entrusted to the Secretariat or whether it would not be desirable to set up one or more small committees of experts, possibly one for each subject, to perform the work with the assistance of the Secretariat.

"Some valuable suggestions as to the nature of the preparatory work are made by the Committee of Experts in its general report on procedure. I should like to lay stress upon two points. In the first place, the League's experience suggests that the work of a conference is most likely to be successful if the delegates have before them a draft convention, or at least a draft series of proposals, which appears *prima facie* likely to secure a large measure of general agreement and which can be dealt with by amendment, omissions or additions. It may, of course, be the case that on some subjects a general exchange of views and discussion of general principles is all that is attainable in the first instance. My second point is that it is prudent to aim in the first instance at an agreed statement of the existing law, *i.e.*, at a codification of the existing views and practice of Governments, or at least that we should start by ascertaining what such views and practice are and make them the basis of the work of the conference. As I stated above, however, and as the Committee of Experts points out in its general report, we do not possess a considered statement of the views and practice of even the majority of Governments on any of the questions recommended for consideration by the Committee. Accordingly, I venture to think that the first stage in the preparatory work, whether it is undertaken by a Government or by the League, should be to inform the Governments that they will be invited to attend a conference and to request them to submit individually full statements of what, in their opinion, is the existing international law and practice on each of the points to be dealt with. The body charged with the preparatory work would have the task of comparing these statements and of seeking to present to the conference a draft convention or series of propositions which would embody in a suitable form the views generally accepted, would distinguish the divergent views on points on which such agreement was not apparent and would, naturally, set out any changes in the existing law which any Government thought it desirable to propose.

"I feel that, in dealing with public international law, it is desirable to impose upon all the Governments the responsibility, and to give them the opportunity, of stating fully what they consider to be the present state of the law. The nature of the subjects to be dealt with makes me feel that this procedure is perhaps preferable to the alternative and more usual procedure of inviting replies from the Governments to a number of detailed questionnaires. Moreover, in the present case, having regard to the general interest and political importance of the questions involved, the framing of appropriate questionnaires, which would give the Governments full scope to express their views, would be excessively difficult, either for an individual Government or for the Secretariat or an expert committee.

" Special Procedure in regard to Two Subjects.

"There remain two subjects which the Committee of Experts recommends as ripe for consideration but in regard to which it recommends a special procedure. These are:

"(a) *The Procedure of International Conferences and Procedure for the Conclusion and Drafting of Treaties* (Questionnaire No. 5); and

"(b) *Exploitation of the Products of the Sea* (Questionnaire No. 7).

"On the first of these subjects the Committee does not propose that an obligatory body of rules should be drawn up and, indeed, it is difficult to see how it can be possible or desirable to limit in advance the method in which conferences conduct their business or to deal in a convention with methods of concluding and drafting treaties.

"The Committee proposes that the subject should be referred to a small committee of experts and that, if the appointment of a special committee should appear to involve too great expense, the committee might be composed of officials of the Secretariat. The results of a study by such a body of experts might, it is suggested, be of assistance in the conduct of conferences and the negotiation of treaties.

"As the matter is in no sense urgent, and does not appear of sufficient importance to warrant asking the Assembly at the present moment to vote the credit necessary for the appointment of a

special committee, I suggest that the Council might ask the Secretary-General to consider whether, in his opinion, the Secretariat could with advantage produce a study of the methods of conference and the methods adopted in making treaties, which might possibly be subsequently submitted to criticism by international organisations and Governments having special experience of the holding of general conferences. The Council will doubtless be prepared to reconsider the whole question when the Secretary-General has had time to form his opinion as to the desirability of undertaking this work.

" The question of Exploitation of the Products of the Sea is the question of protecting valuable fauna of the deep sea against extermination by uneconomic exploitation. The Committee of Experts has satisfied itself that there is, *prima facie*, a need and a demand on the part of Governments for international protection of such fauna but, being a committee of lawyers, it has naturally not been in a position to advise as to the technical possibilities of international action in this matter.

" It recommends that an international conference of technical experts and jurists should consider the whole question and the possibility of action by way of bilateral or general conventions, dealing particularly with certain points set out in the Committee's report. It proposes that the preparatory work for this conference should be done by the Economic Committee of the League of Nations or by the Permanent International Council for the Exploration of the Sea at Copenhagen.

" It is clear that the Council has before it very little information with regard to this subject, and I do not feel that we can at the present stage recommend the Assembly to take a decision in favour of convening even a technical conference. The natural course, subject to the Assembly's approval, would in my opinion be for the section of the Codification Committee's main report which deals with products of the sea, and its special report on procedure in this matter, to be referred to the Economic Committee of the League with the request to invite the collaboration of the International Council at Copenhagen and any other international organisations specially interested in the subject, and to advise the Council as to whether any action in the matter is possible and desirable.

" Subjects with which the Committee does not propose to proceed.

" I have now to mention the two reports by which the Committee informs the Council that there are two matters which it would have placed upon its list of subjects meriting consideration, and have made the subject of questionnaires to the Governments, if it had not found that the Netherlands Government had placed them upon the agenda of the Private International Law Conference at The Hague. These subjects are:

" (1) The Nationality of Commercial Corporations and the Determination of the Question to what State the Right of affording them Diplomatic Protection belongs; and

" (2) Recognition of the Legal Personality of Foreign Commercial Corporations.

" The Council can, I think, only approve the Committee's action. Its reports containing the interesting studies made by its rapporteurs have been communicated to the Members of the League as well as to the Council and will be at the disposal of the Netherlands Government and of the other Governments to which it may be hoped they will be of service in connection with the discussions at the Hague Conference.

" Present Programme of the Committee.

" It remains, in conclusion, to consider the information as to the future work of the Committee of Experts which is before the Council in the letter addressed to the Secretary-General by the Chairman of the Committee under date April 2nd, 1927.

" It will be observed that the Committee is sending questionnaires to the Governments on four new subjects, namely:

" (a) Communication of Judicial and Extra-judicial Acts in Penal Matters;

" (b) Legal Position and Functions of Consuls;

" (c) Revision of the Classification of Diplomatic Agents;

" (d) Competence of the Courts in regard to Foreign States.

" The Committee asks that the replies of the Governments may be sent in by the close of the present year and proposes to hold a session in 1928 to consider these replies and report to the Council as to whether any of the subjects are ripe for international action.

" The Committee has also carried over to the programme of its 1928 session three questions which it has referred to sub-committees but on which it has not yet consulted the Governments, namely:

" (a) The Question of the Application of the Notion of Prescription in International Law;

" (b) The Question of the Legal Position of Private Non-profit-making International Associations and of Private International Foundations;

" (c) The Question of Conflicts of Laws on Domicile.

" In addition, therefore, to the seven subjects upon which it has recommended action, and the two subjects with which it has decided not to proceed on the ground that they form the object of an initiative taken by the Netherlands Government, the Committee has already before it seven

further subjects of greater or less importance which it considers, *prima facie*, to merit attention and which it may ultimately recommend as ripe for international agreement.

"On the other hand, the Committee has abstained from selecting new subjects for examination, while expressing its willingness to resume the selection of new subjects at its next session, if so desired.

"I have no doubt that the Assembly, with which the decision rests as it is a question of voting the necessary credit, will cordially desire the Committee to hold the session contemplated for 1928 for the purpose of completing the work which it already has taken in hand. Whether the Committee should be asked to carry its enquiries still further at the present moment is equally a matter for the Assembly. The Committee observes that it is natural for it to desire to wait and see what action is taken on its first proposals, and also that the available resources will be fully occupied for some time in carrying out the work which it already has in view. It might, in fact, be desirable for the Council and Assembly to take no immediate decision as to the continuance of action under the Assembly's resolution of 1924, but to await the results of the first work of the Committee.

"In the present report I have endeavoured, as briefly as possible, to set out the questions which the Council has to consider in dealing with the documents presented by the Committee of Experts, and have put forward various suggestions as to their solution which are, of course, intended as a basis for discussion. I shall be glad if my colleagues will express their views on the various points. The most convenient course would be, I think, for my report to be amended as far as may be necessary to make it express the general sense of the Council and for it to be transmitted to the Assembly as a basis for discussion there. With this object, I venture to propose the following draft resolution:

Resolution.

" 'The Council of the League of Nations,

" 'Having considered the reports drawn up for submission to the Council by the Committee of Experts for the Progressive Codification of International Law at its third session, held from March 22nd to April 2nd, 1927, and the letter from the Chairman of the Committee to the Secretary-General dated April 2nd, 1927:

" 'Decides to transmit the above-mentioned documents and the report thereon of the Polish representative, as adopted by the Council at its meeting on June 13th, together with the Minutes of that meeting¹, to the Assembly and to place the consideration of these documents and report upon the agenda of the Assembly.' "

EXTRACT FROM THE MINUTES OF THE 45TH SESSION OF THE COUNCIL, FIRST MEETING,
HELD ON JUNE 13TH, 1927.

M. ZALESKI submitted to the Council the following report:

(See text printed above, pp. 3-9.)

Jonkheer BEELAERTS VAN BLOKLAND said that he had read with the very greatest interest M. Zaleski's remarkable report concerning the reports submitted by the Committee of Experts for the Progressive Codification of International Law.

M. Zaleski had recalled the circumstances in which the Assembly adopted its resolution of September 22nd, 1924, a resolution which explicitly recognised the importance of the initiative taken by those Governments that were traditionally interested in a particular field of international law. In this connection, M. Zaleski had been good enough to mention, *inter alia*, the action taken by the Netherlands Government with reference not only to the convening of the two Peace Conferences held in 1899 and 1907, but also to the questions of private international law which had resulted in the well-known Conferences held at The Hague. He desired to thank M. Zaleski for the sympathetic terms in which he had referred to the initiative taken by the Netherlands Government.

He warmly associated himself with the expression of thanks in the report to the Committee of Experts, which had shown the greatest competence in carrying out its work, and he desired to support M. Zaleski's proposal for the printing of the Minutes of the present year's session. From the Minutes of the previous sessions the Members of the Council had been able to appreciate the great value of the Committee's discussions.

The work of the Committee as outlined by the Assembly was restricted to questions of international law regarding which no initiative had so far been taken in other quarters. In its recommendation, the Committee stated that there were seven subjects which, in certain aspects at any rate, were sufficiently ripe for regulation by way of international agreement. The Committee had further informed the Council that there were two subjects which it had placed on the list of questions deserving examination and regarding which questionnaires would have been sent to the Governments but for the fact that the Netherlands Government had placed them on the agenda of the forthcoming Hague Conference on Private International Law. These two questions were: the Nationality of Commercial Corporations and the Recognition of the Legal Personality of Foreign Commercial Corporations. It might be enquired whether the same procedure should not have been adopted in regard to the question of Nationality, which had also been placed on the

¹ The words "together with the Minutes of that meeting" were added by the Council.

agenda of the Conference on Private International Law, following on a recommendation made by the 1925 Conference. This was one of the questions which might perhaps be investigated subsequently when the Assembly come to take a decision on the recommendations submitted to it.

As to the question whether one or more conferences should be contemplated, Jonkheer Beelaerts van Blokland thought this of perhaps less importance than that of the method of convening.

M. Zaleski had suggested that it might be possible for the Conference to be convened by a Government. If, for instance, any particular Government which was traditionally interested in the development of international law, and which had the special experience required for this purpose, were prepared to give its assistance, the Rapporteur had stated that he did not see any reason why the Assembly should not request such a Government to convene the conference with the full support of the League. The Netherlands Government thought that the convening of a conference by a particular Government might have certain advantages — among others, with regard to the co-operation of States which were not Members of the League.

If the Assembly shared this view, the Government of the Netherlands, which was anxious to be as helpful as possible in giving effect to the Assembly's desires, would have very great pleasure in carrying out to the best of its ability any such request, if made to it, and would not fail fully to take into account the extremely important work done by the Committee of Experts as well as the views of the Members of the League.

M. SCIALOJA said that, if the proposal to convene a conference in the name of the League of Nations were to be adopted, he would have to make certain reservations on some of the points raised by the Committee of Experts. He had, however, nothing to say against accepting the proposal of the representative of the Netherlands. It seemed to him that the Governments might be more ready to accept a proposal to hold a conference which came, not from the Council of the League, but from the Netherlands Government. Further, the work of such a conference would include the preparatory study which the problems submitted by the Committee of Experts appeared to him still to need. Before the League could itself take the initiative, it must be very nearly sure that such a conference would result, at any rate to a certain degree, in concrete proposals which could be accepted by the Governments. International law was developing very rapidly, but he did not think that the end was within reach. Progress must be made in that direction, however, and a Conference convened by the Government of the Netherlands would no doubt be a very important step in the right direction.

He would therefore support the proposal of the Netherlands representative, for he was convinced that it was the best which could be made.

Jonkheer BEELAERTS VAN BLOKLAND proposed to amend the third paragraph of the draft resolution proposed by M. Zaleski by adding after the words "adopted by the Council on" the words "together with the Minutes of that meeting".

M. ZALESKI accepted this amendment.

The resolution was adopted as follows:

"The Council of the League of Nations,

"Having considered the reports drawn up for submission to the Council by the Committee of Experts for the Progressive Codification of International Law at its third session, held from March 22nd to April 2nd, 1927, and the letter from the Chairman of the Committee to the Secretary-General dated April 2nd, 1927:

"Decides to transmit the above-mentioned documents and the report thereon of the Polish representative, as adopted by the Council at its meeting on June 13th, together with the Minutes of that meeting, to the Assembly and to place the consideration of these documents and report upon the agenda of the Assembly."

II. 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 HIS HIGHNESS MOHAMMAD KHAN FOROUGHI (PERSIA) AT THE ASSEMBLY ON SEPTEMBER 6th, 1927.

We are glad to note the progress made in regard to the progressive codification of public international law. Persia feels that any effort to lend greater precision and unity to the rules governing the relations between organised communities will contribute to a better understanding among the nations and to the consolidation of peace. She is of opinion that codification is imperative if the defects and anachronisms of common law are to be eliminated from international law. Persia is now engaged in framing her own codes, in organising her courts and in reasserting her

complete jurisdiction over her own territory, and she realises that the rules adopted by the world conscience for the government of international relations should be acknowledged by all nations and in respect of all nations.

SPEECH BY M. URRUTIA (COLOMBIA) AT THE ASSEMBLY ON SEPTEMBER 7th, 1927.

Mr. President, Ladies and Gentlemen,

One of the most important questions placed by the Council on the agenda of the present session of the Assembly and appearing in the Secretary-General's report is undoubtedly the work of the Committee of Experts for the Progressive Codification of International Law.

Owing to its intrinsic importance and universal interest, particularly at the present time, and by reason of its intimate association with the aims of the League as enunciated in the Preamble to the Covenant, this question of the codification of international law at present occupies a foremost position in the minds of the civilised nations.

At its last session in Paris, the Inter-Parliamentary Union drew attention to the urgent need for codification, being of opinion that it might serve to eliminate the flagrant injustice and the numerous ambiguities attaching to international law at the present day, and might offer a sure and generally accepted basis for the settlement of international disputes, thereby promoting the supreme interests of peace.

The codification of international law may be described by some as an attempt to embody the principles of international justice in concrete rules, or as the perfecting of international law; or again it may imply, in the view of certain authorities — and perhaps rightly so — the reconstruction of international law. However that may be, the fact remains that the movement answers to a universal need.

This need was made glaringly manifest during the tragic days of the World War, which seemed well on the way to destroy the material bases of an ancient civilisation and with them the essential principles of morality and international law. It is a need that is daily becoming more ingrained in the popular mind. A strong reaction has set in against methods of violence, and a firm conviction exists that nothing but a system built on law and order is proof against disruption.

One of the main obligations laid down in the Covenant is "the firm establishment of the understandings of international law as the actual rule of conduct among Governments". Many of these "understandings", however, are ill-defined and have never been sanctioned by general acceptance; the Covenant therefore contemplated subsequent action by the League with a view to achieving this result.

In setting up the Permanent Court of International Justice, the League has already realised one of the greatest ideals embodied in the Covenant, but this achievement has only served to emphasise the need for establishing international laws. The Committee of Jurists which met at The Hague in 1920 to frame the draft Statute of the Court rightly recommended the resumption of the work of codification begun before the war by the Hague Conference. International justice cannot hope to progress except by following in the steps and seeking the light of international law.

In 1924, the League Assembly, realising its duties and acting as the faithful interpreter of that universal aspiration to which I have referred, adopted a resolution, which some thought inadequate but which was undoubtedly very important, concerning the progressive codification of international law.

Last June, M. Zaleski, the Polish Minister for Foreign Affairs, submitted to the Council a report setting forth clearly the scope and objects of the Assembly's resolution and the effect given to it in practice, as shown more particularly by the publication of the admirable reports framed by the Committee of Experts. The Council, at the same session, associated itself with M. Zaleski in praising the zeal, accuracy and competence with which the Committee had performed its difficult task.

I also feel that I am doing no more than my duty in acknowledging our indebtedness to the Committee. Its work was both scientific and practical; it kept in view the different aspects of the questions submitted to it; it availed itself of the important studies carried on outside the League, and in certain matters, such as the exploitation of the products of the sea, established the fundamental bases for general and regional organisation. The Committee was, however, subjected to criticism on the grounds of undue timidity and conservatism in regard to questions such as those concerning territorial waters and on account of its opposition to certain measures already established in current practice and to certain tendencies that apparently prevail in international law.

On the other hand, it must be admitted that the Committee's sagacity and moderation are likely to inspire confidence in States which might view drastic reforms with some apprehension.

The Council saw fit to leave the Assembly to decide how the work begun in 1924 could best be carried on. The Assembly is in possession of all the data — including the valuable proposals contained in the Committee of Experts' report to the Council — which it requires as a basis for discussion and for framing resolutions regarding this matter.

Suggestions and definite proposals will certainly be submitted when the question comes up for discussion before the First Committee of the Assembly, and the Colombian delegation will state its views in due course. For the moment, I will confine myself to a few general remarks.

The problem before the Assembly is so vast, so complex and of so universal a character that, in order to estimate it and find a proper solution, it is essential to bear in mind all the factors, both within the League and outside it, which already contribute or may in future contribute towards the desired end.

Even before the League took up the matter, and again later, while this work was proceeding, the question of the codification of international law had been extensively studied, and the League should be able to derive substantial assistance from these previous efforts.

It would take too long to enumerate all these various studies, which were instituted by big scientific associations, by semi-political, semi-scientific bodies, such as the Inter-Parliamentary Union, by distinguished private individuals versed in the science of international relations or by the collective official efforts of groups of States.

As regards this last category, the efforts of the American States to secure the codification of public and private international law were begun more than a century ago. Proposals on the subject were outlined at the Congress summoned in 1826 by Bolivar, at that time President of Colombia, to whom M. Villegas, the Acting President of the Council, paid a well-merited tribute in his opening speech to this Assembly.

These efforts have been pursued with energy and determination during the last five decades. They resulted in very important international agreements, such as the agreement on private international law signed at Montevideo in 1889, in the pacts and resolutions of the Pan-American Conference, in special conferences and studies such as those of the American Institute of International Law, and, lastly, in schemes embodying the knowledge and experience of eminent jurists.

The fifth Pan-American Conference, which met at Santiago de Chile in 1923, decided, in order to give a fresh impetus to the work of codification of international law, which had been suspended during the war, to reorganise the Committee of Jurists set up by the Third Conference at Rio de Janeiro, so that the codification of public international law should be gradual and progressive and based upon a draft submitted to the fifth International Conference by the Chilean delegate, M. Alejandro Alvarez, and entitled "The Codification of International Law in America".

The meeting of the Congress of Jurists at Rio de Janeiro this year was thus the immediate outcome of the decisions of the fifth Pan-American Conference.

The work at Rio de Janeiro, however, was preceded by long scientific preparation. As far back as 1912, M. Epitacio Pessoa, the Brazilian jurist, submitted to the first Assembly of Jurists at Rio a draft on public international law, while his colleague, M. Rodriguez Pereira, presented a draft concerning private international law. On the same occasion, M. Alvarez submitted his work on the codification of international law.

These various efforts are evidence of a progressive spirit and a desire not only to codify international law but to reconstruct it and bring it into harmony with new international conditions.

I may perhaps be allowed to outline the results of the last Congress of Jurists at Rio de Janeiro. Owing to its intrinsic importance and to the fact that the jurists taking part in its work were the official delegates of the American States, this Congress constitutes an official collective effort in the interests of international law — an effort which, on the one hand, does honour to the American Republics and testifies to their progressive spirit and their devotion to the principles of justice and, on the other hand, represents the most important contribution hitherto made by any group of States to the work of codifying general international law.

The Committee of Jurists at Rio adopted twelve draft Conventions on public international law, as well as a draft general Convention on private international law.

The Conventions on public international law related to the following questions: the fundamental bases of international law, States, the pacific settlement of international disputes, treaties, maritime neutrality, the status of aliens, diplomatic agents, consular agents, asylum, the duties of States in case of civil war, the exchange of publications, the interchange of professors and students.

The object of these various drafts, which will be submitted to the sixth Pan-American Conference at Havana in January next, is to define the fundamental bases of international law and to determine its sources and authorities and the rules for its interpretation.

From this point of view, by far the most interesting drafts are undoubtedly those relating to the fundamental bases of international law and States; the latter comprises certain vital questions, such as the recognition of new States and new Governments.

In the main it may be said that the drafts on international law framed at Rio are based on the following great principles of international law, which have been proclaimed and defended from all time by the American States and incorporated by most of those States in their internal legislation. Those principles are the absolute independence and unrestricted internal sovereignty of every State, subject to modifications arising out of voluntarily concluded treaties; political equality as between States; the duty of solidarity and special international co-operation between the States of the New World, which, far from excluding the States of other continents, implies the establishment of closer ties with them; the equality of civil rights as between nationals and aliens, etc., etc.

The general draft convention on private international law framed by the Cuban jurist, Antonio Sanchez de Bustamante, was based on the following principles: the *jus soli* determines the nationality of individuals; their "personal legal status" is determined by the test of domicile; juridical persons owe their existence solely to the law of the country sanctioning them and are therefore neither nationals nor aliens; the recognised jurisdiction is that of the country where the contract is fulfilled, etc. The acceptance of these principles would, in the opinion of the jurists at Rio, constitute a real reconstruction of private international law.

Although the Rio drafts were framed in an eminently American spirit and in the light of circumstances and conditions peculiar to the States of the New World, this does not mean that their learned authors, or the jurists who discussed and adopted them, intended to establish a body of international law different from — still less conflicting with — that of the European States. On the contrary, I think I may say that the jurists at Rio, when voicing the ideas of the Governments they represented, were anxious to co-operate in the universal task of perfecting, codifying and reconstructing international law. Any new principles discovered in these Conventions should be regarded as proposals submitted by the States of the New World to other States, with a view to securing their introduction into universal international law. These ideas had already been enunciated by public men and eminent writers on international law in America and are in complete harmony with the categorical declarations made on the subject by the fourth Pan-American Conference at Buenos Aires.

When speaking of the codification of international law before this Assembly, it is impossible to forget the eminent services rendered uninterruptedly for more than half a century to the cause of the evolution and progress of international law by the patient and enlightened work of the Institute of International Law, which was founded in 1873 and whose motto has always been "*Pro justitia et pace*". Experts on international law in the different continents have taken part in the work of this Institute, and some of its illustrious members have been heard at the Peace Conferences, the Hague Court of Arbitration and the Permanent Court of International Justice.

The Institute's publications and recommendations are a valuable and trustworthy source of information to all who desire to ascertain what was, at any given moment, the reliable expression of the conscience of the civilised world on specific questions relating to international law. The work of the Institute has been, and still is, primarily scientific in character and, up to a certain point, is connected with international politics. It is, however, a valuable factor in the framing of positive international laws. There is perhaps no single important question of international law that has not been thoroughly studied and discussed by the Institute at its annual sessions, which now exceed forty in number.

Certain resolutions adopted by the Institute have had to be revised owing to changed conditions and the constant evolution of international law. A mere list of the Institute's committees and of the questions studied during recent years will suffice to show the vital character and the value of the Institute's contribution towards the codification and reconstruction of international law. Let me quote the following: the international responsibility of the State for damage caused on its territory to persons and property, nationality, conciliation procedure, the extension of compulsory arbitration and the compulsory jurisdiction of the Permanent Court of International Justice, navigation on the high seas, arbitral procedure, draft regulations relating to territorial waters, diplomatic and consular immunities, immunities to be granted to persons discharging functions of international concern, international air navigation, shipping regulations in maritime ports, the codification of international law.

It will be seen that some of these questions, such as nationality, territorial waters, diplomatic privileges and immunities, the responsibility of the State for damage caused on its territory, were examined simultaneously by the League Committee of Experts, the Institute of International Law and the Committee of Jurists at Rio de Janeiro. Instead of regarding these various activities as isolated and independent endeavours, we must bring them into harmony with one another and use them for the attainment of one common object.

The results achieved outside the League in no way detract from the high merit of the work accomplished at Geneva for the codification of international law, especially as the League is not only endeavouring to promote, but has already promoted, with increasing success, the progressive codification of special subjects, through international conferences convened under its auspices and through the Conventions resulting from those conferences.

The Conventions on communications and transit, on navigable waterways of international concern, on maritime ports, on slavery and others I might name represent an important contribution towards the progressive codification of international law. The international conciliation and arbitration Conventions which the League encourages so vigorously constitute to-day a valuable worldwide system of moral links so powerful that it is no exaggeration to say that the principle of international conciliation and arbitration has become a sort of universal law arising out of an international consensus of opinion. Nor must we forget international labour legislation, which protects the once neglected interests of the working classes and serves to consolidate the valuable progress achieved in the matter of social reform.

The League of Nations has successfully continued the fruitful work of the two Hague Conferences, where, to quote the words of our lamented and most eminent colleague, Léon Bourgeois, "the heart-beat of humanity was first felt". The Hague Conferences will go down to history as the first universal effort to codify international law. The fact that these glorious acts, which instituted arbitration, condemned all barbarous methods of warfare, sought to protect

defenceless populations, wounded combatants and prisoners, and reasserted the principle of respect for the dead — the fact that on dark occasions those acts were abjured is of but little moment. They will stand for ever as the expression of the thoughts and aspirations of the civilised world.

This, then, is the problem before the Assembly: How is the League to carry on effectively and with universal approval the great work it has undertaken in the interests of international law, work which has found its expression in its acts and in the studies of the Committee of Experts, on which more than thirty States have already pronounced an opinion?

In the light of past achievements, inaction would be equivalent to retrogression, and for the League would mean a failure to fulfil its most imperative duty. The League has contributed towards the strengthening of international justice, and has created the Permanent Court to administer it; as a natural corollary, it remains for it to define and perfect law, which is the inseparable companion of justice, and to secure its application, wherever this is necessary to regulate the life of the States.

The definition of law, the strengthening of justice and the maintenance of peace are the aims of our institution, but the project is so vast that to carry it out we must avail ourselves of all the efforts made, even outside the League, to attain this end. To co-ordinate these efforts, to harmonise and group them together, as is quite feasible in such a task as the codifying of international law, would be to render a great service to humanity. M. Briand, the eminent first delegate of France, when speaking a few days ago before the Inter-Parliamentary Union on the need for educating the public in regard to certain problems of international politics, said: "What we have to do is to establish the peace of the world on a legal basis, to make a legal reality of international solidarity, which is already apparent in fact as a physical reality. The task is sufficiently difficult to require the energetic co-operation of all concerned."

Endorsing M. Briand's words and applying them to the progressive codification of international law, we would repeat: "the task is sufficiently difficult to require the energetic co-operation of all concerned".

It will be for the Assembly, in the course of its coming debates, to find some formula which shall ensure this energetic co-operation, and I am sure that, conscious of its world-wide mission of civilisation, the Assembly will find such a formula, if it seeks it in the lofty and generous conception of international solidarity and of the benefits to be derived from consolidating and extending the empire of law and justice and perpetuating the reign of peace.

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SPEECH BY M. MOLTESEN (DENMARK) AT THE ASSEMBLY ON SEPTEMBER 7th, 1927.

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Denmark hails with special satisfaction the preparatory work of the Committee of Experts on the Progressive Codification of International Law. This work is essential if the activities of the League and of the Permanent Court are to be established on a permanent and solid basis of unequivocal justice. It constitutes, moreover, one of the principal factors in the maintenance of peace.

It is Denmark's earnest desire that this work shall be pursued as vigorously as possible and we trust that the discussions of this Assembly will ensure its being continued in the form best calculated to secure the attainment of the lofty aim in view.

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SPEECH BY M. HAMBRO (NORWAY) AT THE ASSEMBLY ON SEPTEMBER 8th, 1927.

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Another subject on which progress has been made is that of the codification of international law. Various speakers have laid stress on this point, and the delegate for Colombia emphasised it with great warmth. The Norwegian Government attaches great importance to the efforts of the Committee of Experts, and we should look with grave anxiety on any attempt to obstruct or hinder the work that has begun and already aroused so much interest.

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SPEECH BY DR. LANGE (NORWAY) AT THE ASSEMBLY ON SEPTEMBER 9th, 1927.

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I should certainly be the last to underestimate the importance of the work for the progressive codification of international law which has been so successfully inaugurated by the League. On the contrary, this work is one of the questions with which we are primarily concerned here. But we all know that it will be a work extending over generations and generations, a work which will

never be complete and which we shall never be able to complete, because international, no less than national, life is always and will always be throwing up new problems in the field of legislation.

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SPEECH BY M. CABALLERO (PARAGUAY) AT THE ASSEMBLY ON SEPTEMBER 10th, 1927.

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I shall confine myself to certain matters on which the League's influence might be brought to bear to an even greater extent. Numerous difficulties are being caused by the diversity which exists between the various systems of legislation, in a world where relations of every kind are increasing and becoming more closely interconnected. The work of co-ordinating the laws which govern these various questions could beyond doubt be successfully carried out under the auspices of the League. The League alone is in a position gradually to overcome the obstacles, arising out of State sovereignty, which prevent freedom in the legal and economic relations between the nationals of different States.

Such a work would be in keeping with the League's essential mission, which is to procure the maximum of security. The world looks to the League to complete the work of international co-operation, in matters of law, of which the foundations have already been laid. We might advance step by step and succeed, if not in unifying, at all events in bringing into line the legal systems of the different States. Thus, while leaving each individual State to settle the details of its national legislation, it would still be possible to crystallise the principles common to them all and to establish as it were a secondary legal system to serve as a guide to legislators in their constructive task, and also to judges in their work of interpretation.

The League might render signal service both in establishing a common legislative system and in unifying or assimilating private law so far as this may be desirable and feasible.

Our grateful thanks are due to Italy for taking the lead in this direction and laying the foundation of an International Institute for the Unification of Private Law.

No society can live without positive laws, without a recognised code of order applicable to all its members. Similarly, no League of Nations can live and prosper and become a truly international community without some system of laws to govern its activities. Justice presupposes judges, and if the uncertainties of judicial administration are to be done away with, we must have a positive system of law to apply.

As you are aware, two methods, two conceptions, exist in regard to the codification of international law. The first consists in the framing of rules for international relations, the ultimate object being the complete codification of international law.

This is the method followed in America. The International Committee of American Jurists, which met for the second time at Rio de Janeiro, from April 17th to May 22nd, 1927, framed a draft for the codification of public international law, and this, if adopted by the Sixth Pan-American Conference, which is to meet at Havana in January 1928, will come into force in America.

The second method is the one adopted by the League Committee of Experts. It consists in examining the questions which, in the Committee's opinion, are already sufficiently ripe in the legal conscience of the nations to form the subject of international conventions. This method results only in partial and gradual codification. I will not venture to choose between the two methods, both of which are excellent in their way. Considerations of expediency alone may decide as a temporary measure in favour of one or other.

It is important, however, in my view that, if a scheme for codification is adopted in America, the League should immediately set about framing a second scheme for the codification of international law. The Committee of Experts should be instructed to submit to the League, quite soon, if possible, a draft scheme for general codification.

This is the only way to prevent a break in international law as the result of the adoption of different systems of codification in the two continents. Law, once codified in America, might develop along quite different lines from the international code, adopted later for the rest of the world. It is no doubt necessary in America to codify the international law governing certain specific questions, but it is essential to preserve the unity of international law. There is nothing to prevent the American States from adopting a unified system; but they will still remain free to settle this or that point of detail in accordance with their particular conditions.

The world has hitherto had a single system of international law, and it would be truly regrettable if this should divide into two divergent currents. It seems advisable, therefore, when instructing the Committee of Jurists to prepare a draft plan for general codification, as I have just suggested, to recommend it to take into account the work which is proceeding simultaneously in the New World. The League of Nations, which has already given evidence of its activity in the field of international law, ought to take up this work of codification, since, if successfully completed, it would not only be of great value from the moral point of view but would establish legal unity throughout the world.

It would subsequently be quite feasible and comparatively easy to combine the two systems and thus ensure the universality of international law.

In view of these considerations the delegation of Paraguay has the honour to submit to the Assembly the following draft resolution:

" The Assembly,
" Having in view the importance and urgency of preparing, for the use of all nations, a Code of International Law,
" Invites the Council to entrust the Committee of Experts with the preparation of a general and comprehensive plan of codification of international law, paying due regard, as far as possible, to the work of codification which is being carried on in America."

.....

PROPOSAL MADE BY THE PRESIDENT TO THE ASSEMBLY ON SEPTEMBER 10th, 1927.

M. Caballero to-day submitted the following resolution:

" The Assembly,
" Having in view the importance and urgency of preparing, for the use of all nations, a code of international law,
" Invites the Council to entrust the Committee of Experts with the preparation of a general and comprehensive plan of codification of international law, paying due regard, as far as possible, to the work of codification which is being carried on in America."

When this draft resolution was submitted, I told the Assembly that, in order to expedite procedure, I would, before the end of the meeting, suggest the action to be taken in regard to it. My proposal will not, I think, give rise to any objection, as there are a number of precedents for it.

I propose that this draft resolution be referred to the Agenda Committee, which will be requested to report on it as soon as possible.

If no plenary meeting of the Assembly is taking place when I receive the report, I shall regard myself, with your consent, as empowered to transmit this draft resolution to the Committee designated by the Agenda Committee.

Is there any objection ?

The proposal was adopted.

SPEECH BY THE PRESIDENT TO THE ASSEMBLY ON SEPTEMBER 12th, 1927.

The Assembly will remember that it decided, at its afternoon meeting on September 10th, to refer to the Agenda Committee a draft resolution submitted by Dr. Caballero, delegate of Paraguay, concerning the preparation of a code of international law.

I do not think it is necessary for me to read this draft resolution, as the text was circulated to the delegations. I will simply read the letter addressed to me by the Chairman of the Agenda Committee with reference to the resolution. It is as follows:

" At the close of the meeting held on the afternoon of Saturday, September 10th, you proposed and the Assembly agreed that the draft resolution submitted by the delegate of Paraguay concerning the preparation of a general plan for the codification of international law should be referred to the Agenda Committee and that that Committee, of which I am Chairman, should be requested to report on the question as soon as possible.

" I have consulted my colleagues, and am now in a position to inform you that the Agenda Committee, after a preliminary examination of the draft resolution, proposes that the question should be placed on the agenda of the present session, and should be referred to the First Committee.

(Signed) DE BROUCKÈRE."

If no objections are raised, I shall consider that the Assembly is in favour of the proposal to place on the agenda of the present session, and to refer to the First Committee, the draft resolution submitted by the delegate of Paraguay concerning the preparation of a general plan for the codification of international law. (*Approved.*)

III. EXTRACTS FROM THE MINUTES OF THE FIRST COMMITTEE.

SECOND MEETING.

Held on Tuesday, September 13th, 1927, at 10 a.m.

Chairman: M. ADATCI (Japan).

5.

6.

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

The CHAIRMAN read a letter from the President of the Assembly, informing the Committee that the Assembly, at its meeting of September 12th, had decided that the draft resolution for the preparation of a Code of International Law, presented by the delegation of Paraguay, should be referred to the First Committee.¹

On the proposal of the Chairman, it was agreed that he should suggest such methods as he deemed most appropriate for the discussion of the question.

8.

9. **Work of the Committee of Experts for the Progressive Codification of International Law**

The CHAIRMAN asked M. Fromageot to make the statement on the work of the Committee of Experts for which the First Committee had asked him.

M. FROMAGEOT (France) said that the codification of international law was a question which engaged the attention of the public opinion of the whole world. It was a striking fact that in many cases it was not clear what were the legal rules to which States had to conform in their relations. Codification, however, was a difficult task. It implied a written rule and this could only be the outcome of a convention. There was not, as in the national community, an imperative rule which imposed itself on its members.

Nevertheless, for some years past, first through the arbitral tribunals and to-day through the Permanent Court of International Justice, certain legal rules had been asserting themselves in the form of jurisprudence. It might therefore be said that up to a certain point the rules of common law laid down by the Court of Justice were assuming an imperative and compulsory character. It would be very difficult for States to evade them.

The work of jurisprudence, however, differed from codification; it was an essentially elastic work, the rules of which could be modified with the passage of time and with the evolution of international relations.

The Assembly of 1924 had realised the difficulties which would be encountered, but it had considered that, after five years of existence, it would be doing a considerable service by satisfying, at least in some degree, the need that was felt for the regulation of international relations.

¹ The draft resolution presented by the Delegation of Paraguay runs as follows:

" The Assembly,

" Having in view the importance and urgency of preparing, for the use of all nations, a Code of International Law,

" Invites the Council to entrust the Committee of Experts with the preparation of a general and comprehensive plan of codification of International Law, paying due regard, as far as possible, to the work of codification which is being carried on in America. "

This Assembly had begun by recalling the important conventions drawn up in the sphere of international conciliation, in that of communications and transit, those relating to the simplification of Customs formalities, the recognition of arbitration clauses in commercial contracts, international labour legislation, the suppression of the traffic in women and children and the protection of minorities. To these might be added the numerous conventions previous to the advent of the League, referring to industrial or literary property, trade-marks, posts and telegraphs, the protection of submarine cables, etc.

The Assembly, at its session of 1924, after recalling all these conventions, expressed the desire to increase the contribution of the League of Nations to the progressive codification of international law. To this end it requested the Council to convene a Committee composed of Experts in questions of international law, and representing as a body the main forms of civilisation and the principal legal systems of the world. After consulting the most authoritative organisations, this Committee was to prepare a provisional list of the subjects of international law, the regulation of which by international agreement seemed to be most desirable and realisable; the Committee was to communicate this list to the Governments for their opinion and on receiving their replies to report to the Council on the questions which were sufficiently ripe, and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Assembly had therefore clearly indicated, that progress must be made by means of conventions, which was the only method making it possible to draw up written rules compulsory for all States.

The first question with which the Committee had been faced was the following: Would it be advisable to make a single convention covering a mass of subjects? Or was it better to examine each subject separately, and see if an international conference would have a chance of bringing about an agreement in the form of a convention, on each of them?

The Committee had met under the chairmanship of M. Hammarskjöld. A considerable list of subjects touching every branch of international law had been drawn up. This list had even been supplemented later by questions of private international law. Three times in two years the Committee had met to consider these various questions, after appointing two of its members to report on each of them.

The majority of these reports were accompanied by a preliminary draft convention suitable for submission to the different States. All these reports were considered afresh by the Committee, which endeavoured, in connection with each one of them, to reply to the Council's question: "Is this subject ripe for a convention?"

M. Fromageot was obliged to admit that the Committee had found itself profoundly at variance on many points; the views expressed had, however, been the personal ones of the members of the Committee, who were not representatives of the Governments, but had been appointed *intuitu personæ*.

The work of the Committee was then sent to the Governments, who forwarded their replies to the Secretariat. Those replies were far from being unanimous. As regards certain questions, they were on the whole favourable to the drawing up of a convention; in certain other cases the majority were against such a course.

After examining these replies, the Committee presented a new report to the Council indicating those matters which, in the opinion of the majority of its members, appeared to be sufficiently ripe for international regulation. There were seven such subjects and they were divided into two groups.

The first group included the following matters:

Nationality; Territorial Waters; Diplomatic Privileges and Immunities; Responsibility of States for Damage done in their Territory to the Person or Property of Foreigners, Piracy.

The second group included the *Procedure of International Conferences and the Procedure for the Drafting and Conclusion of Treaties*, and, secondly, the question of *the Exploitation of the Products of the Sea*.

As regards the first five of these questions, the report of the Committee of Experts declared that the need of an agreement was not equally urgent in the case of every one of these subjects, and concluded by stating that piracy, and possibly diplomatic privileges and immunities, might be temporarily left on one side.

In the case of nationality, territorial waters and the responsibility of States, the opinions as to the solutions of these problems, which were often delicate, were far from being unanimous; nevertheless, whilst making certain reservations, the majority of the States consulted considered that something "might" be done in this direction.

As regards these three questions, the Council considered that it would be preferable to convene a general conference which might be sub-divided into three Committees, one for each subject.

With reference to the procedure of international conferences and the drafting of treaties, matters which were somewhat technical, the Committee did not propose that a hard-and-fast set of rules should be drawn up, but that certain provisions might be framed similar *mutatis mutandis* to those laid down in the Hague Conventions on the procedure for arbitration, which were generally considered wise and equitable, ensuring the hearing of both parties to a dispute and enabling both to set forth their points of view. These provisions would constitute a sort of guide for States desirous of concluding conventions, enabling them to avoid divergent practices such as have been indicated with regard to accessions subject to ratification.

M. Fromageot added that, nevertheless, he thought that this was not an extremely urgent question upon which the peace of the world depended.

It was otherwise, however, with the question of the exploitation of the products of the sea, but the Committee considered that this was a highly technical matter handled by organisations already in existence and dealing with maritime questions which were at the same time of economic

interest. It might be referred to the Oceanographical Commission of Copenhagen and the economic organ of the League.

The Committee of Experts had not thoroughly investigated the matter; but he wished now to recall his remarks to that Committee, namely, that there was urgent need to settle this question, for at the present rate, certain maritime fauna would be practically exterminated in a few years' time. For example, new technical means enabled whales to be followed to regions hitherto considered inaccessible and in which they had sought refuge, and they were there destroyed wholesale.

M. Fromageot added that the French Government had asked him to point out to the First Committee the urgency of summoning an international conference to regulate, as far as possible, the hunting and fishing of marine animals, in order to prevent the disappearance of species of great utility to mankind. Hunting had thus been regulated in Africa. Birds useful to agriculture and seals in the Behring Sea had also been protected by the same means.

The First Committee had to take a decision on the three questions he had mentioned (nationality, territorial waters, and responsibility of States):

1. Was it desirable to pursue the investigation of these three questions ?
2. How was that to be done ? Would it be best to hold a general conference to study each of these questions and perhaps draw up special conventions, or should special conferences be held ?
3. Ought not the two matters he had previously mentioned, which called for a special procedure, to be recommended to the attention of Governments ? Would not a special conference have to be held on the question of the exploitation of the products of the sea ?

The Committee had also before it a proposal by the delegation of Paraguay for the preparation of a scheme for the codification of international law. An international code implied a body of concrete provisions covering, if possible, all the matters that concerned international law. Scientists and scientific societies had drafted codes which were of great scientific interest. In practice, however, would it be desirable to try to cover so many subjects in one convention ? If that were done, it was highly probable that many countries would object to the convention because one or another of its clauses did not suit them. It would be much easier for Governments to reach agreement on conventions dealing with more limited subjects. Consequently it might be better not to try to cover the whole question at once. The idea of drawing up an international code to embrace all international relations did not seem to fit in with the actual facts at the present time. Some excellent codes had been drafted in America, but it was doubtful whether Governments could accept them, since such acceptance implied a common outlook which did not seem to exist.

The CHAIRMAN suggested that as M. Fromageot had touched upon the question raised by the proposal of the Paraguayan delegation, the Committee might discuss together that question and the one now before it.

M. POLITIS (Greece) regarded the two questions as entirely separate, and did not think they should be discussed together.

The material now under discussion represented the result of some extremely important work which ought to be continued. M. Caballero's proposal contemplated fresh preparatory work for an immensely more comprehensive scheme; for he suggested that a general *plan* of codification should be worked out.

It would probably be easy to arrive at practical conclusions on the first of these two questions, whereas opinions might be sharply divided as to the expediency of undertaking at the present stage the considerations of a general plan of codification.

M. CABALLERO (Paraguay) agreed with M. Politis. The question was one of method. There were some problems which, though not in sharp antithesis, must not be confused with each other, because they were not alike.

The Committee of Experts, which had done its work excellently, was quite prepared to undertake a fresh task; but the fact remained that it was better to deal with the two questions separately.

The CHAIRMAN, summarising the opinions that had been expressed, said that the Committee appeared to be unanimous on the point that the two questions should be discussed separately.

This was agreed.

M. GUERRERO (Salvador) said that after the very full statement that had been made by M. Fromageot he would content himself with emphasising what seemed to him the most important question for the Committee to decide. It was this: How had the Committee on the Codification of International Law come to its conclusions regarding the questions which must ultimately be regarded as capable of settlement by international agreement ?

At its session in April 1925 the Committee of Experts had applied itself in the first place to drawing up a scheme of procedure, in accordance with its terms of reference, and defining the scope of the international codification contemplated.

After a highly important debate on what was to be understood by codification, the Committee had decided that it should confine its work to drawing up a list of questions of international law capable of settlement by international agreement, and forwarding this list to the Governments, subsequently considering their replies and reporting to the Council.

The members of the Committee were invited to submit lists of questions for study. The Committee then made a first selection of a dozen questions.

In January 1926, the Committee again met to consider the Sub-Committees' reports. An extremely thorough discussion had taken place on both the form and the substance of the Rapporteurs' statements and conclusions. The object was to make a further selection, from the questions considered, of those which in the Committee's opinion had the best prospect of gaining the acceptance of Governments as being suitable for consideration by a Conference.

The Committee decided to propose for consideration the following questions: conflicts of law regarding nationality, diplomatic privileges and immunities, the international responsibility of States, the procedure of international conferences, the suppression of piracy, and the exploitation of the products of the sea.

Although after a long debate, more than once resumed, the Committee had reached a decision in regard to the proposed conclusions, it felt that it ought not to influence the Governments by recommending any definite solutions. The Committee then decided to forward the list of questions proposed, with the report on each, to the States Members of the League and others, but not to ask them for their views on the actual subjects mentioned.

Nevertheless, certain Governments had given their opinions on some of the actual questions. The Committee had consequently had to contemplate reconsidering the questions to be included in the list.

Thus, in regard to the international responsibility of States, the Secretariat had received thirty-three replies, of which twenty-five were definitely in favour of the inclusion of these questions in the list of subjects to be dealt with by a convention; four were also favourable, but with reservations; and four were definitely against.

The Cuban Government was in favour of the inclusion of the question, but pointed out that the Pan-American Conference which was to meet shortly at Havana would deal with that very point, and that it would be desirable to await the issue of its discussions. The Cuban reply had, however, been classed as favourable with reservations.

The Committee had continued the work of sifting the list of questions which might be regarded as sufficiently ripe for codification. Originally, the list had contained about sixty such questions, but the Committee had cut down this programme to eleven questions, later reduced it to seven, then to five, while the Rapporteur to the Council had settled on three. At the same time it was not desirable to prepare an unpleasant surprise for the public by giving it the impression that in the end there was nothing to codify.

In spite of the work it had done, the Committee of Experts had not escaped criticism. It had been accused of not having given its opinion upon each of the solutions proposed by the Rapporteurs, and it had also been charged with a certain timidity in the choice of questions to be studied.

It could be replied that the Committee had sought to respect its terms of reference, both in the spirit and in the letter; owing to the numerous obstacles foreseen, it had been desirable to exercise some measure of circumspection in the choice of questions.

M. Guerrero passed next to the report approved by the Council on June 13th, 1927. He quoted the opinions of M. Zaleski, the Polish representative, who had explained the stage reached by the work of the Committee of Experts for the Progressive Codification of International Law and had formulated the questions to be placed before the Assembly.

M. Zaleski, replying to one of the points of criticism directed against the Committee of Experts, had emphasised the necessarily limited character of the action taken by the Assembly in 1924 — a character to which the Committee had had to conform in order to keep within the terms of its mandate.

The Rapporteur enumerated the seven subjects of international law which the Committee of Experts had placed before the Council and then before the Assembly. These subjects were divided into two groups, as M. Fromageot had pointed out.

Two questions in particular ought to be settled by the Assembly; first, whether it was desirable to submit the proposed subjects to the examination of one or more international conferences (the Rapporteur to the Council was in favour of a single conference); and, secondly, the question of the procedure to be followed (in this connection the Rapporteur mentioned two alternatives: either the Assembly, as soon as the Council was satisfied that the preparatory work was completed, would request it to convene one or more conferences under the auspices of the League, or it would invite the Government of a State Member of the League of Nations to undertake the preparatory work and the convening of the conference).

M. Guerrero pointed out that the second group of subjects was far less important; it included, on the one hand, the procedure of international conferences and the procedure for the drafting and conclusion of treaties, and on the other the question of the exploitation of the products of the sea. M. Zaleski had proposed that the Secretary-General should be requested to submit a report to the Council on the effect which might be given to the recommendations of the Committee of Experts with regard to the first of these questions, while he proposed that the second question should be referred to the Economic Organisation of the League. These proposals reproduced in a slightly modified form the suggestions of the Committee of Experts.

The First Committee would consider whether it was desirable to make recommendations to this effect to the Assembly and also what effect should be given to the recommendations so far made by the Committee of Experts.

The last question before the Committee was the question whether and how far it was desirable for the Committee of Experts to continue its work or, on the other hand, whether it was better to await the result of the work already done. At its last session the Committee of Experts had refrained from entering upon a discussion of new subjects on the ground that it was evidently better to await a decision on the questions which had already been recommended to the Council.

To sum up, it appeared that the questions upon which recommendations should be submitted to the Assembly by the First Committee might be formulated as follows:

1. Was it expedient to convene conferences for the examination of all or part of the five subjects the regulation of which by international agreement was thought by the Committee of Experts to be desirable and realisable?

2. If so, what was the procedure to be recommended with a view to the convening of these conferences?

3. Should M. Zaleski's suggestion be accepted as regards the procedure of international conferences and the procedure for the drafting and conclusion of treaties and as regards the question of the exploitation of the products of the sea?

4. Should the Committee of Experts be requested to continue to exercise the mandate conferred upon it by the Assembly in 1924 and, if so, to what extent?

In conclusion, M. Guerrero referred to the importance attaching to any statements that M. Rundstein might make in the First Committee.

The meeting rose at 12.45 p.m.

THIRD MEETING.

Held on Wednesday, September 14th, 1927, at 10 a.m.

Chairman: M. ADATCI (Japan).

10. Work of the Committee of Experts for the Progressive Codification of International Law (continuation of the discussion).

M. Rundstein (Poland), Member of the Committee of Experts, was invited by the Chairman to speak.

M. RUNDSTEIN (Poland) said that the Committee had kept scrupulously within its terms of reference, which were expressly limited by the resolution of September 22nd, 1924. This resolution stated that it was not desirable for the Committee to trespass in any way upon the official initiative taken by certain States. Moreover, the Committee had adopted the rule to proceed cautiously at the outset of an enterprise which must be based upon solid foundations. Had it been bolder in contemplating vast schemes it would have stood no chance of being followed by the States.

M. Rundstein illustrated his point with an example furnished by the question of nationality. It might have been proclaimed as a theoretical principle of great constructive importance that every person must have a definite nationality, and that double nationality was a pathological phenomenon which ought to be excluded from the sphere of international law.

But the complication of the facts, the diversity of qualifications and the lack of common terms with the same meaning in the different legal systems were obstacles which complicated the present task.

General ideas were said to be generous ideas, but if it were desired to make effective progress the realities of the present legal position must be borne in mind. This was what had been done by the members of the Committee of Experts, who were modest and practical men.

Twenty-eight Governments had replied to questions on the problem of nationality. Nine States had advocated immediate codification and had, in principle, accepted as a basis the general outlines of the preliminary draft; twelve States, while recognising the advantages of codification, put forward various objections. These States might therefore be included among those who were in favour of international regulation; some of them had even wished to increase the scope of the proposed codification. Five States had replied in the negative and two others had adopted a rather special point of view.

Under these conditions the Committee must continue to seek to establish an agreement between the States. But the methods and procedure to be adopted were of great importance. A special preparatory organisation might be created, or the work of the preparation might be entrusted to a Government, following the eminently practical method already adopted by the Government of the Netherlands.

M. ROLIN (Belgium) confined himself to the first point mentioned by M. Guerrero: the questions to be submitted to the examination of general or special conferences.

M. Zaleski proposed to limit these questions to three; nationality, territorial waters and the responsibility of States. These three questions seemed, indeed, to be vitally important for peace, though this importance had not always been recognised by public opinion.

The question of nationality would be considered next January by a conference summoned by the Government of the Netherlands. The work of this conference must be noted, but it was probable that it would not exhaust the question, the importance of which had been demonstrated recently by the dispute concerning the nationality of Maltese nationals living in Tunisia. On this occasion great Powers had been involved in a discussion concerning their right to grant nationality. Elsewhere, in the succession States of Austria-Hungary, hundreds of thousands of inhabitants were without nationality.

As regards this last question, would it be asking too much of the States concerned if they were urged to spare the present generation the continuation of such a situation, and to confer

full nationality by right of birth or residence on the children of parents who were unknown or whose nationality was doubtful? If codification were to be progressive in one sense it must be progressive also in another. They must not limit themselves to registering customary law; they must also improve it, when circumstances had begun to undermine it. A case in point was that of territorial waters. If codification were effected not only in its narrow sense but also in the direction of international legislation, this would be an excellent thing.

The responsibility of States was also an important question. Crimes committed against foreigners might give rise to war when strong passions were aroused (Janina).

M. Guerrero had considered two questions in his report:

1. In what cases could a State be considered responsible?
2. How could responsibility be established and sanctioned without recourse to force?

It was to be hoped that the second question would be most thoroughly examined, and that it should, if possible, even be mentioned in the title of the proposed convention.

It was necessary to consider not only the cases of harm done to foreigners, but also that of harm done by foreigners upon the territory of a State (Serajevo murder).

The question of the responsibility of States had to be distinguished from that of the procedure for securing the repression of certain crimes.

The Belgian delegate had the better reason for declaring himself in favour of the system of an international commission of enquiry in that Belgium had applied this system two years previously in the case of an incident in the Rhineland. When the Mixed Arbitral Tribunal which had been entrusted with this enquiry gave as its opinion that the persons condemned under Belgian jurisdiction were innocent, the Belgian Government had released them. All the same, such a procedure could not give complete satisfaction, in the first place, because when the Commission of Enquiry was summoned to verify whether the repression of an international crime was effectively assured by the Government of the territory upon which the crime had been committed, it was no longer the crime but rather repression which was the object of such enquiry. The real accused was no longer the criminal, but the judicial system of the country upon whose territory the crime had been committed. This gave to this tardy enquiry a special significance. On the other hand, one was faced by final judgments which could only be revised or rescinded according to the procedure in force in the country itself. The granting of a pardon was sometimes the only way to set aside the verdict.

It was very often not immediately, but in the course of the proceedings, that suspicions of partiality in the jurisdiction of the country began to arise. Would it not be wise to accept, as a principle, that from the moment the crime had been committed and upon a request by the State concerned, the latter's judicial authorities could be present at the discussions without there being any need for the modification of the country's legislation, and that these judicial authorities should be allowed to suggest any procedure which might be useful, such as enquiries or expert opinions, so as to offer every guarantee to the foreign Government concerned. Unfounded accusations could not then be made against the State assuming the responsibility of the trial.

The speaker considered that the suggested programme was interesting and capable of rousing public opinion; it would provide, not detailed solutions, but solutions which were of the greatest importance for the League of Nations. The latter, by obtaining definite results in regard to these points, would have made a notable contribution to the solution of the question which was in everybody's mind, that of security.

M. LIMBURG (Netherlands) thought it advisable to recall a passage in M. Zaleski's report, as well as the first delegate of the Netherlands's reply to it. This passage read as follows:

"Should, for instance, a particular Government possessing a traditional interest in the advancement of international law, and the special experience necessary for the task, desire to give its assistance, I see no reason why the Assembly should not invite it to convene the conference, as the mandatory of the League, that is to say, at the express invitation and with the full support of the League and with the assistance which it might require from the Secretariat and the technical organisations of the League."

To these words the first delegate of the Netherlands made the following reply:

"If the Assembly shared this view, the Government of the Netherlands, which was anxious to be as helpful as possible in giving effect to the Assembly's desires, would have very great pleasure in carrying out to the best of its ability any such request, if made to it, and would not fail fully to take into account the extremely important work done by the Committee of Experts, as well as the views of the Members of the League."

The delegate of the Netherlands wished to repeat what had already been said by M. Beelaerts van Blokland. His country was the faithful servant of the League of Nations and if the latter should ask the Government of the Netherlands to summon the proposed conference as a mandatory of the League, his Government would be glad to assume this responsibility.

In connection with the three very important questions for which conventions were suggested — nationality, territorial waters and the responsibility of States — the speaker wished to make an observation concerning the last. The question of the responsibility of States for harm caused upon their territory to the goods or persons of foreigners, was very difficult and complicated. M. Guerrero had examined all the aspects of this question in his very substantial report. The Committee would, perhaps, be well advised if it restricted itself to considering those aspects of the question upon which it would be possible to come to an agreement.

M. POLITIS (Greece) wished to make some observations on the various points which the Committee had to settle:

I. *Questions to be submitted to one or several Conferences.*

It seemed that an agreement might be reached upon the following basis: Of the five questions mentioned in the Committee's report to the Council there were three which were generally considered worthy of being retained — nationality, territorial waters and the responsibility of States.

M. Politis, like M. Fromageot, would like the question of the procedure of international conferences and the conclusion of treaties and that of the exploitation of the products of the sea to be retained. This latter question, however, owing to its technical nature, would have to be considered by a special conference.

Four questions would thus be submitted to a general conference.

2. *Place of Meeting of the Conference.*

M. Politis thought that it would be advisable to choose The Hague, owing to its atmosphere, its resources, its calm surroundings and the memory of its services to the cause of law.

To choose The Hague would, moreover, in a sense, be to affirm the continuity of the efforts made by the civilised world to obtain a well-established law. Finally, and for various reasons, a conference meeting at The Hague might attain a larger, wider and more effective co-operation from States which were not yet Members of the League of Nations. The Greek delegate hastened to add that the meeting at The Hague of the first Codification Conference would in no way break or weaken the close bonds which must unite the Conference to the League of Nations. The Government of the Netherlands would be the authorised mandatory of the League of Nations, and of any States non-Members of the League which might wish to co-operate in the work.

To remove any doubt concerning this point and to avoid any misunderstanding, the Government of the Netherlands and the Council of the League of Nations, by common agreement, would determine the methods of their collaboration and would thus emphasise the close bonds uniting the Conference and the League.

Some persons might think of the material advantages there might be in holding the Conference at The Hague. He himself attached no value to this consideration. He thought, on the contrary, that it would be more advisable and more dignified if the League of Nations did not allow the mandatory State to bear the expenses of the Conference.

3. *Procedure.*

It was essential for the conference to be prepared with great care. It was not only the preliminary examination of questions and treaties which must very carefully be considered, but also the method to be adopted and its operation.

The two conferences which had met at The Hague in 1899 and 1907 afforded, in this connection, valuable suggestions. In 1907, the nations represented had expressed the unanimous wish that the next conference should be most carefully prepared. The speaker hoped that the organisers of the first Codification Conference would fully realise the importance of such preparation.

Without wishing to examine the difficulties which might arise, M. Politis drew attention to certain particularly delicate points.

The first point was the unanimity rule. At the last Hague Conference the question had been raised, not whether the majority could bind the minority — that was inconceivable — but whether countries that did not wish to accept a convention agreed upon almost unanimously by the Conference should prevent the other countries binding themselves among themselves at that conference.

It was essential that before the first Codification Conference was held this important point should be settled, and that it should be understood that, though no country could be directly or indirectly bound against its will, the other countries could bind themselves by a convention concluded at that same conference.

Another important question was that of the extent of the obligations which countries consenting to a convention could assume. On this matter he found a general tendency at diplomatic conferences, when difficulties arose, to restrict the scope of the convention to an increasing degree, in order to obtain the necessary accessions. In such an important matter as that with which the Committee was dealing, the disadvantages of this method would far outweigh its advantages. He had another method to propose. They might conceive the possibility of a comprehensive general convention embracing all the questions to be submitted to the Conference, this convention embodying only certain principles, and being consequently acceptable to all parties. Then within the framework of this general convention there would be more limited and detailed conventions.

These two rules were necessary for the satisfactory progress of the work that had been undertaken, and for the success of the first Codification Conference.

With regard to the subject-matter of these future conventions, he agreed with M. Rolin that it would not suffice to write down the customary rules as they stood. Further stipulations must be added. In other words, they would not be content to record the existing law, but they would amplify it.

He had another observation to make which he thought was of some importance. The codification of law thus effected must not be allowed to hamper the subsequent progress of law, which was an essential living organism, and could not be imprisoned within a rigid frame.

Accordingly, the conventions should be drawn up in a liberal spirit, so that the judges whose duty it would be to apply the instruments adopted might be able to adjust them to realities and practical needs.

Such were the guiding rules that might be outlined in the resolution which would be passed by the Assembly, and on which the Conference would base its work. He attached great importance to these rules, because he hoped that the first Codification Conference would lead to definite and practical results, and also because, when the progressive codification of international law was to begin in earnest, after the admirable work of the experts, a precedent would be created and a path entered upon that would be followed for generations.

It was essential, he concluded, that the first attempt at international codification should not be accompanied by difficulties and awkwardnesses that would seriously hamper future conferences. He therefore asked the Committee to give serious attention to the ideas he had put forward, and to consider how far, and in what form, they could be recommended to the Assembly.

Dr. LANGE (Norway) felt it his duty to read the strict instructions the Norwegian delegation had received on the question of international codification. They were as follows:

“The delegation is to emphasise the great importance attached by the Norwegian Government to the question of codification, and is to urge on behalf of the Government that the preparatory work in this field must be continued under the guidance of the League of Nations.”

Interpreting these instructions, he said that the admirable work already done by the Committee of Experts should be continued under the auspices of the League. It was obvious that the existing preparatory organisation created in 1924 had become inadequate, now that the Conference was drawing near.

The work should be continued “under the guidance of the League of Nations”. That meant that an organisation must be evolved, having such a form and such a basis that it could work under the constant direction of the authorities of the League — the Assembly, the Council, and the Secretariat.

He would, of course, be delighted that the Netherlands Government should co-operate in what might be called the material preparation for the Conference, but that did not mean that the actual preparation for the Conference should be entrusted to any Government, however great the confidence which was placed in it. Moreover, it would be so delicate a task that no Government would care to undertake the responsibility.

Besides, the League was already in possession of models for the preparation of the work. These were to be found in the Economic and Financial Organisations instituted by the Secretariat, which had grown into scientific departments in which research work had been quietly pursued for years, and when the time had come to undertake that preparatory work they had naturally obtained the successful results represented by the conclusions of the Economic Conference.

The Legal Section of the Secretariat should contribute largely to the task now before the League. It was conceived somewhat as a collective legal adviser on questions affecting the League. Seeing that preparations were to be made for a Conference on Codification, the Legal Section should be developed and any necessary co-operation called in. In addition to the Legal Section, a permanent Committee constituted on the lines of the Permanent Economic and Financial Committees should, he thought, be set up. In view of the admirable spirit which prevailed in the Secretariat, they could be sure that such a procedure would lead to excellent results.

Passing over problems which might be dealt with by the first conference, he wished to emphasise the words used by M. Politis who, on several occasions, had said that what was in view was a first conference for the codification of international law. That codification would not be achieved in a few years; it was childish to imagine that a complete code of international law could be drawn up in two or three years. It would take generations and would involve interminable labour, as was the case with national legislation.

If, therefore, that first conference was to be followed by others, it was indispensable that permanent organisations should be created to pursue the endless task on methodical and traditional lines.

Even if the Governments' replies revealed some degree of hesitation and doubt in regard to the questions to be placed on the agenda of the first conference, even if negative replies were received, it was nevertheless indispensable that the work of codification should be undertaken. If the League of Nations were never to undertake anything except with the assurance of success, it would undertake nothing at all.

Amongst the questions included in the list were some for which a solution should be sought by every possible means: the question of nationality, for instance, which ruined hundreds of thousands of people in Central Europe. With reference to that matter he would mention one case that was particularly suggestive.

During the occupation of the Rhineland, a young German teacher married an officer of the occupying forces. A few days after the wedding the officer disappeared. The young woman had lost her German nationality. She was unable to regain her post as a teacher. She had not the means to trace her husband. She was left destitute.

This showed the urgency of remedying a state of affairs which led to persons being placed in such painful situations. If there was one task incumbent upon the League of Nations it was that of restoring nationality to the unfortunate victims who had lost it.

He also wished to associate himself with the wise observations of M. Politis regarding certain points of procedure for the Conference — in particular the question of unanimity. At the Second Hague Conference he (Dr. Lange) had been called upon, with regard to compulsory arbitration, to raise the question whether at a conference the rule of unanimity should be interpreted to mean that one or more Powers might place an absolute veto on any action on the part of the rest.

The same question arose in connection with contraband, and it was then discussed whether a majority of States could be found willing to sign a convention on that subject. The Assembly's attention should be drawn to this point in the report, and some means might be found by which a majority of States could conclude a convention among themselves. To demand absolute unanimity would condemn the work to sterility.

The public interest in the United States in this question of international codification was well known. One reader of M. Zaleski's report had interpreted it as meaning that the authority in control of the preparatory work — the Council or the Assembly — would have the right to restrict the programme of the Conference. This undoubtedly was a false interpretation. The limitation contemplated in M. Zaleski's report was a restriction of the number of questions on the agenda; that was not imperative.

It would be well to mention, either in the resolution or in the accompanying report, that, as these conferences were, so to speak, autonomous both as regards their procedure and even, to some extent, as regards their programme, States would be free to propose that other questions should be placed upon the agenda. These questions, however, would have to be carefully prepared by the new organisation which he had outlined, and it was in order to secure this careful preparation under the direction of the League that he was instructed to press the point.

The place of meeting was a comparatively minor matter; the important thing was that the Conference should be prepared and convened by the League. They would, of course, be very grateful to accept hospitality from any country which cared to offer it.

M. PELLA (Roumania) hoped that what he was about to say would not cause him to be regarded as a Utopian, and he desired to state that he shared the views of M. Fromageot as to the methods of bringing about the codification of international law. From the scientific point of view, codification on the lines proposed by the delegate of Paraguay would make the whole work more coherent; but, from the point of view of early results, the progressive system had the advantage of allowing a start to be made immediately on certain problems which were considered to be ripe.

It would be well, he thought, to define the method of codification. Was it sufficient to transform into positive law the customary rules of international law? That would delay the work of codification by five or six centuries. Progressive codification must not stop at a mere registration of customary rules; it must go on improving those rules to suit the needs of international life. Draft conventions must be framed even if they had to undergo a large amount of revision. Thought must be given to the establishment of a general plan of codification, such as had indeed been proposed by important international associations, notably, the Inter-parliamentary Union. The object of this plan would be to determine the essential conditions of peace in accordance with present necessities, and to scrap certain principles which were no longer in harmony with the present-day conception of international law, the whole basis of which had been tending to change since the war. In these circumstances, it was necessary to take a wide view.

Contemporary international law was developing new aspects of which account must be taken.

The classic division between the law of war and the law of peace, which still existed in international public law, must surely be eliminated. In the unofficial schemes drafted in the New World that law of war was disappearing, and only one law remained: the law of peace. Modern ideas were incompatible with the existence of a law of international courtesy to be punctiliously observed in the perpetration of wholesale massacres. Obviously, some of the rules derived from the law of war would continue to govern the application of international sanctions.

On another important question he desired to express a purely personal opinion. The questions of extradition and the penal jurisdiction of States over offences committed outside their territory had not been regarded as ripe for codification, owing to the great diversity of penal laws. It had accordingly been proposed to work in the direction of their unification, and for this purpose to create an institute like the Institute for the Unification of Private Law. Should not work be undertaken to unify some of the principles of international penal law with a view to future codification? And since the work of codification had to be carefully prepared, would it not also be well to consider whether the Committee of Experts for the Codification of International Law might not be established on a permanent basis?

It was impossible to exaggerate the importance of the progressive codification of international law. Even if delay did not directly threaten peace, it nevertheless threatened the very existence of universal international law, and, while the work done in America was welcomed, it was none the less true that the further codification advanced in America, the more difficult it would be to achieve universal codification. There was therefore no time to lose.

As the codification of international law become more complete, the obstacles in the way of international justice would disappear. Once effected, this codification would greatly brighten the prospects of international solidarity and co-operation.

M. LÖFGREN (Sweden) hoped that the work of codification would continue not only under the auspices but under the direction of the League of Nations.

He expressed his particular gratitude to the Netherlands Government for the offer of its services, but, with regard to M. Politis' suggestion that the proposed conference should meet at The Hague, he considered that the tranquil atmosphere of Geneva would be quite as suitable for the study of these questions.

In any case, the technical questions with which the Conference would have to deal should be previously studied not only by the Committee, but also by the Sub-Committee it had appointed.

Turning to the question whether the work of preparing for the Conference should be carried out with the collaboration of a particular Government, he reserved his final opinion until the question had been examined by the Sub-Committee.

The discussion was adjourned to the next meeting.

The meeting rose at 12.45 p.m.

FOURTH MEETING.

Held on Friday, September 16th, 1927, at 3.30 p.m.

Chairman: M. ADATCI (Japan).

II. Work of the Committee of Experts for the Progressive Codification of International Law (continuation of the discussion).

M. MOTTA (Switzerland) observed that it seemed to be generally agreed that the following subjects should be codified: in the first place, nationality, territorial waters and responsibility of States; in the second place, procedure of international conferences and exploitation of the products of the sea. M. Motta considered that the codification of international law should not escape the League of Nations; this task came essentially within its sphere and was implicitly provided for in the Covenant. He thought, moreover, that there were reasons of policy why the League should not surrender this work to any individual Government. The opponents of the League would not fail to emphasise its timidity and speak of failure. M. Motta saw no objection, however, to the Conference on Codification being called elsewhere than at Geneva.

Sir Cecil HURST (British Empire) said that his delegation attached the greatest importance to the work on the codification of international law. The uncertainty of the law, which was a source of anxiety to international judges, professors and jurists, was still more troublesome to Governments. Anxious as he was not to hinder the work of codification, but desiring rather to render it more fruitful, Sir Cecil Hurst thought it necessary to indicate a danger. It was important that the completion of the work should not create a worse situation than existed at present. An ordinary international convention only bound those who signed it. If rules of common law were embodied in such a convention, outside States might perhaps deny the value of these rules on the pretext that they were not parties to the convention. If this were the case, the rule of law would have lost ground. To obviate this drawback, Sir Cecil Hurst proposed to begin by noting the international law which existed and to deal separately with other rules intended to develop and supplement this law.

It was inevitable that the present law, founded on practice, should lag behind more progressive and advanced conceptions of law. The triumph of the latter should not be despaired of, but the essential thing was first of all to indicate clearly what was the present law, which alone provided a solid basis for future developments.

M. URRUTIA (Colombia) thought that the work initiated by the Assembly in 1924 must be pursued and must remain under the direction of the League of Nations.

He regretted the proposal not to deal with the status of diplomatic and consular agents. He hoped that a certain latitude would be left to Governments to introduce new subjects into the programme of the forthcoming Conference.

This work of codification should take account of every current and every tendency and should follow closely the efforts made in America with the same end in view.

He did not think Sir Cecil Hurst's objection was decisive, for the rules of law contained in an important international convention tended to find acceptance to some extent in the eyes of the whole world.

Sir William MOORE (Australia) thought that the codification of international law was an essential task of the League, which it could not neglect or entrust to others. The world must not

be allowed to think that the League of Nations was only good for political work and that legal work must be done elsewhere.

There was no reason why a Government should not incidentally lend its assistance to the work of codification, but, as this was a progressive and lengthy task, it should remain under the control of the League.

M. DUZMANS (Latvia) said that he would like to make a few observations in order to show that the difficulties suggested by Sir Cecil Hurst were not sufficient to justify his anxiety regarding the effects of the codification of international law. Codification proper would merely note in the international code the law which already existed and which was followed by the civilised world. This would be the essential and by far the largest part of the new code, or rather of the new code as a whole, in which would be included legal clauses which the jurisprudence of the League of Nations had established in order to fill up gaps in the law.

The code or the special codes would cover a vast field, for the law to be codified was not merely to be found in custom. It was a mistake to think, as Sir Cecil Hurst and certain other speakers had remarked, that customary law alone would furnish the material for future codes. If this were so the field of codification would not be very great. To customary law, however, there must be added a number of other sources of positive law, e.g., judge-made law, precedent, rules drawn from conventional law, legal theses from more or less classical scientific works, *communis opinio doctorum*, etc. There would also be certain principles of international intuitive law — pure justice — without any outward authorisation, but consisting in principles of a legal nature, which had been and always would be followed, without ever being rendered positive.

This, then, was the great field in which were to be found the origins of the new international codes. As every one knew, even after codification all such law would remain as it had been before it was compiled in the articles of the code. Therefore, there would be no difference between the legal attitude of States signatories to the Codification Convention and the non-signatory States remaining outside the terms of the code.

Only a minute part of the new codes could produce differences of opinion in legal matters between the two groups of countries, namely, the law newly established by the legal doctrines of the League in order to fill up gaps in the system in which that newly established law would be included immediately after its creation. Sir Cecil Hurst's misgivings could only apply to the codification of newly established law. But by analogy with the fractions used in mathematics and opposed to units, this minute part might be considered a negligible fraction, particularly since, as a source of difference of opinion, it would gradually tend to disappear.

In warning the Committee of the danger that codification might result in a situation worse than the present one, Sir Cecil Hurst had mentioned the crystallisation of international law resulting from codification, which would hinder its free evolution. M. Duzmans thought, too, that this danger was not a real one. In the first place, in the life of national (internal) law codification had never prevented its development, though codification had been a ruling principle during the whole history of law and of the State. It was true that codification was not dear to Anglo-Saxon minds and that the constitutional law of England had never been incorporated in the articles of a regular constitution, but though there existed in the country of his British colleague a firm and powerful legal mentality which rendered codification unnecessary, the position was unfortunately not the same in international life. It was the nature of all law to be conservative and crystallised through the permanent nature of its rules. The advantage of this conservatism in future codes of international law would be to introduce stabilisation and clarity in international legal opinions and would result in the stabilisation of peace, which in its social aspect was based on national codes. International law should therefore cease to take a second place when compared with the civil law in individual States.

M. Duzmans concluded with the hope that a happy fusion would be reached between the two points of view prevailing in the Committee, which were held by members who were all warm supporters of the right. The Anglo-Saxon prudence, with its slow but sure evolution, might well be joined to the creative and vivifying boldness, so valuable for the prosperity of the League of Nations, which was shown yesterday in the words of the Norwegian delegate: "If the League of Nations were never to undertake anything except with the assurance of success it would undertake nothing at all".

M. ROLIN (Belgium), referring to Sir Cecil Hurst's remarks, said that codification must not be confined to noting existing law; otherwise those very uncertainties which codification aimed at dispelling would subsist. He quoted as an example the question of territorial waters. Every country recognised that this subject belonged to international law, and yet the law at present in existence was both variable and inadequate.

Speaking of the forthcoming conference, M. Rolin noted that a number of members were in agreement, on principle, with what M. Politis had said, namely, that it would be the first Codification Conference and not the third Hague Conference.

It would be necessary to follow this idea both in the convening and the preparation for the Conference. It had been suggested that the Conference should be convened by the Netherlands Government; but this procedure would be contrary to that hitherto followed by the League of Nations. Governments offered hospitality to conferences, but the conferences were convened by the League.

It could not be claimed that, by departing from the procedure hitherto followed, the United States would be encouraged to take part. That country had shown that it had no reluctance in coming to Geneva to take part in the conferences of the League.

The League of Nations, added M. Rolin, must do more than address a request to the Government of the Netherlands, as the Tsar had done in 1889 and President Roosevelt in 1907. If it abdicated from its responsibility in favour of a State, a section of opinion which was hostile to it would interpret this withdrawal as a failure. It would not be sufficient to say that the Codification Conference was held at the League's invitation and under its patronage. Likewise, they must not be content with preparatory work, the details of which would be difficult to settle and would probably lead to complications. M. Rolin therefore saw no objection to the Conference meeting at the Hague, provided that it was convened by the League of Nations itself. The preparations for the Conference might be made by a Committee of the Council of five members, comprising the Director of the Legal Section, the Registrar of the Permanent Court of International Justice and three other members, including a Netherlands jurist appointed by the Council.

M. LIMBURG (Netherlands) said that the Codification Conference should be confined to registering the rules of international law which were already generally accepted. It must fill in the gaps in the present law and settle the differences which, as regards certain matters, existed between the various systems.

Replying to the doubts expressed by Sir Cecil Hurst, M. Limburg stated that the codification of international law would not in any way alter the position of States which did not participate in this codification. Law which, at the present time, was positive law would remain such for States which adhered or did not adhere to future conventions, whilst new law established by the Conference would not be legally binding upon States which did not adhere.

In conclusion, M. Limburg thought it would be advisable to take as an example, from the point of view of preparation, the London Naval Conference of 1908. He asked for this last suggestion to be submitted to the Council.

M. FROMAGEOT (France) explained the method of preparation adopted at the London Conference, the object of which had been to make more certain the law which would have to be applied by the Prize Court, the creation of which was then being considered. In this connection, the British Government had sent a list of questions to the eight principal naval Powers, asking them what method they adopted in each case. A committee met to examine the replies. It noted the points on which the various methods agreed and those upon which they differed. The Conference registered the measure of agreement already attained and tried to settle the disagreements which had been noted. The result was the Declaration of London.

The CHAIRMAN declared the general discussion closed. He proposed the appointment of a Sub-Committee to examine all the points raised in the course of the discussion.

The proposal was adopted.

The Committee chose as members of the Sub-Committee:

M. ROLIN (Belgium),
Sir Cecil HURST (British Empire),
M. POLITIS (Greece),
M. LIMBURG (Netherlands),
M. ROSTWOROWSKI (Poland),
M. CABALLERO (Paraguay),
M. GUERRERO (Salvador),
M. LÖFGREN (Sweden).

The CHAIRMAN suggested that the work of this Sub-Committee would be to consider the questions indicated by M. Guerrero and all the points which had been raised in the course of the general discussion.

Agreed.

Dr. LANGE (Norway) said that the work of preparing the Conference might perhaps necessitate an extension of the Secretariat. This would involve expenditure, and it was necessary immediately to inform the Fourth Committee when proposals of this nature were being made.

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

M. CABALLERO (Paraguay) said that the Commission of American jurists, composed of official delegates of the American States, had drawn up, at its last meeting at Rio de Janeiro, a plan of general codification of international law, involving a series of draft conventions which were to come into force in America if they were adopted by the sixth Pan-American Conference which was to meet at Havana in January 1928.

M. Caballero said that this fact altered the basis of the codification problem. The American States, which had preferred the system of total codification, were nearing their goal. Without trying to decide whether they were right or wrong, it was necessary to take this fact into account. There was a danger of the American initiative threatening the unity of law. If the codification realised in America should precede universal codification there was a risk of two laws being established side by side. To obviate this, M. Caballero wished the Committee of Experts or

any other organ to be asked to present, as soon as possible, a general plan of codification. No doubt conditions peculiar to America justified the existence of special rules of restricted geographical application, but these rules must only be accessory in character. If the League of Nations remained indifferent to the American efforts to codify international law it would be false to its fundamental principle of universality.

It was, moreover, to be feared that the method of gradual and fragmentary codification did not help forward the matter in the very least, and such a method had grave disadvantages. The problems of international law were interdependent, and it was very difficult to settle them separately. M. Caballero said that public opinion was not satisfied by the League of Nations codification proposals. It wanted something more, it demanded complete codification. The Inter-Parliamentary Union, the most direct expression of the opinion and sentiments of the nations, had shown this quite recently in one of its resolutions adopted at Paris.

M. Caballero did not wish to minimise the importance and the value of the work which was already in hand, but he suggested a new task which was more extensive and important. He did not believe that this general codification could be accomplished in a short time, but he wished the task to be considered immediately in its entirety and to be begun without delay. The problems which preoccupied the States of Latin America were those of their judicial relations; it was therefore in dealing with technical questions and the codification of law that the League of Nations could render the greatest service to these countries. Finally, if international jurisdiction was to function with more authority, there must be a positive international law applicable to all nations.

The CHAIRMAN proposed that M. Caballero's draft resolution should be referred for examination to the Sub-Committee which had just been appointed.

M. MOTTA (Switzerland) asked that the Sub-Committee should submit a special report on this proposal.

These suggestions were adopted.

The meeting rose at 7 p.m.

EIGHTH MEETING.

Held at Geneva on Friday, September 23rd, 1927, at 3 p.m.

Chairman: M. ADATCI (Japan).

17. **Preparation of a General and Comprehensive Plan of Codification of International Law: Proposal by the Delegation of Paraguay: Report of Sub-Committee No. 2 (Rapporteur, M. Caballero).**

M. CABALLERO (Paraguay) read the report of Sub-Committee No. 2¹.

M. PELLA (Roumania) was of opinion that, if it were desired by means of a general plan of codification to safeguard the universality of international law, it was necessary that the various legal systems of the world should be represented on the special Preparatory Committee.

He added that it was this idea on which the constitution of the Committee of Experts was based. The Assembly's resolution appointing that Committee had provided that its members should represent the main forms of civilisation and the principal legal systems of the world.

M. SCIALOJA (Italy) stated that he was in agreement with the proposal of the delegation of Paraguay, although he fully realised the difficulties of the undertaking. The mass of codified law, both international public law and international private law, was enormous, and it might perhaps be best to begin with international public law.

He supported the Roumanian representative's proposal, but pointed out the complications that might arise, if the representatives of the various systems each desired his own to prevail, in which case no agreement would be reached.

He thought that the codification of international law which had been undertaken in America might be of great service to that continent. The danger lay, however, in the fact that it represented an obstacle to the unification of international law. It was always difficult to modify a system that had already been crystallised into a code, as both the susceptibilities of the author of the code and acquired customs were obstacles in the way of any alteration.

In conclusion, the speaker said that the immense task that lay before the League should be begun with a full realisation of the difficulties which it presented, but at the same time with the necessary courage to overcome them.

M. ZAHLE (Denmark) stated that he had received instructions from his Government to support the proposal of the delegation of Paraguay, and in doing so he associated himself with the observations made by M. Scialoja.

¹ The text of this report is not reproduced. The report as submitted to and adopted by the Assembly is to be found on page 50.

M. Caballero's report was adopted with a slight modification to the first sentence of paragraph 7, which should read as follows: "The task might be entrusted to a special Committee chosen by the Council; the members of this Committee should not merely possess individually the required qualifications, but should also represent the main forms of civilisation and the principal legal systems of the world."

On the proposal of the Chairman, M. CABALLERO was appointed Rapporteur to the Assembly.

18. **Action to be taken as a Result of the Work of the Committee of Experts for the Progressive Codification of International Law: Report of Sub-Committee No. 2 (Rapporteur M. Politis.**

The CHAIRMAN opened the discussion on M. Politis' report¹.

M. URRUTIA (Colombia) stated that he was not in agreement with certain conclusions of the report. In the first place, he would have liked a certain amount of initiative to have been left to the Governments in regard to the drawing up of the agenda for the Conference. At it was, the report made no provision whatever for this.

He wished next to make some observations regarding the way in which the Committee was to be constituted. It was proposed to entrust the President of the Council with the task of appointing the members of the Committee, on the advice of the Secretary-General. M. Urrutia was of opinion that the Council could not be asked to delegate its powers to its President, since this would be contrary to precedent. It was, moreover, desirable that all the members of the Council should be able to participate in the constitution of that Committee, which was to undertake extremely important work. He therefore proposed that the resolution should be amended as follows:

"To entrust the Council with the task of appointing", etc.

To save time, the members of the Council might, if necessary, be consulted by letter.

Like M. Scialoja, he foresaw a possible cause of complication in the work already carried out in America in regard to codification. He regretted that it was not intended to hold the proposed Conference at an earlier date than 1929.

M. POLITIS (Greece), in reply to M. Urrutia, stated that the date given in his report for the convening of the first Conference was only provisional, and anything that was provisional was necessarily, to some extent, uncertain.

As regards the appointment of the members of the Committee, the Sub-Committee, in entrusting this right to the President of the Council, had done so not because it felt any lack of confidence in the Council, but solely in order to expedite the appointment of the Committee. It must not be forgotten that the Committee's task would be a very heavy and a very ungrateful one. Not only would the highest qualifications be required of the members of that Committee, but they must also be prepared to devote a considerable time to its work. If the choice were to rest with the Council as a whole, it was to be feared that it would be impossible to make definite appointments at the December session of the Council, in which case it would be necessary to wait until March 1928. The consultation of members of the Council by letter might commend itself when a person was to be appointed to take a decision in a given matter, but there could be no question of such a procedure in a matter as important as the appointment of members of the Preparatory Committee. Nevertheless, in deference to the Council, and notwithstanding the loss of at least a month which this would involve, he accepted the amendment proposed by M. Urrutia.

M. MOTTA (Switzerland) fully endorsed the views of M. Urrutia. He would even go further by proposing to suppress in the same paragraph the words: "on the advice of the Secretary-General". It was not within the competence of the Secretariat to advise upon such matters.

M. URRUTIA (Colombia) agreed with M. Motta upon this latter point.

M. POLITIS (Greece) admitted that, since the appointment of the Committee was to be made by the Council, the advice of the Secretary-General was unnecessary.

He remarked that of the Council could not make the appointments in December, there was nothing to prevent it from delegating that duty to the President.

The CHAIRMAN proposed an amendment, which was accepted by the Rapporteur. The beginning of paragraph 5 of the conclusions of the report was to be worded as follows: "To entrust the Council with the task of appointing at the earliest possible date".

The proposal was adopted.

Sir Cecil HURST (British Empire) observed that the difficulties to which he had referred at previous meetings of the Committee had been given full consideration by the Sub-Committee and the best possible solution was to be found in the report, to which he gave his adhesion.

Dr. LANGE (Norway) paid a tribute to the wise and prudent spirit in which the report had been drawn up. He would like, however, to say one thing: The States, whether Members of the League

¹ The text of this report is not reproduced. The report as submitted to and adopted by the Assembly is to be found on page 45.

or not, who were to be invited to take part in the Conference, should receive an invitation couched in such terms as would induce them to give a favourable reply. He did not think it possible to charge the first Codification Conference with the investigation of other questions than those contemplated in the report, but it was important to put things in the right way, especially as regards countries which were still prejudiced against the League. It had occurred to him that it might be possible for the Council to address a preliminary communication to all the States which were subsequently to receive an invitation, in which would be included a paragraph reading somewhat as follows: "We intend to convene a first Codification Conference. In view of the preparatory work already done, we anticipate that the programme of the Conference will include such-and-such a matter. We shall be glad if you will let us know whether, if possible, you would like other subjects to be considered by the Conference".

He would accordingly ask the Rapporteur whether he would not agree to delete the second paragraph on page 4 of the report.

The CHAIRMAN read a letter which he had just received from the Chairman of the Fourth Committee, informing the First Committee that a supplementary credit of 80,000 frs. for the setting up of a Committee to prepare for the Conference for the codification of three questions of international law had been voted and that the credit of 75,000 frs., allocated under Article 29 of the budget for 1928, to the Committee of Experts for the Progressive Codification of International Law, had been cancelled.

M. POLITIS (Greece) expressed the hope that this was only a temporary measure and that the credit of 75,000 frs. would be re-established next year, to enable the Committee of Experts to hold its annual session in 1929. As the result of this communication, an amendment should be made in the report and draft resolution.

In the second paragraph of the chapter in the report entitled "Future of Codification", instead of: "The Committee should hold the session which it contemplated for 1928", should be inserted the words: "The Committee should hold the session which it contemplated for the purpose of completing the work it has already taken in hand, so soon as funds are available".

In addition, under No. 7 of the draft resolution the words: "To ask the Committee of Experts to hold a session in 1928 for the purpose of finishing the work which it has begun", should read: "To ask the Committee of Experts, at its next session, to complete the work it has already begun".

Sir Cecil HURST (British Empire) pointed out that the work of the Preparatory Committee might not perhaps entirely exhaust the credit allotted by the Fourth Committee. Would it not be advisable to request the Fourth Committee to word this item in a sufficiently elastic way to enable the sums which remained available after the Preparatory Committee had completed its work to be assigned to the Committee of Experts?

M. POLITIS (Greece) (Rapporteur) doubted whether a sufficient balance would remain. According to the statement of the Secretariat, the travelling and living expenses for a Committee of five persons for two sessions of three weeks each would amount to about 80,000 frs. Since the available balance could hardly exceed from five to ten thousand francs it would be insufficient to cover the expenses of an ordinary session of the Committee of Experts. They must not cherish any illusions; there would be no balance.

Sir Cecil HURST (British Empire) said that there might be only one session of the new Committee instead of two. In that case the sum thus made available might be allocated to the Committee of Experts.

The CHAIRMAN proposed to communicate this suggestion to the Fourth Committee.

*This proposal was adopted*¹.

The CHAIRMAN further thought that some of the members of the First Committee might with advantage communicate the view of their Committee to a Sub-Committee of the Fourth Committee.

M. POLITIS (Greece) (Rapporteur) thought that the question would not raise any difficulty and therefore did not propose any increase in the appropriation.

M. GUERRERO (Salvador), returning to Dr. Lange's suggestions, said that the Sub-Committee had thought it might be prejudicial to the success of the future Conference to submit to it subjects which had not been sufficiently studied and prepared. It had appeared advisable that every new proposal of the Governments should be submitted first to the Committee of Experts for study and preparation.

Dr. LANGE (Norway) said that he approved that portion of the report which said that no new questions might be raised in the course of the Conference. It would be a mistake, however, to create in certain circles the impression that there was a strictly fixed programme in which nothing could be changed by any State.

It might therefore be an advantage to delete the beginning of the last paragraph of Chapter I of the report.

Dr. Lange said that the programme of the Conference must doubtless be restricted, but restricting need not mean fixing within prescribed limits especially when the right of fixing these limits belonged to an authority not recognised by all States, and particularly by a State whose collaboration was essential. He considered that the question was a psychological one.

M. POLITIS (Greece) (Rapporteur) said that he did not believe in the psychological effect of which Dr. Lange had spoken. Dr. Lange himself recognised that when the resolution had been passed by the Assembly it would be impossible for a Government to propose the insertion of a new

¹ As a result of discussion in the Assembly and in the Fourth Committee, arrangements were made to assure the possibility of a session of the Committee of Experts in 1928 without increasing the credit voted for the purpose of codification.

item on the agenda of the Conference. If that had been said in the report it was to avoid any misunderstanding and in order that no proposal of this kind might be made.

Dr. LANGE (Norway) said it was conceivable that a question should come under consideration in 1927, and be discussed in 1929, the date of meeting of the Conference. The Committee should not dismiss offhand the possibility of suggesting at the present time the discussion of a new question in 1929.

M. POLITIS (Greece) (Rapporteur), after hearing Dr. Lange's further remarks, pressed still more energetically for the retention of this passage in the report. The question was whether a State could propose the addition of a new item to the programme of the Conference while the Preparatory Committee was already occupied in drawing up the difficult programme for that conference. Every new question would have to be referred to the Committee of Experts. No shorter procedure could be followed than that which had been adopted for the questions inscribed on the programme of the Conference.

M. GUERRERO (Salvador) said that he hesitated no longer. After these explanations he considered the retention of the passage in question to be indispensable. The procedure which was being followed was slow, but it would ensure the success of the Conference. This procedure must be maintained and the addition of any new unprepared questions to those which had already been prepared must not be admitted.

Dr. LANGE (Norway) said that it was necessary to take into account public opinion in the various countries and to avoid anything that might prevent a State from taking part in the Conference. At least the terms of the passage in question should be modified.

M. POLITIS (Greece) (Rapporteur), did not see what modification could be made. There were two possibilities — either the current of opinion mentioned by Dr. Lange would be followed by the Government concerned, which would propose a new question that would have to follow the course indicated by M. Guerrero, or the current of opinion would not be followed by the Government and there would be no reason to take it into account.

Dr. LANGE (Norway) proposed to add after the first sentence in the paragraph under discussion:

"It is evident that this right still remains intact, but what will be said later as to the necessity for preparing the work of the Conference carefully and methodically will demonstrate the difficulties which would arise if such a procedure were followed."

The CHAIRMAN put Dr. Lange's proposal to the vote.

This proposal was rejected¹.

The CHAIRMAN regretted that the Committee had been unable to comprise on a text which would satisfy Dr. Lange.

Sir William MOORE (Australia) pointed out some contradictions in the report. These related to paragraph (c) of Chapter III, which says:

"As these agreements are meant to define and fix the law, it is not to be supposed that they could be concluded for limited periods or with the option of denunciation. They must be perpetual",

and the following paragraph, which reads as follows:

"Any convention drawn up by the Conference would be concluded for a period of ten years."

The Australian delegate further criticised the expression "renewable by tacit agreement", which appeared in the same paragraph. The word "renewable" was not suitable, since it was intended to express the idea that the Convention continued whatever the agreement between the parties. He proposed the following wording:

"Any convention drawn up by the Conference would be concluded for a period of ten years and might be revised in the ten years following, if requested by a certain number of States. A similar rule would be followed in the revision and continuation of the Convention".

M. POLITIS (Greece) (Rapporteur) agreed with the Australian delegate's remarks. It was certainly preferable to say that the Convention was not renewable, and that revision might be requested after a first period of ten years. Nevertheless, the Australian delegate's drafting did not seem to him very good. He suggested another text in these terms:

"Any Convention drawn up by the Conference would be subject to revision after the expiration of an initial period of ten years if a request to that effect were received from a certain number of signatory States".

The rest to remain unchanged.

The preceding paragraph should also be slightly modified. Instead of saying "they must be perpetual", the wording should be "they must be permanent".

¹ The report as adopted by the Assembly and reproduced on page 45 contains certain modifications of drafting in this paragraph which were agreed upon between the Rapporteur and Dr. Lange with the approval of the Chairman of the First Committee.

The CHAIRMAN put this new draft to the vote;

Adopted.

M. FROMAGEOT (France) said that the English text of the terms used for paragraph (3) of the Conclusions were somewhat vague. *Action* and not *study* was required. The Economic Committee, in collaboration with the Copenhagen International Council, should state in its report to the Council whether, and if so how, it would be possible to establish international protection for marine fauna, for what species, and in what regions. The Council would then take a decision.

He therefore proposed to draft this paragraph as follows: .

" 3. To instruct the Economic Committee of the League to study, in collaboration with the International Council at Copenhagen and any other organisations specially interested in this matter, the question whether and in what terms, for what species, and in what areas, international protection of marine fauna could be established. This Committee will report to the Council the results of its enquiry indicating whether a Conference of Experts should be convened for such purpose at an early date. "

M. POLITIS (Greece) (Rapporteur) accepted this draft, which had the result of modifying the corresponding paragraph in the report, which should read: " indicating how far it might be possible to convene a conference ", instead of : " indicating how far it was possible to convene a conference".

The CHAIRMAN put these two modifications to the vote.

Adopted.

On the motion of the Chairman, M. POLITIS *was appointed Rapporteur* to the Assembly.

The CHAIRMAN observed that the Committee had concluded its agenda.

M. FROMAGEOT (France) was sure he spoke for all the members of the Committee in thanking the Chairman for the care with which he had conducted the debates, and for his perfect courtesy and impartiality which had enabled the Committee to carry out its work.

The CHAIRMAN thanked the members of the Committee for the indulgence they had shown him. He would retain the happiest memory of their collaboration, which had been crowned with such complete success.

The meeting rose at 5.20 p.m.

IV. DISCUSSION OF THE REPORTS OF THE FIRST COMMITTEE AT THE PLENARY MEETINGS OF THE ASSEMBLY.

EXTRACT FROM TWENTY-SECOND PLENARY MEETING.

Held on Tuesday, September 27th, 1927, at 10 a.m.

President: M. GUANI (Uruguay).

97. — Codification of International Law : Report of the First Committee : Resolutions.

THE PRESIDENT:

Translation: The next item on the agenda is the examination of the report of the First Committee on the Progressive Codification of International Law (See page 45).

(On the invitation of the President, M. Adatci, Chairman of the First Committee, and M. Politis, Rapporteur, took their places on the platform).

THE PRESIDENT:

Translation: M. Politis, Rapporteur, will address the Assembly.

M. POLITIS (Greece), Rapporteur:

Translation: Mr. President, Ladies and Gentlemen — The Assembly has to decide on the action to be taken in regard to the work of the Committee of Experts for the Progressive Codification of International Law.

The First Committee has examined most carefully the Committee's reports and the suggestions made by the Council. An account of the work is to be found in the report which I had the honour to submit to the Assembly. It resulted in the conclusions which are summed up in the draft resolution now submitted to you for approval, so that in this statement I need simply confine myself to a study of the general scheme of arrangements.

First of all, I should like to bring the efforts made in this matter by the League into proper perspective by reminding you of the circumstances which existed and the intentions which actuated the League when it decided three years ago to undertake the progressive codification of international law.

The necessity of making international law somewhat more fixed and of giving it greater precision and uniformity came to be felt more and more acutely as international relations developed and extended and became further complicated. In answer to this need, the idea was conceived many years ago of codifying international law.

It is of interest to note that the idea of codifying international law originated in England, the very country that has always shown herself averse to the codification of her own laws. That is peculiarly characteristic, for we find that the need for codifying international law is felt by peoples which until now have never considered it desirable or necessary to codify their own internal laws.

The first manifestations of this movement appeared in England towards the end of the eighteenth century. Since then, the idea has gradually spread to all other countries. It has exercised a decisive influence upon the Governments, and during the nineteenth century a large number of diplomatic conferences were held and were attended by a continually increasing number of States. These conferences resulted in a series of international Conventions relating to the most varied matters and, as a result, one section of international law, what is called administrative law and private international law, has now been codified.

This fragmentary and intermittent movement towards codification attained its culminating point at the end of last century and about the beginning of the present century with the two Hague Conferences of 1899 and 1907. You all know, gentlemen, the tremendous influence exercised by their work. The most ardent hopes were based upon those conferences, especially as it seemed certain, after the Conference of 1907, that other conferences would be held at regular intervals.

A third conference had been fixed for 1914 at The Hague, and the idea was to convene similar meetings there every seven years.

Unfortunately, the catastrophe of 1914 prevented the realisation of these fair hopes, but immediately after the cessation of hostilities — in fact, before peace had been re-established — the international movement towards codification made itself felt once again. When the Covenant was being framed, certain eminent persons conceived the idea of entrusting to the League of Nations, which was then under discussion, the task of directing the progressive development of international law, and the following year, that is, in 1920, when a Committee of Experts was convened at The Hague to draw up the Statute of the Permanent Court of International Justice, the eminent authorities who were members of this Committee expressed the view that it was highly desirable to define and stabilise the law which the new institution would be called upon to apply. With this in view they recommended that the work of The Hague, which had come to a standstill in 1907, should be resumed as soon as might be practicable.

The Assembly of the League of Nations during its first session did not see its way to complying with this recommendation of The Hague jurists. It thought that the war, which had caused such national upheavals and left so much unrest behind it, was still of too recent date to permit of pursuing work which, by its very nature, requires an atmosphere of calm and studied reflection.

But although the systematic codification of international law seemed premature in 1920, partial codification, restricted to certain specific questions, was found by the League to be a matter of immediate necessity, and from 1921 onwards, with the Barcelona Conference, this tendency manifested itself in a practical form. Since then, as the result of numerous conferences and of the work carried on here, international law has been enriched by the addition of new rules, and the number of questions dealt with is increasing every year, including, for example, communications and transit, traffic in women and children, Customs formalities, obscene publications, commercial arbitration and other questions — the list is already a lengthy one. I might add in passing that this most valuable and productive work of the League has not in the past received and is not yet receiving the attention that it deserves from the general public. That is because it is carried on, as it were, outside the League's bigger political activities. But more than once, while these modest though important efforts were proceeding, the League, in the course of its political activities in recent years, found itself confronted by most embarrassing legal problems.

It was then that it began to realise what a serious menace to peace the imperfection and lack of precision in international law might be in certain cases. Three years ago, therefore, the Assembly eagerly accepted the proposal so opportunely submitted by the Swedish delegation and decided that definite measures should be taken for the progressive codification of international law.

The Assembly laid down the methods to be adopted in the matter in its resolution of September 22nd, 1924. A Committee of seventeen members, belonging to different countries — all eminent jurists — was appointed to determine what subjects of international law are now sufficiently ripe for regulation by international agreement and to indicate what procedure might be followed to obtain this end.

The Committee of Experts held three annual sessions between 1925 and 1927, under the chairmanship of that eminent Swedish jurist and statesman, M. Hammarskjöld.

It completed the first stage of its discussions in the spring of this year and submitted a report to the Council. It has performed the mission entrusted to it by the 1924 Assembly with a zeal, conscientiousness and ability and, I must add, a sense of reality deserving of the very highest praise. The Council has already paid a well-merited tribute, and the Assembly, I am sure, will wish to add an expression of its satisfaction and deep sense of gratitude.

After examining the subjects of international law which would admit of codification, the Committee of Experts, in its report to the Council, mentioned five as being sufficiently ripe, namely, nationality territorial waters, the responsibility of States, diplomatic privileges and immunities, and piracy.

The Council and, after it, the First Committee took the view that only the first three questions were at all likely at present to form the subject of successful international discussion. As regards the other two, the conclusion of a universal agreement seemed somewhat difficult, and in any case neither was of very pressing importance.

Two other questions were mentioned by the Committee of Experts as deserving of special study, namely, the procedure of international conferences and the procedure for the conclusion and drafting of treaties and, secondly, the question of the exploitation of the products of the sea.

Your Committee proposes that both these questions should be made the subject of special investigation, the first to be examined by the Secretariat and the second by the Economic Committee in co-operation with the International Council at Copenhagen and other associations specially interested in the matter, with a view to convening in the near future a technical conference which would draw up a scheme for the international protection of marine fauna.

The three questions which, in the opinion of the Council and of the First Committee, might fittingly become the subject of international negotiations at once should be embodied in the programme of a single conference, which might, we think, be known as the first Codification Conference.

The Conference might be divided into several sections and, if it cannot complete its agenda all at once, might hold subsequent sessions.

When could it be convened? It is difficult to say as yet. It will depend upon the work of preparation, to which I shall refer again presently; but this preparatory work should be pushed on as quickly as possible in order that the first Codification Conference may be convened some time in 1929.

Where is it to be held? Your Committee is unanimous in proposing that the capital of the Netherlands should be selected as the place of meeting. The Hague merits this honour, offering, as it does, with its well-known atmosphere of serenity, the ideal setting for what must be the dispassionate work of the Codification Conference. The best and most representative attendance may undoubtedly be expected if the first Codification Conference meets at The Hague. It should meet at The Hague because the choice of this seat would be symbolical in the eyes of the world. It would show our desire to associate our efforts with those made by the nations in the past, starting far back to invest international law with a little more stability. This work is to be continued, and, by the good offices of the League, is now to become more regular and more methodical.

Finally, ladies and gentlemen, not the least reason, in my view, for the choice of The Hague is that this would be a compliment to the Netherlands Government, which has rendered the most valuable service to the cause of international understanding and international law by its repeated essays in the matter of codification.

But, while it is most desirable that the Conference should meet at The Hague, it is, on the other hand, absolutely essential that its convocation and preparation should be left entirely to the League of Nations.

I can state, in all truth, that any other course would be interpreted by a section of public opinion as a real blow to the prestige of the League, and for this reason your Committee is unanimous in proposing that the League alone should take the initiative in convening the Conference and that the League alone should supervise the preparation of its work.

The preparation should be most careful and methodical and this is a condition not only for the success of the first conference but for the success of the work as a whole. This first conference is to be the first of a long series, which I hope will meet for generations and will gradually complete the progressive codification of international law. A tradition will at once be established, which will exercise a decisive influence upon subsequent conferences. This tradition must be established from the outset on solid and unassailable foundations, so as to prevent difficulties later.

The preparatory work will be especially heavy and your Committee is of opinion that it should be entrusted to the Secretariat of the League, assisted by a special Committee, to be appointed by the Council of the League, and consisting of five persons possessed of a wide knowledge, both theoretical and practical, of all the questions coming within the scope of the Conference.

In view of the urgency of the matter, it is desirable that the Council should proceed at once to appoint this small Committee, and if, in the short time at its disposal before the end of its present session, it is unable to arrive at a definite decision it might delegate the right of appointment to its President, so that the nominations may be made before the next session in December.

As regards the work of this Committee, a famous precedent has been quoted, namely, the London Naval Conference of 1908-09, the preparation of which constitutes a model never yet surpassed in the annals of diplomacy. The method and care with which this Conference was prepared facilitated the proceedings enormously. The Committee urgently recommends this same method to the Committee of Experts and the Secretariat when preparing the first Codification Conference.

The Preparatory Committee will first of all devote its attention to the work of the Committee of Experts and to the resolutions passed by various learned associations that have specialised in international law. It will also have to pay very particular attention — let me emphasise this — to the immense and most noteworthy efforts at codification carried out during the last few years by the Pan-American Union.

After this preliminary survey, the Preparatory Committee will have to draw up detailed schedules showing the various points which in its opinion the Codification Conference should discuss. These schedules would then be sent through the Secretariat of the League of the Governments of the Members and non-Members of the League with an invitation to furnish information on each of the points indicated, with reference to the position of their positive law, their own practice at home and in international relations, and, finally, their wishes as regards the supplementing of international law and the manner of making good present deficiencies.

When the replies from the different Governments have come in, the Committee would be in a position, after comparing them, to establish the points on which there is agreement or any degree of divergency, and on these several points would draw up a report the conclusions of which might serve as a basis of discussion for the Conference.

When this work is finished, it would remain for the Council, following the suggestions of the ordinary session of the next Assembly, to decide the date of the Conference, to send out the invitations, enclosing, in accordance with the First Committee's recommendation, a draft set of regulations and indicating a number of general rules, in order to make clear to the States the spirit in which the work of the Conference should be conducted and the scope of the decisions it may be called upon to take.

Lastly, the First Committee proposes that you should ask the Committee of Experts at its next session — which I hope may be held in 1928 — to complete the work it has already begun.

These, ladies and gentlemen, are, in brief, the conclusions reached by your First Committee. With the approval of the Assembly the work already undertaken will at once enter upon a decisive phase. I cannot sufficiently emphasise its importance. Here, as in nearly all the activities of the League, we find impatient people who criticise our methods, declare they are too involved and too slow, and blame the Committee of Experts for having spent three years over their work and produced meagre results which are far too timidly conceived.

I personally refuse to admit these criticisms. To anyone who understands the difficulty of the task they must appear quite unjustified. In such a matter it is infinitely better to be over-cautious rather than over-hasty. The path of codification is beset with obstacles and pitfalls. We must give proof of the wisdom already shown by the Committee of Experts and confirmed by the Council and the First Committee, in order to win over those States that are not yet equally prepared to invest international law with the degree of stability and uniformity at which we are aiming.

Over-hasty general codification is calculated to injure rather than benefit international law. Nothing is more deceptive than signing texts which in the end may not be accepted and, what is still more serious, may not be respected. It is only when a law has actually become part of the conscience of the nations that it can be incorporated in a treaty with any certainty of being observed. That is why I for my part shall never regard prudence and circumspection in such matters as out of place.

Doubtless the questions selected as subjects for the first Codification Conference are modest in themselves; but a thorough technical study is really necessary, and they constitute excellent material for the experiment we wish to make; and if, as I firmly hope, the first Conference achieves practical results, that will be the best way of giving an active impetus to the League's subsequent work in the matter of codification. When the nations understand more clearly how important it is in the interests of peace to invest international law with the stability and precision at which we are aiming, they will manage to bring pressure to bear on their Governments so that the League will gradually extend the scope of its programme. The main thing is to start, to create an atmosphere, to establish traditions. We must clear the ground in readiness for our work.

Already what has been done and what is shortly to be done in pursuance of your resolutions represents an immense advance after the tentative efforts of the past. I need only remind you that, before the foundation of the League of Nations, international law and its codification were the sport of circumstances and improvised expedients. A Government had to take the initiative and summon the Conference, and this step was followed by long and complicated negotiations regarding the date, place and programme. The conditions under which these negotiations were carried on

were such that political influences always or nearly always obscured the real issue. As a result, the work of the conferences suffered very frequently from insufficient preparation.

This defect was particularly noticeable at the Second Hague Conference, so much so, in fact, that on the termination of the Conference opinion was unanimous that the Third Conference, which was to have been held in 1914, should be very carefully prepared. A radical change in the situation has occurred or will occur as a result of the League, the appointment of the Committee of Experts in 1924 and now with the creation of the Preparatory Committee. Henceforth the League Council can take the initiative in convening a conference, and this act, which will be invested with international authority, will in its essence reflect the collective decision of all the countries represented here.

Not only will this obviate the difficulties to which I have alluded, but these conferences, being organised by the League and forming part of a general scheme of international organisation, will stand a far better chance of success; their work will be more methodically and carefully prepared; the proceedings will be conducted with a better comprehension of technical details; the States will come to the debates better equipped and gradually, as conferences are convened on these lines, it should become easier to achieve results.

Finally, and this is not the least advantage, when a conference convened in this way has framed texts and resolutions, the League's organisation and authority will be of the utmost help in obtaining signatures and ratifications.

Henceforth, the work of codification will possess its own organs. If they perform their duties, as I firmly hope, with method and circumspection, they will lead the nations on, from question to question and from chapter to chapter, to a connected body of written relational law, with facilities for revising and supplementing it according to circumstances and to suit the fresh requirements of international life.

That will be an immense advance. The work we have in view is bound to be a lengthy undertaking, but we can rest assured that it will lead to definite results.

I cannot emphasise too strongly the importance of this work in the organisation of peace. Three years ago, during our work on arbitration, security and disarmament, we realised clearly that the dangers of war would never disappear completely until legal rules had been established for the solution of all disputes. The uncertainty and the vagueness of law at present undoubtedly constitute a serious hindrance to the extension of arbitration.

These defects make the States hesitate to put their faith in justice in any serious matter, in the case of disputes where the interests at stake are too important to justify their accepting in advance a decision which a judge might give on his own personal conception of equity.

Whatever confidence one may feel in a man's judgment in these circumstances, if the rules on which he is to base his award are not known beforehand, the risk is too great for it to be possible to appoint him to arbitrate on the so-called vital interests of the States.

And now, ladies and gentlemen, I would ask you to consider the conclusion at which the experts have arrived. There can be no certainty in very serious matters, there can be no certainty in regard to pacific settlement, because we cannot always count on a legal solution.

Peace will never be really assured until the defects in international law have been remedied by a wise regulation of the liberty, to-day absolute and indisputable, which is enjoyed by the States in what is called their domestic affairs.

It is only when international law has been sufficiently extended to permit of the legal solution of all disputes that peace will be assured and the peoples of the world will have a really adequate protection against the possibilities of war.

In a word — and this is my last word — the League of Nations will not really have fulfilled its task until, having created an atmosphere of confidence and peace, it has secured for the nations the reign of justice on earth.

THE PRESIDENT:

Translation: Jonkheer Loudon, delegate of the Netherlands, will address the Assembly.

Jonkheer LOUDON (Netherlands):

Translation: Mr. President, Ladies and Gentlemen. — As the representative of a country which counts it an honour to be especially connected with the growth and development of international law, I should like to say how much we appreciate the fresh impulse which the Assembly will, I hope, shortly give to the progressive codification of international law. That the Assembly is taking this action is due to the initiative of Sweden and in particular of the great Swedish lawyer and statesman, M. Hammarskjöld.

The Netherlands Government did not ask that the proposed conference should be held at The Hague; but, as M. Beelaerts von Blokland, the Minister for Foreign Affairs, told the Council, it would be most happy to offer hospitality to the Conference should it be decided to hold it there.

I wish more especially to offer my warmest thanks to M. Politis for the very courteous terms in which he spoke of my country and also for the high praise which he bestowed upon the Netherlands in his report. The League proves, indeed, to be the heir of the two Peace Conferences held at The Hague, and the choice of that city as the seat of the proposed conference, which the League will convene and prepare, accentuates, as M. Politis said, the continuity of the efforts (which,

thanks to the League, are to-day being placed on a systematic basis) to give greater precision and finality to international law. I can therefore assure the Conference of a most cordial welcome by the Netherlands Government.

The PRESIDENT:

Translation: M. Pella, delegate of Roumania, will address the Assembly.

M. PELLA (Roumania):

Translation: Mr. President, Ladies and Gentlemen — A famous English man of letters, Oliver Goldsmith, once said that when a professor published a book his colleagues usually observed either that it contained no new ideas at all or else that such ideas as it did contain were incorrect. We should like, at the outset, to give the lie to this statement by saying that we are among the first to recognise the immense importance, the high value and the lofty purpose of the two reports on the codification of international law which have been submitted on behalf of the First Committee.

We venture, however, to intervene in the discussion because we wish to be enlightened on certain questions which are still somewhat controversial, and also because we wish to make certain suggestions which are closely connected with the codification of international law and which might be taken up either by the Committee of Experts or by a future Assembly of the League.

As, however, the suggestions we propose to submit concern the problem of the codification of international law as a whole, we shall endeavour, in order to avoid prolonging the discussion, to concentrate in a single statement our remarks on the reports submitted by M. Politis and M. Caballero respectively.

All who have taken part in the work of the First Committee and have heard the learned statements of Sir Cecil Hurst, M. Fromageot, M. Politis, M. Guerrero and M. Rolin must realise that even those jurists who are most eager and impatient to see the work of codification achieved — amongst whom we do not hesitate to include ourselves — are bound to recognise and accept the important results reached by the Legal Committee.

Faced with the two conflicting systems of codification — the full codification of international law and progressive codification — it must be recognised that, whatever the scientific value of the first system, it is very difficult, from the point of view of practical realities, not to be entirely in favour of the system of progressive codification, which the Legal Committee prefers.

The problem, however, is more intricate than appears at first sight, when we think that the establishment of the actual system of progressive codification presupposes the adoption of two widely different methods. The first consists in determining what questions are ripe for codification, taking as sole criterion their degree of maturity, and the second involves the establishment of a general and synthetic scheme, including nomenclature and the systematic classification of the various codifiable questions.

Nevertheless, the Legal Committee seems to have found a method of surmounting this difficulty, and accordingly two reports, both dealing with the problem of the codification of international law, are to-day submitted to the Assembly.

Whatever may be the practical results of the Assembly resolution concerning the preparation of a general and synthetic plan of codification, such a resolution, especially in the sphere of public international law, has in any case an importance which cannot be denied. In fact, this resolution confirms the necessity of establishing such a plan, although its practical utility has often been disputed by certain writers in the past.

Obviously this work covers a very wide field, and its achievement calls for perseverance and a wide knowledge not only of the legal conditions but also of the political, economic, social and moral conditions which lie at the root of contemporary international life.

To dispute the utility of such a scheme would be to deny the interdependence of problems of international law and also to forget that the progressive transformation of the rules of customary law into rules of positive law must be instinct with the same spirit.

It is also a mistake to believe that the establishment of such a scheme necessarily means the full and immediate codification of all questions of international law, even those which all States are not yet ready to accept generally in conventional form.

This scheme should aim, as has been said, at determining the fundamental conditions of the regime of peace. The irrational division of international law into the law of peace and the law of war must thus give way to the only law which can henceforth be conceived: the law of peace.

The plan must also aim at transforming certain vague and hitherto disconnected ideas into concrete formulæ. In this way it affords a conspectus of all questions which are ripe for codification.

Finally, under such a scheme, future conventions would rest on a common foundation which would bring them into line with each other. So will the coping-stone be added to the temple which successive generations have laboriously erected for the cult of international law.

It now remains to ascertain what organisations are capable of drawing up this scheme. For our part we do not conceal our preference for unofficial international associations. In the atmosphere of such associations, with their purely scientific interests, and their freedom of action, immune from political fears and responsibilities, the jurist could, at his ease, by induction, conjecture or even by temporary construction, strike out into a new path and carry out original work, without any risk of becoming a mere exegetist.

Only in such conditions can jurists forecast the future developments of international law. Without fearing to be treated as visionaries, they will be able to draw up a declaration of the

rights and duties of States; they will be able, too, to conceive of the existence of inter-State private law governing private relations between States which by their very nature do not concern the international community at large. Then, again, they will be able to form a conception of the true scope of the public international law of to-morrow, covering only the study of the relations of each State with the community of nations; finally, they will be entirely free to study measures for ensuring respect for international law.

Only in such an atmosphere can the full scope of the general plan for codification be realised, or the dynamic force of international law be felt in all its intensity.

When, and only when, this preliminary work has been completed and public opinion has been thus educated, the League's organisations will be able to begin their part and, taking the work already accomplished as a basis of discussion, proceed on the same sound and cautious lines to the framing of a final plan for codification.

We therefore entirely approve of the draft resolution, because, instead of requiring the Committee of Experts at the outset to draw up a scheme of codification, it merely asks it to study the conditions in which the work could be undertaken; the Committee will thus be able to propose that the preparatory work should be entrusted to unofficial international associations.

In urging this method, however, we should not like it to be thought that we deny the urgent need for a general plan of codification; we are among the first to desire that international law should speedily become universal.

Indeed, while recognising that it is impossible to prevent the formation in the New World of individual rules of international law arising out of needs peculiar to the American States, we ourselves stressed in the Legal Committee the danger which threatens the universality of international law — a danger arising from the fact that international law in America, when codified, will evolve along different lines.

We must not delay, then, but at the same time we must adopt a course which will be sure to yield the results desired. We do not, however, propose that, until such a plan is realised, we must remain with folded arms and let come what may; nothing really useful has ever done by such an attitude.

We therefore grant the importance of the First Committee's work, which is so admirably defined in M. Politis' report; moreover, that report deals only with the questions which are considered ripe for codification, and does not attempt any general and synthetic plan.

We pass over the parts of the report which concern the date and place of International Conference; what interests us is the preparatory work.

On this subject the draft resolution recommends the formation of a Preparatory Committee composed of five persons who, besides possessing a wide knowledge of international legal practice, must be fully acquainted with the items on the agenda of the First Conference.

We beg to point out that at least two American legal experts must necessarily sit on this Committee, in order that the work of the Conference may be brought into line with the important work already done in America.

As the Conference will meet at The Hague, we must not forget that there must also be a Dutch legal expert on the Committee.

In these circumstances, we may well wonder whether the principal legal systems of Europe, Asia and, in particular, of the Far East will be adequately represented by the two experts who then remain to be appointed.

It must not be forgotten that each of these experts must also have a wide knowledge of the questions placed on the agenda — questions which, by their very nature, are most dissimilar. Indeed, the fact of having a wide knowledge of the question of territorial waters does not necessarily presuppose the same degree of knowledge in the matter of nationality or State responsibility.

We should therefore have preferred that the draft resolution, while recommending the formation of a Preparatory Committee, should have left the Council to fix the number of members of that Committee. It should be remembered, moreover, that when committees of experts have been set up in other branches of the League's work it has almost always been the Council to which this duty was entrusted.

We venture to hope that the Rapporteur will be good enough to receive our proposal favourably or at any rate to define more clearly the nature of the work to be accomplished by this small Committee of five, in order to dispel the misunderstandings under which we have hitherto been labouring.

Before dealing with the actual questions which will be submitted for examination by the first Conference, we cannot pass over in silence the passages in the report which deal with the alternative systems of unanimity or of a majority as regards the decisions to be reached by the Conference. We entirely agree with the arguments in favour of the latter system, since it involves no risk for States wishing to reject individual conventions (for they are at full liberty to do so), while at the same time it makes it possible for other States to accept draft conventions.

The special importance of the report as regards the scope of engagements entered into and the flexibility of conventions must also be mentioned; we fully approve its provisions on that subject.

We now come to the questions submitted to the first conference: without dwelling upon the great value of the reports of M. Rundstein and M. Schücking, and the letters accompanying those reports, we should like to say that, in the matter of the responsibility of States, M. Guerrero has, in our opinion, arrived at very sound conclusions and has succeeded in drawing up a most erudite report which has been favourably received by the majority of States, although the question dealt with is most delicate and is by its very nature extremely controversial.

In addition to these three problems, the Committee of Experts also considered the questions of diplomatic privileges and immunities and of piracy as having now reached a sufficient degree of maturity to be codified. We will not dwell upon the reasons which justified their exclusion from the Conference agenda.

While recognising the theoretical importance of the reports by the Committee of Experts on these two questions, we nevertheless think that the adjournment of the question of diplomatic privileges and immunities will perhaps be advantageous, because it will enable the preparatory work to be completed and will also bring it into line with the recent desiderata of penal doctrine as to the effective responsibility of diplomatic agents who flagrantly abuse their immunity and openly flout international morality.

Finally, as regards piracy, the problem might perhaps have been of current interest if the universality characteristic of the methods of suppressing piracy had been linked up not with the maritime nature of the crime but with the fact that it is committed in a place which does not come under the sovereignty of any State.

An important part of the report is that which deals with the future of codification. The Committee proposed, in particular, that a permanent legal Committee should be set up under the auspices of the League, with a view to strengthening and ensuring the continuity of efforts to achieve codification.

Though on financial grounds we defer to the solution adopted, we cannot refrain from emphasising the great importance of this proposal.

In America — to confine ourselves to the earliest proposals — the American Institute of International Law has already declared, at its session at Montevideo, that the work of systematising international law urgently calls for improved methods, to be brought about by the creation of technical organs permanently appointed to do this work.

On this question of the future of codification we would again point out that in certain fields — and unfortunately in the most important — codification will never be achieved unless efforts are made to prepare the grounds by other methods than those hitherto employed.

For example, no one, I think, would deny the great desirability of embodying the question of extradition in a general international convention.

It is true that, on the list of questions submitted to the Governments by the Committee of Experts, extradition and the competence of States in cases of crimes committed outside their territories were considered to be not yet ripe for codification.

We might go further and affirm that in all questions of international penal law, that is to say, in a field where a united international front in the campaign against criminality is a categorical imperative, the necessary general agreements cannot be concluded, precisely because of the sovereign prerogatives to which every State holds in such matters.

Moreover, if we remember that ordinary criminality, which takes little account of State susceptibilities, closely follows the changes and the constantly growing internationalisation of contemporary social life — while becoming international itself too — we at once see the absolute necessity of seeking other methods of protecting society against international criminals.

Foreseeing all these difficulties, the first international Congress on Penal Law, which was held at Brussels in 1926, passed a resolution suggesting that no agreement could be reached between States unless the method of unifying the fundamental principles for the suppression of crime, as contained in certain legal systems, were adopted first.

An unofficial international conference of representatives of codification committees will take place at Warsaw at the end of the year. This conference is obviously only a prelude to the formation of an International Institute for the Unification of Penal Law.

Clearly such an institute should not aim for the moment at unifying the grounds for indictment and the penalties which are specified in the various codes and which meet the special needs of each particular State for the protection of society.

On the contrary, the institute should for the time being confine itself to subjects such as the contrast between the systems of territoriality and personality, the solution — often difficult enough — of negative disputes as to competence which lead to impunity, international questions relating to the repetition of offences or complicity, and matters concerning the international execution of safety measures.

Only by the gradual extension over ever larger groups of States of the same principles for the international suppression of criminal offences, especially in the spheres indicated, will it be possible to prepare the ground for the codification of subjects of international penal law.

In our opinion, the League, as has been said, is primarily a power which should help forward the great cause of the international campaign against evil. It cannot, therefore, remain indifferent to the growth of crime, which constitutes, especially since the war, one of the gravest dangers to the world.

Since the creation of the Rome Institute, which enables us to envisage the ultimate possibility of unifying private law, was unanimously and enthusiastically greeted by legal opinion throughout the world, it does not seem too bold to propose the formation of an international institute for the unification of certain principles of penal law.

Undoubtedly, the solution of many of the problems which may in the future be submitted to the League would be facilitated by the formation of such an institute.

The League has already been led to deal with certain problems connected with crime; in particular, it has worked to ensure, from certain points of view, universality in the suppression of the traffic in women and children, the traffic in narcotic drugs and the sale of obscene publications.

It cannot abandon these activities, or fail to recognise that penal law is a factor in the establishment of peace. The aim of penal law also is peace and order. As has often been said, it has to combat hostile natural forces and the disastrous perverted passions which lead communities as well as individuals to the abyss of crime.

We will confine ourselves for the moment, on behalf of the Roumanian delegation, to the idea of setting up an international institute for the unification of penal law.

It will be the task of a future session of the Assembly and of the individual Governments to appreciate the scope of this proposal and contemplate the possibility of carrying it into effect.

In conclusion, we should like to say that Roumania is entirely in favour of the most extensive codification of international law. She considers this work to be one of the League's most important tasks, since only by codification can the reign of arbitration in international relations be effectively assured.

Like members of society, States which form part of the international community do not rebel against justice, but they want to know what the law is that they must obey. The nations sincerely desire arbitral justice; what they dread is arbitrary justice.

It is therefore for the League to remove all obstacles to arbitration. A great speaker whom we regard with both admiration and affection has said in this Assembly: "Peace through arbitration!" Let us adopt this admirable maxim, completing it thus, if you will allow us: "Peace through arbitration, and real and effective arbitration through the codification of international law!"

THE PRESIDENT:

Translation: Sir Cecil Hurst, delegate of the British Empire, will address the Assembly.

Sir Cecil HURST (British Empire):

Mr. President, Ladies and Gentlemen — I am afraid that in the minds of many the codification of international law is not an enlivening subject, but if all the bodies which deal with such a question as this had had an opportunity of listening to the brilliant exposition of the subject which our Rapporteur gave us this morning I think that the opinion now so largely held about codification might change. After all, if the codification of international law is not a subject which excites popular enthusiasm, it is work that requires to be done and it is work which undoubtedly excites popular interest. You will have learned from the Rapporteur's statement, and also from the report, of the scheme which is now outlined and of the proposal to appoint this expert Committee. The reason for this course is as follows: after three years of work since the League of Nations first took up this question and although we have only a modest programme of three subjects to lay before the Conference which it is proposed to hold, we yet are in the position that there is much preparatory work to be done. If an expert Committee is appointed to frame questionnaires, the answers to those questionnaires can only come from the Governments, and therefore, as regards this preparatory work that still remains to be done, we must secure effective and adequate co-operation by the Governments.

What is the codification of international law? Is it much more than endeavouring to write down with reasonable precision what the rule of law is, the rule of law being founded, at bottom, upon the practice of States: and if questionnaires are sent out to Governments asking for information to be supplied, it is because it is only through action by the Governments themselves that the Expert Committee will be able to obtain reasonably clear and precise knowledge as to the practice of Governments upon the various points.

We have been listening during the last few minutes to a very interesting and eloquent speech from the honourable delegate for Roumania, in which he expressed some disquiet as to the smallness of the Expert Committee which it is proposed to set up, and he asked whether, as regards the two members who would alone be available for the rest of Europe in this small Committee of five, it would be possible to find men who would have the necessary knowledge of all the systems of Europe.

I think, if I might venture to suggest to the Assembly, that the answer to that criticism is to be found in the fact that it is not to be the business of this Expert Committee itself to supply the information upon which the codification will be based; their task is only to indicate the points upon which knowledge is required, and it is for the Governments themselves to provide that detailed information which will lead up to the ultimate codification for which we are hoping. If that were not so, it would be necessary to have not a Committee of five but a Committee of fifty since, if the intention is to obtain detailed knowledge of the laws and the practice of the various States, it is for each Government, or for a national representing each Government, to supply that information, and we cannot trust merely to the intervention of the Expert Committee.

My reason for asking to be allowed to say a few words to the Assembly is that I think that if the Assembly — as I trust it is going to do — accepts the report before it, that acceptance should be taken as a pledge that the Governments which are represented here will co-operate in this work by supplying to the utmost of their power precise and detailed information as to their practice on all these points. Do not let us under-estimate the difficulties that lie in this task of codification. This subject has been one which has attracted international lawyers for generations, and if it is

now only, in the year 1927, that the League of Nations is approaching this task, it is because hitherto the efforts that have been forthcoming have led rather to a realisation of the difficulties than to an adequate achievement of results.

If upon the plan that is submitted to you now we can secure that essential element of Government co-operation in supplying the information required, there is no reason why this task should not be carried through with success. After all, if the programme for this first conference is a modest one, may we not hope that if it is carried through with success it may lead on, as our Rapporteur has suggested, to other conferences, framed with the same skill and having the same task before them so that ultimately, they also in their turn being successful, will each add its modest contributions to the whole, until at last the entire field of international law is covered by accepted and acceptable as well as clear and precise rules?

That, ladies and gentlemen, is a great dream. But let me return to what is the fundamental issue before us now, namely, that, if we are to make this first conference a success, there must be the spirit of co-operation by the Governments. We must not trust entirely to our Expert Committee. So far as we are concerned in Great Britain, I can only say that that help will be forthcoming in the confident hope that all other Governments will do likewise.

THE PRESIDENT:

Translation: M. Politis, Rapporteur, will address the Assembly.

M. POLITIS (Greece), Rapporteur.

Translation: I should like to add a few words to second Sir Cecil Hurst's very judicious remarks on the composition of the small Preparatory Committee for the first Codification Conference.

I am afraid that Professor Pella's recommendation is due to a misunderstanding. There is no question of again going over the ground already covered by the Committee of Experts, which has done such valuable work under the chairmanship of M. Hammarskjöld, since it was formed in 1925. It is merely a matter of compiling annotations which have been made, drawing up a questionnaire, and requesting and awaiting replies from the different Governments. This work, of course, demands judgment and immense application, but is not a matter of personal opinion. If it is to be properly done it is essential that the Committee should be small, and so, after careful consideration, the Sub-Committee and, later, the First Committee limited this Committee to five members.

I feel I must point out that geographical divisions and the various conceptions of jurisprudence and legislation need not be taken into account, as, I repeat, there is no question of creative work, but merely of compilation. If we fail to clear up the misunderstanding under which I fear Professor Pella is labouring, difficulties may arise when the Council comes to appoint this Committee. The five members to be chosen must have a thorough theoretical and practical knowledge of all the questions on the agenda of the Conference, but apart from that the Council need not concern itself with the nationality or the system of jurisprudence and legislation represented by the members of the Committee. It seemed to me necessary to say this in order that the appointment of the Preparatory Committee by the Council might proceed smoothly and as quickly as possible.

THE PRESIDENT:

Translation: If no one else wishes to speak, I will put to the vote the resolutions of the First Committee, which read as follows:

“ The Assembly:

“ Having considered the documents transmitted to it by the Council in conformity with its resolution of June 13th, 1927, and the report of the First Committee on the measures to be taken as a result of the work of the Committee of Experts for the Progressive Codification of International Law;

“ Considering that it is material for the progress of justice and the maintenance of peace to define, improve and develop international law;

“ Convinced that it is therefore the duty of the League to make every effort to contribute to the progressive codification of international law;

“ Observing that, on the basis of the work of the Committee of Experts, to which it pays a sincere tribute, systematic preparations can be made for a first Codification Conference, the holding of which in 1929 can already be contemplated:

“ Decides:

“ (1) To submit the following questions for examination by a first conference:

“ (a) Nationality;

“ (b) Territorial Waters; and

“ (c) Responsibility of States for Damage done in their Territory to the Person or Property of Foreigners;

“ (2) To request the Council to instruct the Secretariat to cause its services to study, on the lines indicated in the First Committee's report, the question of the Procedure of International Conferences and Procedure for the Conclusion and Drafting of Treaties;

“ (3) To instruct the Economic Committee of the League to study, in collaboration with the International Council at Copenhagen and any other organisation specially interested in this matter, the question whether and in what terms, for what species and in what areas, interna-

tional protection of marine fauna could be established. The Committee will report to the Council the results of its enquiry indicating whether a Conference of Experts should be convened for such purpose at an early date.

"(4) To ask the Council to make arrangements with the Netherlands Government with a view to choosing The Hague as the meeting-place of the first Codification Conference, and to summon the Conference as soon as the preparations for it are sufficiently advanced;

"(5) To entrust the Council with the task of appointing, at the earliest possible date, a Preparatory Committee, composed of five persons possessing a wide knowledge of international practice, legal precedents, and scientific data relating to the questions coming within the scope of the first Codification Conference, this Committee being instructed to prepare a report comprising sufficiently detailed bases of discussion on each question in accordance with the indications contained in the report of the First Committee;

"(6) To recommend the Council to attach to the invitations draft regulations for the Conference, indicating a number of general rules which should govern the discussions, more particularly as regards:

"(a) The possibility, if occasion should arise, of the States represented at the Conference adopting amongst themselves rules accepted by a majority vote;

"(b) The possibility of drawing up, in respect of such subjects as may lend themselves thereto, a comprehensive convention and, within the framework of that convention, other more restricted conventions;

"(c) The organisation of a system for the subsequent revision of the agreements entered into; and

"(d) The spirit of the codification, which should not confine itself to the mere registration of the existing rules, but should aim at adapting them as far as possible to contemporary conditions of international life;

"(7) To ask the Committee of Experts at its next session to complete the work it has already begun."

The resolutions were adopted.

98. **Proposal by the Delegation of Paraguay for the Preparation of a General and Comprehensive Plan of Codification of International Law: Report of the First Committee; Resolution.**

THE PRESIDENT:

Translation: The next item on the agenda is the examination of the First Committee's report on the proposal by the delegation of Paraguay for the preparation of a general and comprehensive plan of codification of international law (See page 50).

(On the invitation of the President, M. Caballero, Rapporteur, took his place on the platform.)

THE PRESIDENT:

Translation: M. Caballero, Rapporteur, will address the Assembly.

M. CABALLERO (Paraguay), Rapporteur:

Translation: Mr. President, Ladies and Gentlemen — I trust the Assembly will permit me to offer a few remarks on the report and draft resolution which I have the honour to submit for your approval on behalf of all my colleagues of the First Committee.

The proposal by the delegation of Paraguay suggests a new programme of work for the League, an important and vast undertaking which will supplement and embrace the work it has already accomplished. Codification or, more exactly, the adoption of rules for such a large number of problems of international law is an immense and arduous task. Nevertheless, as all these questions are interdependent, it is essential to have a general scheme clearly planned in advance.

It is also because we fear that legal particularism may hinder the work of codification of international law that this proposal has been made.

We must eschew all rivalry between one system of codification and another, otherwise, instead of unifying law, they will merely accentuate the present differences.

By adopting this proposal, the Assembly will once again evince its attachment to the universal principle which is the very basis of the Covenant. It is, indeed, the League's bounden duty to undertake this task, which, once successfully accomplished, will not only possess a high moral value but will go far towards creating universality in international law.

The less we delay, the better. As M. Scialoja, who helped to draft the Covenant, very rightly observed in the First Committee, the greater the progress of codification in America — and codification is, of course, an excellent thing for that continent itself — the greater will be the difficulties in the way of the ultimate unification of international law.

It is therefore necessary to maintain the closest possible co-ordination between the work of codification in America and in Europe. As M. Rolin reminded us in his speech yesterday, this is one of the useful and necessary aims of our work, and if we make no attempt to establish contact we shall destroy the bridge that links our work with that which is being done in America. We should, by co-ordination, be able to modify our procedure and expedite our work, if necessary.

We fully realise that such a task cannot be undertaken and completed rapidly, but we think the time has come to take a broad view of the question and begin our investigations.

We are quite prepared to accept the amendment proposed by the Swedish delegation, in order to avoid delay in continuing the work in hand and in carrying out this new plan.

Moreover, public opinion, that powerful instrument of peace, will not tolerate delay. The Inter-Parliamentary Union, which more than any other association can call itself the direct representative of the opinions and feelings of the nations, drew attention in one of the resolutions it passed at its last meeting in Paris to the important and urgent nature of this work.

The problems most immediately engaging the attention of the Latin-American States are those relating to the development of international law — and of course, too, technical problems, in which connection the delegation of Paraguay last year asked one of the League's organisations — the Health Section — to despatch a Mission to South America.

At the very first session of the Assembly in 1920, M. Pueyrredon, the first delegate of the Argentine Republic — a country which we all hope to see again amongst us next year — pleaded for the codification of international law.

How could it be otherwise? As M. Raul Fernandes, the eminent Brazilian jurist, whose absence we all regret so deeply, very aptly pointed out in his remarkable speech to the Assembly in 1925, any international disputes which might arise between American nations would be legal rather than political in character.

Consequently, it is in the legal sphere, and especially in that of the codification of international law, that the League could, by developing its influence render inestimable services to the American States. Thus will the bonds that unite them with Geneva be strengthened and the prestige of the Permanent Court of International Justice increased.

The outlawry of war is the most vital question of to-day. To enable respect for law to be forced, to render jurisdictional functions less hazardous, a positive law, applicable to all nations, must be established, to paraphrase with Mr. S. Brown Scott a celebrated dictum of Cicero. "*Non erit alia lex Romae, alia nunc, alia posthac, sed et apud omnes gentes, et omni tempore, una eademque lex obtinebit*", let us say: "The same law will govern London and Paris, Berlin and Rio de Janeiro, Havana and Washington."

THE PRESIDENT:

Translation: If nobody else wishes to speak, I will put to the vote the resolution of the First Committee, which reads as follows:

"The Assembly,

"Having taken note of the First Committee's report on the proposal of the delegation of Paraguay for the preparation of a general and comprehensive plan of codification of international law,

"Desires to place on record the importance which it attaches to the spirit underlying the proposal of the delegation of Paraguay;

"Requests the Council to invite the Committee of Experts to consider at its next session under what conditions the work referred to in the said proposal could be undertaken;

"And will decide later upon the course to be adopted after taking note of the suggestions of the Committee of Experts and the opinion of the Council in regard thereto."

The resolution was adopted.

V. REPORTS ADOPTED BY THE ASSEMBLY.

(a) PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW.

REPORT OF THE FIRST COMMITTEE TO THE ASSEMBLY.

Rapporteur : M. POLITIS (Greece).

The First Committee appointed a Sub-Committee to study the various questions referred to the Committee by the Assembly in connection with the work of the Committee of Experts for the Progressive Codification of International Law,

The Sub-Committee was composed of M. ROLIN (Belgium), Sir Cecil HURST (British Empire), M. POLITIS (Greece), Dr. LIMBURG (Netherlands), Dr. CABALLERO (Paraguay), Count ROSTWOROWSKI (Poland), M. GUERRERO (Salvador) and M. LÖFGREN (Sweden).

The Sub-Committee adopted a report which was approved, with slight modifications, by the First Committee on September 23rd, 1927.

The First Committee submits this report to the Assembly and recommends the adoption by the Assembly of the resolution proposed therein.

REPORT SUBMITTED TO THE FIRST COMMITTEE ON BEHALF
OF THE SUB-COMMITTEE.

Rapporteur : M. POLITIS (Greece).

Your Sub-Committee has very carefully examined the documents forwarded by the Council to the Assembly, and it has reached the following conclusions, which it has the honour to submit for your approval.

The Committee of Experts appointed by the Council in pursuance of the Assembly resolution of September 22nd, 1924, for the progressive codification of international law, having completed the first stage of its discussions, submitted a report to the Council on April 2nd, 1927. In its annual sessions of 1925-27, it has performed the mission entrusted to it with a zeal, conscientiousness and ability which deserve unqualified praise. The Assembly will no doubt wish to associate itself with the tribute of thanks already paid by the Council to the distinguished Chairman, and the Rapporteurs and members of the Committee.

The Committee recommended to the Council five subjects of international law which, in some of their aspects, are, in its opinion, now ripe for regulation by international action, and stated what it considered to be the most appropriate method for carrying out the preliminary work. It mentioned also two other subjects of a more particular character for which it suggested a special procedure.

On the report of the Polish representative, M. Zaleski, the Council expressed a number of highly interesting opinions on the Committee's conclusions.

It is for the Assembly to decide what action should be taken in respect of the Committee's proposals and the suggestions which the Council has made regarding them.

I. QUESTIONS WHICH NOW APPEAR RIPE FOR REGULATION BY INTERNATIONAL AGREEMENT.

The five questions which now seem to the Committee of Experts to be ripe for codification are the following :

- (1) Nationality ;
- (2) Territorial Waters ;
- (3) Diplomatic Privileges and Immunities ;
- (4) The Responsibility of States for Damage done in their Territories to the Person or Property of Foreigners ;
- (5) Piracy.

Of these five questions, the Council took the view that only three should be dealt with at present, the question of diplomatic privileges and immunities and that of piracy being left on one side. Neither of these two questions, on which the conclusion of a universal agreement seems somewhat difficult at the present time, is important enough to warrant its insertion in the agenda of the proposed Conference.

Your Sub-Committee was unanimous in concurring with this view, for it is essential to the success of the work in hand that the agenda of the First Codification Conference should not be unnecessarily overburdened.

The Sub-Committee was further in agreement with the Council's suggestion as to the two particular questions which the Committee proposed should be governed by a special procedure, viz. : (1) the question of the procedure of international conferences and procedure for the conclusion and drafting of treaties ; and (2) the question of the exploitation of the products of the sea.

As regards the first question, the Sub-Committee is of opinion that the Assembly should ask the Council to instruct the Secretary-General to have the question investigated by his services. To this end, all available precedents on the subject would be collected, the Governments being asked to give information as to their own practice, which they would no doubt be prepared to do ; and research by and discussion with individual specialists in the various countries should be encouraged by giving as much publicity as may prove possible to the results of the enquiry.

As to the second question, the Sub-Committee wholly concurs in the recommendations of the Committee of Experts and of the Council. There is no doubt that marine fauna is exposed to the risk of early extermination by exploitation which is opposed to economic principles. International protection would fill a real need and at the same time meet the wish of all the Governments concerned. It would be well worth while to establish such protection by means of an international agreement framed by a conference of experts. At the same time, it is quite certain that, at the present stage, there can be no thought of immediately convening such a conference, and we must be content for the present to pave the way for it. For that purpose, it would be well to refer the question to the Economic Committee of the League for investigation, suggesting that it should seek the co-operation of the International Council at Copenhagen and of any other body particularly concerned in the matter. This done, the Economic Committee would report to the Council, indicating how far it was possible to convene a conference. In addition, the Assembly might pass a resolution urging that this investigation should be carried out as expeditiously as possible so that the meeting of the conference need not be too long delayed.

It has been asked whether it would be possible to propose that further questions in addition to those mentioned above might be added to the programme of the First Codification Conference. What will be said below regarding the necessity of careful and methodical preparation for the Conference will show how difficult it would be to allow such a possibility. At the Conference no right of initiative can be admitted. It will not even be possible for new questions to be put on the programme during the preparatory work. To do so would disorganise the whole scheme. Exercise of such an initiative can only be conceived in the form of submitting to preliminary enquiry new questions the examination of which would be reserved for a subsequent conference.

* * *

II. THE FIRST CODIFICATION CONFERENCE.

As the number of subjects now ripe for codification is limited to the three questions already stated, your Sub-Committee, following the example of the Committee of Experts and the Council, debated whether these questions ought to be dealt with separately at several conferences, or simultaneously at a single conference, which might be subdivided into different sections. It was of the unanimous opinion that the second alternative was, for more than one reason, the better. Not only did it present the advantage of a great saving of time and money but it would also go further towards satisfying the interest taken by public opinion in the problem of codification.

It should be observed, however, that, if it proved impossible for the Conference to finish its work within the space of time which the Governments participating were able to devote to it, arrangements would have to be made to enable it to hold successive sessions at fixed intervals until it had completed its programme.

It remains to consider the date, place and manner of convocation of the Conference.

(a) *Date of the Conference.*

The date depends essentially on the preparation necessary for framing the agenda of the Conference, a matter which we shall discuss presently. It is impossible to foresee at all exactly how long this will take. All that can be said is that it is highly desirable that the preparatory work should be performed as rapidly as possible so that the Conference may meet some time in 1929. It is to be hoped that the work will have reached a sufficiently advanced stage for the ninth session of the Assembly to fix the date for which the Conference can be summoned.

(b) Place of the Conference.

For the place of the Conference, the Sub-Committee, in accordance with the suggestion made in the Committee, proposes The Hague. This choice is good for many reasons.

The Hague, on account of its atmosphere of serenity, so precious to all who have stayed there, is the ideal place for an assembly met to co-operate in a difficult task, the success of which calls in a high degree for calm and reflection ; further, the First Codification Conference might rally more States if it met at The Hague than in any other town ; The Hague was the seat of the two Peace Conferences to the heritage of which the League of Nations may be said to have succeeded ; to convene the First Codification Conference at The Hague would demonstrate the continuity of the effort — an effort to-day rendered more systematic by the good offices of the League — to invest international law with a little more precision and stability ; lastly, the choice of The Hague would be a compliment to the Netherlands Government, which, through its repeated initiatives in connection with the codification of international public and private law, has never failed to render valuable service to the cause of international understanding.

From the statements of the Netherlands representative at the Council, we may venture to hope that, if the Assembly accepts the proposed choice, the Netherlands Government would willingly accede to the Council's request and extend its hospitality to the First Codification Conference.

(c) The method of Convocation of the Conference.

Your Sub-Committee is unanimously of opinion that the convocation and preparation of the First Codification Conference should be left entirely to the League of Nations. When this point was discussed in the Committee, it was forcibly shown that any other course would be interpreted by a section of public opinion as a real blow to the prestige of the League.

* * *

III. PREPARATION OF THE CONFERENCE.

Knowledge of the nature of the work to be undertaken, added to the experience gained from certain important conferences in the past, lead to the conviction that, in order to ensure the success of the First Conference on Codification, it is absolutely essential that the programme and organisation should be carefully and methodically prepared. This is all the more necessary as the coming Conference is to be the first of a long series of similar Conferences and will establish a tradition which, if it is to be fruitful, must be based on solid and unassailable foundations.

The preparatory work will be specially heavy. It will demand from those who undertake it great sacrifices of time and considerable theoretical and practical knowledge. It must for this reason be entrusted to the Secretariat of the League assisted by a special organisation. Your Sub-Committee is of opinion that this organisation should be a Committee limited to five persons, possessed of a wide knowledge of international practice, legal precedents and scientific data relating to the problems to be resolved. They should be appointed by the Council.

This special organisation must above all make use of the work of the Committee of Experts, taking into account at the same time the resolutions which have already been adopted or are in process of being framed by such learned associations of international law as the Institute of International Law, the International Law Association and other similar bodies. Where necessary, it could apply directly to these bodies and request them to devote the work of their next session to the questions which will be dealt with by the First Conference on Codification. Lastly, in order to ensure the universality of international law, it should take into account the extensive and remarkable effort at codification made during recent years by the Pan-American Union.

After this preliminary work, which would be in the nature of a general survey of the subjects to be dealt with, the Committee would have to undertake an enquiry, approaching the Governments of the States Members and non-Members through the Secretariat, according to the following plan :

It would first of all draw up a schedule for each of the questions coming within the scope of the programme of the Conference, indicating the various points which were suitable for being examined with a view to reaching agreement thereon. These points should be detailed as fully as possible so as to make them perfectly clear and facilitate the replies. The States would be invited to furnish information on each point from the following three points of view :

(a) The state of their positive law, internal and international, with, as far as possible, circumstantial details as to the bibliography and jurisprudence ;

(b) Information derived from their own practice at home and abroad ;

(c) Their wishes as regards possible additions to the rules in force and the manner of making good present deficiencies in international law.

In drawing up the schedules, the Committee should follow as far as possible the precedent offered by the minute and methodical preparation for the London Naval Conference of 1908-1909.

The schedules would then be sent through the Secretary-General to the different Governments, with an invitation to reply within a reasonable time, which might be fixed at six months.

If, after examining the replies from the Governments, the Committee considered that it would be useful to make further enquiries of some of them, it would state in a fresh schedule the precise points upon which further particulars were desired. This schedule would again be sent to the Governments concerned through the Secretary-General.

At the end of its enquiry, the Committee would be in a position, after comparing the information sent by the various Governments, to establish the points on which there was agreement or any degree of divergency, in respect of each aspect of the questions to be dealt with. The result of this comparative study of each single aspect should be embodied in a report, the conclusions of which might serve as detailed bases of discussion for the Conference.

In his report to the Assembly in 1928, the Secretary-General should give full information concerning the progress made by the Committee.

When the Committee's work was finished and the bases of discussion for each item on the Conference's programme had been fixed, it would remain for the Council to decide the date of meeting and the form of the invitations.

In your Sub-Committee's opinion, the Council, in sending the invitations, should not confine itself merely to enclosing the reports and bases of discussion prepared by the Preparatory Committee. The lessons taught by the experience of the Second Hague Conference and your Sub-Committee's anxiety to ensure the complete success of the First Codification Conference lead it to think that the Council should also send the Governments invited to the Conference a draft set of regulations for the work, and that it would be highly desirable that, in this document, a number of general rules should be indicated with precision in order to make clear the spirit in which the work of the Conference would be conducted and also the scope of the decisions it would be called upon to take.

Your Sub-Committee considers that these rules should include the four following :

(a) *Rule of Unanimous Vote or Majority.*

Although it is desirable that the Conference's decisions should be unanimous, and every effort should be made to attain this result, it must be clearly understood that, where unanimity is impossible, the majority of the participating States, if disposed to accept as among themselves a rule to which some other States are not prepared to consent, cannot be prevented from doing so by the mere opposition of the minority.

(b) *Rule of the Scope of the Engagements entered into.*

In such matters as may lend themselves to this, it would be useful to provide for the possibility of concluding two kinds of convention : a very comprehensive convention on the general rules of the subject, likely to be accepted by all States ; and a more restricted convention, which, while keeping within the framework of the other convention, would include special rules binding only upon such States as might be prepared to accept them.

(c) *Rule of the Flexibility of the Conventions.*

As these agreements are meant to define and fix the law, it is not to be supposed that they could be concluded for limited periods or with the option of denunciation. They must be permanent. But, with the double object of facilitating their acceptance by all States and of making it possible to adapt the rules laid down to the changing needs of life, it would be desirable to provide an organised system of revision, such as follows :

Any convention drawn up by the Conference would be subject to revision after the expiration of an initial period of ten years if a request to that effect was received from a certain number of signatory States. In that case, it would be for the Council of the League to summon a conference at the earliest possible opportunity to consider what amendments were to be made in the convention the revision of which had been demanded.

(d) *Rule of the Spirit of the Codification.*

Codification of international law can be imagined in several forms. It might be a mere registration of the law in force. It might be something more if, instead of merely recording the rules already in existence, an attempt were made to adapt them to practical needs. Lastly, it might be an entirely original work designed to make good the present deficiencies in the law or to replace the old rules by new. Although it is very difficult to lay down strictly beforehand in what spirit the work of the First Codification Conference should be conducted, it can be stated that while, in order to lead to useful results, the Conference must refrain from making too many innovations, it cannot limit itself to the mere registration of the existing law. It must, as far as possible, adapt the rules to contemporary conditions of international life. It is in order to avoid any misunderstanding on this matter that the States which are to take part in the Conference should be apprised of the spirit in which the work of codification is to be undertaken.

IV. FUTURE OF CODIFICATION.

It was proposed to the Committee that a permanent organisation for codification should be formed, by constituting a permanent legal committee and perhaps enlarging the Legal Section of the Secretariat. Your Sub-Committee is unanimous in thinking that these plans are, to say the least, somewhat premature. The experience of the Preparatory Committee and the proposals which it may formulate next year should first be awaited.

As regards the continuation of the work of the Committee of Experts, your Sub-Committee endorses the opinion expressed in M. Zaleski's report, which represents the views of the Committee itself. The Committee should hold the session which it contemplates for the purpose of completing the work it has already taken in hand, so soon as funds are available; but it would be premature to ask it at present to carry its enquiries further. It would be better to await the results of the work which it has already accomplished.

V. CONCLUSION.

As conclusion to the above observations, your Sub-Committee proposes that you should adopt and submit to the Assembly the following draft resolution:¹

“ The Assembly :

“ Having considered the documents transmitted to it by the Council in conformity with its resolution of June 13th, 1927, and the report of the First Committee on the measures to be taken as a result of the work of the Committee of Experts for the Progressive Codification of International Law.

“ Considering that it is material for the progress of justice and the maintenance of peace to define, improve and develop international law ;

“ Convinced that it is therefore the duty of the League to make every effort to contribute to the progressive codification of international law ;

“ Observing that, on the basis of the work of the Committee of Experts, to which it pays a sincere tribute, systematic preparations can be made for a first Codification Conference, the holding of which in 1929 can already be contemplated :

“ Decides :

“ (1) To submit the following questions for examination by a first Conference :

“ (a) Nationality ;

“ (b) Territorial Waters ; and

“ (c) Responsibility of States for Damage done in their Territory to the Person or Property of Foreigners ;

“ (2) To request the Council to instruct the Secretariat to cause its services to study, on the lines indicated in the First Committee's report, the question of the Procedure of International Conferences and Procedure for the Conclusion and Drafting of Treaties ;

“ (3) To instruct the Economic Committee of the League to study, in collaboration with the International Council at Copenhagen and any other organisation specially interested in this matter, the question whether and in what terms, for what species and in what areas, international protection of marine fauna could be established. The Committee will report to the Council the results of its enquiry indicating whether a Conference of Experts should be convened for such purpose at an early date.

“ (4) To ask the Council to make arrangements with the Netherlands Government with a view to choosing The Hague as the meeting-place of the first Codification Conference, and to summon the Conference as soon as the preparations for it are sufficiently advanced ;

“ (5) To entrust the Council with the task of appointing, at the earliest possible date, a Preparatory Committee, composed of five persons possessing a wide knowledge of international practice, legal precedents, and scientific data relating to the questions coming within the scope of the first Codification Conference, this Committee being instructed to prepare a report comprising sufficiently detailed bases of discussion on each question, in accordance with the indications contained in the report of the First Committee ;

¹ This resolution was adopted by the Assembly on September 27th 1927.

“ (6) To recommend the Council to attach to the invitations draft regulations for the Conference, indicating a number of general rules which should govern the discussions, more particularly as regards :

“ (a) The possibility, if occasion should arise, of the States represented at the Conference adopting amongst themselves rules accepted by a majority vote ;

“ (b) The possibility of drawing up, in respect of such subjects as may lend themselves thereto, a comprehensive convention and, within the framework of that convention, other more restricted conventions ;

“ (c) The organisation of a system for the subsequent revision of the agreements entered into ; and

“ (d) The spirit of the codification, which should not confine itself to the mere registration of the existing rules, but should aim at adapting them as far as possible to contemporary conditions of international life ;

“ (7) To ask the Committee of Experts at its next session to complete the work it has already begun. ”

**(b) PROPOSAL BY THE DELEGATION OF PARAGUAY FOR THE PREPARATION OF
A GENERAL AND COMPREHENSIVE PLAN OF CODIFICATION
OF INTERNATIONAL LAW.**

REPORT SUBMITTED BY THE FIRST COMMITTEE TO THE ASSEMBLY.

Rapporteur : Dr. CABALLERO (Paraguay).

The First Committee referred the proposal of the delegation of Paraguay to the Sub-Committee which it had appointed to report on the various questions arising out of the work of the Committee of Experts for the Progressive Codification of International Law. The Sub-Committee consisted of M. ROLIN (Belgium), Sir Cecil HURST (British Empire), M. POLITIS (Greece), Dr. LIMBURG (Netherlands), Dr. CABALLERO (Paraguay), Count ROSTWOROWSKI (Poland), M. GUERRERO (Salvador) and M. LÖFGREN (Sweden).

The Sub-Committee adopted a report which was approved with slight modifications by the First Committee on September 23rd, 1927. The First Committee submits this report to the Assembly and recommends the latter to adopt the resolution contained therein.

REPORT OF THE SUB-COMMITTEE.

Rapporteur : Dr. CABALLERO (Paraguay).

The First Committee has asked the Sub-Committee to present a report on the proposal submitted by the delegation of Paraguay at the plenary meeting of the Assembly on September 10th, 1927, inviting the Council to entrust the Committee of Experts with the preparation of a general and comprehensive plan of codification of international law, paying due regard, as far as possible, to the work of codification which is being carried on in America.

It is unnecessary to mention the considerations which led the delegation of Paraguay to submit this proposal, as they were explained in detail both in the Assembly and at the meeting of the First Committee on September 16th, 1927.

The proposal was referred to the Sub-Committee of the First Committee, for consideration in the light of the results already obtained by the Committee of Experts for the Progressive Codification of International Law, and bearing in mind the views and opinions expressed by the First Committee.

The Sub-Committee considers that the proposal of the delegation of Paraguay is of the highest interest for the attainment of unity and universality in international law.

It is of opinion that it would be advisable to consider the possibility of framing a general draft plan of codification, with special reference to nomenclature, and the systematic classification of subjects, with a view to their progressive codification as and when they are considered sufficiently ripe.

In carrying out this task, regard should be had, as far as possible, both from the scientific and practical standpoints, to the advance of theory, to the work already accomplished by learned bodies and to the vast and remarkable efforts at codification which are being carried on in America.

The task might be entrusted to a special Committee chosen by the Council ; the members of this Committee should not merely possess individually the required qualifications, but should also represent the main forms of civilisation and the principal legal systems of the world. The Sub-Committee, however, considered that it would be premature to appoint any special organ for the purpose at the present time. It is preferable to wait until the Assembly is in a position to draw up the future programme of work for the Committee of Experts. It would be sufficient for the moment to invite the Committee of Experts to consider at its next session the conditions under which the problem might be investigated and to present a report to the Council, which would communicate these suggestions to the Assembly.

The Sub-Committee has accordingly the honour to propose that the following draft resolution be submitted to the Assembly for its approval :

*Draft Resolution.*¹

“ The Assembly,

“ Having taken note of the First Committee's report on the proposal of the delegation of Paraguay for the preparation of a general and comprehensive plan of codification of international law,

“ Desires to place on record the importance which it attaches to the spirit underlying the proposal of the delegation of Paraguay ;

“ Requests the Council to invite the Committee of Experts to consider at its next session under what conditions the work referred to in the said proposal could be undertaken ;

“ And will decide later upon the course to be adopted after taking note of the suggestions of the Committee of Experts and the opinion of the Council in regard thereto. ”

VI. APPOINTMENT OF THE PREPARATORY COMMITTEE
FOR THE CODIFICATION CONFERENCE.

Note by the Secretary-General.

On September 28th, 1927, M. SOKAL, the representative of Poland, submitted a report to the Council on the action to be taken on the following resolution, which was adopted by the Assembly on September 27th, 1927 :

“ The Assembly decides :

“ ”

“ 5. To entrust the Council with the task of appointing at the earliest possible date a Preparatory Committee composed of five persons possessing a wide knowledge of international practice, legal precedents and scientific data relating to the questions coming within the scope of the first Codification Conference, this Committee being instructed to prepare the report, comprising sufficiently detailed bases of discussion on each question, in accordance with the indications contained in the report of the First Committee. ”

The Council, on the proposal of the Rapporteur, decided to authorise its Acting President, in consultation with the Secretary-General, to appoint the members of the Committee in the interval between the forty-seventh and forty-eight sessions of the Council.

As a result of this decision, the Acting President, after submitting a list of the proposed nominations to his colleagues on the Council, has appointed the following persons to serve on this Committee :

- Professor BASDEVANT,
- Counsellor Carlos Castro RUIZ,
- Professor FRANÇOIS,
- Sir Cecil HURST,
- M. Massimo PILOTTI.

¹ This resolution was adopted by the Assembly on September 27th 1927.

Geneva, February 15th, 1928.

LEAGUE OF NATIONS

FIRST CODIFICATION CONFERENCE

**Schedules of Points drawn up by the Preparatory
Committee for Submission to the Governments**

The Preparatory Committee for the International Law Codification Conference¹ has considered each of the questions on the programme of the forthcoming Conference and the studies which have been made of these questions, and, in accordance with the resolution adopted by the Assembly on September 27th, 1927², the Committee requests the Secretary-General of the League of Nations to ask the States for information on the points enumerated below.

In order to render the work to be undertaken possible and successful, States are requested to furnish information as precise as possible from the three following points of view:

- (a) The state of their positive law, internal and international, with, as far as possible, full details as to the bibliography and jurisprudence;
- (b) Information derived from their practice at home and abroad;
- (c) Their views as regards possible additions to the rules in force and the manner of making good existing deficiencies in international law.

The points upon which information is desired are the following:

A. NATIONALITY.

- I. The general principle that the acquisition and loss of its nationality are matters which, by international law, fall solely within the domestic jurisdiction of each State.

It appears necessary to take as the point of departure the proposition that questions of nationality are in principle matters within the sovereign authority of each State and that in principle a State must recognise the right of every other State to enact such legislation as the latter considers proper with regard to the acquisition and loss of its nationality. The consequence should be that any question as to the acquisition or loss of a particular nationality by any person is to be decided by application of the law of the State of which the person is claimed to possess, or not to possess, the nationality.

Are there, however, limits to the application of these two principles? Is there no limit to the right of the State to legislate in this matter? Is a State bound in every case to recognise the effects of the law of the other State?

- II. Case of a person who possesses two nationalities.

It appears that three cases must be distinguished:

1. The question may arise before the authorities and courts of a State which attributes its nationality to the person concerned. The first sentence of Article 5 of the preliminary draft drawn up in 1926 in the course of the discussions of the Committee of Experts for the Codification of International Law recognises the right of each State to apply exclusively its own law.

¹ The Committee, which was appointed under the Council's resolution of September 28th, 1927, consists of Professor BASDEVANT, M. CARLOS CASTRO-RUIZ, M. FRANÇOIS, Sir Cecil HURST and M. PIOTTI. It met at Geneva from February 6th to 15th, 1928, under the chairmanship of Professor Basdevant.

² The minutes of the discussion of the question of codification by the Council and the Assembly of the League of Nations in 1927 have been published separately in the document C.548.M.196.1927.V.

2. The question may arise directly between two States each of which considers the person to be its national. The point to be determined is whether either of these States is entitled to exercise the right of diplomatic protection on behalf of the person as against the other State (see Articles 1, 5 and 6 of the preliminary draft of the Committee of Experts). If no answer covering all cases can be given, certain subsidiary questions should be considered. Can such diplomatic protection be exercised as against a State of which the person concerned has been a national since his birth, or as against a State of which he is a national through naturalisation, or in which he is domiciled or on behalf of which he is or has been charged with political functions? Or, finally, is the admissibility or inadmissibility of the exercise of diplomatic protection as between the two States governed by other considerations capable of being formulated?

3. The question may present itself to a third State. What principle decides which nationality is to prevail over the other? Should preference be given to the nationality which corresponds to the domicile of the person concerned (the criterion adopted in the preliminary draft of the Committee of Experts and by the International Committee of Jurists which met at Rio de Janeiro in 1927), or to the nationality which corresponds to the person's habitual residence (the criterion adopted by the Conference on Private International Law at The Hague in 1928), or to the nationality last acquired; or should account be taken of the person's own choice; or should preference be given as between the conflicting laws to the one most closely resembling the law of the third State itself; or should some other element of the case determine which nationality is to prevail?

III. Loss of nationality through naturalisation abroad and authorisation to renounce nationality.

Does the loss of nationality result directly from the naturalisation in the foreign country? Or, on the contrary, is it the authorisation to renounce the former nationality which causes that nationality to be lost, and, if so, how and at what date? Is there an exact correspondence between the loss of the former nationality and the acquisition of the new nationality by naturalisation, especially as regards date? If such correspondence does not exist, is it desirable to establish it by an international convention?

IV. Effect of naturalisation of parents upon the nationality of minors.

V. Application of laws conferring the nationality of the State on persons born within its territory to the case of children of persons enjoying diplomatic privileges, and, in general, of persons exercising official functions on behalf of a foreign Government, such as consuls, financial agents, members of a military or commercial mission, etc.

If these laws are applicable to such children, should the cases of double nationality which result be treated in accordance with the rules ordinarily applicable or in accordance with different rules?

If these laws do not automatically apply to such children, are they given the opportunity of claiming the benefit of them?

VI. Application of laws conferring the nationality of the State on persons born in its territory to the case of a child born in the territory while the parents were merely passing through.

VII. Nationality of a child of unknown parents, of parents having no nationality, or of parents of unknown nationality.

VIII. Nationality of a child to whom the parents' nationality is not transmitted by operation of law.

The Committee has in mind the case of a child born abroad the law of whose parents makes transmission of their nationality conditional upon their birth on the national territory, or, again, the case of an illegitimate child whose parents are of different nationalities and who, under the national law of the father, should possess the mother's nationality, and, under the national law of the mother, should possess the father's nationality.

In cases of this nature, should the child be considered to possess the nationality of the parents, or one of them, or the nationality of the State of birth?

IX. Is birth on board a merchant ship to be assimilated, as regards acquisition of nationality in virtue of birth, to birth on the territory of the State whose flag the ship flies:

- (a) When the birth occurs while the ship is on the high sea?
- (b) When it occurs while the ship is in the territorial waters of a foreign State?
- (c) When it occurs while the ship is in a foreign port?

X. Option by a person entitled to double nationality. Conditions governing such option. Is there an option between the two nationalities or a power to renounce one of them and, if so, which? Can the system of option be made general or be extended and, if so, to what extent?

XI. Loss of nationality by a woman as the result of marriage with a foreigner.

Assuming such loss of nationality to be the rule of the woman's national law, is it conditional on the national law of the husband conferring his nationality on the woman?

In like manner, if during the period of married life a change occurs in the nationality of the husband, is loss of nationality by the woman, assuming it to be the rule of her national law, conditional upon the new national law of the husband giving her the husband's new nationality?

XII. Status of a woman who, after acquiring the nationality of her husband in consequence of or during her marriage, recovers her original nationality after dissolution of the marriage.

Does the woman in such a case lose the nationality which she acquired in consequence of or during the marriage? It seems necessary to consider separately: (a) the case where the recovery of the original nationality occurs automatically by operation of law; (b) the case where the recovery results from the decision of a public authority; and (c) the case where the recovery results from a declaration of intention by the woman herself.

XIII. Other effects of marriage upon nationality.

XIV. Effect of a change in the status of an illegitimate child (recognition, legitimisation) upon the child's nationality.

In what cases and to what extent is there such an effect? More particularly, if the illegitimate child loses the former nationality, is such loss conditional upon acquisition of another nationality (that of the father or of the mother, as the case may be)?

XV. Effect of adoption upon the nationality of the adopted child.

In what cases and to what extent is there such an effect? More particularly, if the adopted child loses the former nationality, is such loss conditional upon acquisition of the nationality of the adoptive parent?

B. TERRITORIAL WATERS.

I. Nature and content of the rights possessed by a State over its territorial waters.

It would seem possible to take as the point of departure the proposition that the State possesses sovereignty over a belt of sea around its coasts. This involves possession by the State in the belt of the totality of those rights which constitute sovereignty, so that it is not necessary to specify that, for example, it has legislative authority over all persons, power to make and apply regulations, judicial authority, power to grant concessions and so forth. It is obvious that in exercising its sovereignty the State must respect the limitations imposed by international law. It has therefore to be determined what those limitations are (see points IX, X, XII, XIII).

The breadth of the belt will be considered under point III.

The question arises whether it is possible for special rights belonging to another State to restrict or exclude the rights of the coastal State in the belt. Are such special rights claimed by any State? If so, what is the extent and the ground of the claim? Is the claim admitted by other States?

II. Application of the rights of the coastal State to the air above and the sea bottom and subsoil covered by its territorial waters.

III. Breadth of the territorial waters:

(a) Breadth of the territorial waters subject to the sovereignty of the State (three miles, six miles, range of cannon, etc.).

(b) Does the State admit any claim by any foreign State to exercise sovereignty, in virtue of usage, special geographical configuration, or any other ground, over a greater breadth of territorial waters than that over which the former State itself exercises sovereignty along its own coasts?

(c) Does the State claim to exercise rights outside the territorial waters subject to its sovereignty? If so, what precisely are those rights? On what are they founded? Are they claimed within a belt of fixed breadth or within an indeterminate area of the waters adjacent to the coast but outside the territorial waters?

(d) Does the State admit any claim by any foreign State to exercise such rights outside the territorial waters subject to the sovereignty of the latter State?

(e) Whatever be the existing law, is it considered possible and desirable to embody in a convention an agreement upon one of the following alternatives:

(1) A uniform breadth for territorial waters would be fixed for all States and for all purposes;

(2) A uniform breadth for territorial waters would be fixed for all purposes but the breadth might be different for different States on the ground of special circumstances ;

(3) The territorial waters in which the State exercises sovereignty would be delimited, but beyond such limits, within an area to be determined, the State would be entitled to exercise such special rights as might be specified ?

IV. Determination of the base line for calculation of the breadth of territorial waters.

(a) Along the coasts. Is the line that of low tide following the sinuosities of the coast ; or a line drawn between the outermost points of the coast, islands, islets, or rocks ; or some other line ? Is the distance between islands and the coast to be taken into account in this connection ?

(b) In front of bays. Breadth of the bay to be taken into account. Historic bays. Bays whose coasts belong to two or more States.

(c) In front of ports.

V. Territorial waters around islands.

An island near the mainland. An island at a distance from the mainland. A group of islands ; how near must islands be to one another to cause the whole group to possess a single belt of territorial waters ?

VI. For the purposes of points IV and V, what is meant by an island ?

VII. Straits.

Conditions determining what are territorial waters within a strait connecting two areas of open sea or the open sea and an inland sea : (a) when the coasts belong to a single State ; (b) when they belong to two or more States.

VIII. Line of demarcation between inland waters and territorial waters. A port. A bay. The mouth of a river.

IX. Obligations of the coastal State in regard to innocent passage of foreign ships through its territorial waters.

Rights of passage : (a) of merchant ships ; (b) of warships ; (c) of submarines.

Anchoring in territorial waters while exercising the right of passage.

Anchoring in case of distress.

Rights of passage of persons and goods.

X. Regulation of the passage and the anchoring in territorial waters of foreign warships.

Penalties for non-observance of the local laws and regulations. Right to require the ship to depart.

XI. It is to be remembered in connection with points IX and X that the Committee of Experts for the Progressive Codification of International Law did not include in the scope of its work questions relating to war and neutrality.

XII. Limitations upon the exercise of the sovereignty of the coastal State as regards jurisdiction in the case of a foreign ship passing through its territorial waters.

Is the coastal State precluded from exercising jurisdiction : (a) in civil cases ; (b) in criminal cases ?

Is jurisdiction only exercisable in respect of occurrences happening during the passage ?

Are there distinctions to be made according to whether the ship is passing through the territorial waters on its way to or from a port of the coastal State or is merely passing through such waters ?

Are there distinctions to be made according to whether the effect of the occurrences does or does not extend beyond the ship itself or the persons on board or according to other criteria ?

Arrest of a person on a ship passing through territorial waters.

XIII. Limitations upon the exercise of the sovereignty of the coastal State in fiscal matters.

May dues be levied upon foreign ships passing through territorial waters ? If so, is their collection subject to conditions : dues collected to cover expenses incurred in the interests of navigation, equality of treatment, exemption for ships forced to take refuge in the territorial waters, etc. ?

XIV. Continuation on the high seas of pursuit of a foreign ship commenced within territorial waters.

Is such pursuit permitted? If so, to what conditions or restrictions is it subject (zone contiguous to the territorial waters, entry into the territorial waters of another State, etc.)?

XV. Jurisdiction over foreign merchant ships within maritime ports.

Should this point form the object of a provision of the convention on territorial waters. To meet the eventuality of the above question being answered affirmatively, to what extent may the coastal State exercise: (a) civil jurisdiction, (b) criminal jurisdiction, over such ships and the persons on board? Measures of execution involved in the civil jurisdiction (arrest). Right of the authorities of the coastal State to make an arrest upon a foreign ship.

C. RESPONSIBILITY OF STATES FOR DAMAGE CAUSED IN THEIR TERRITORY TO THE PERSON OR PROPERTY OF FOREIGNERS.

I. The responsibility of a State in international law for damage caused in its territory to the person or property of foreigners must be distinguished from the responsibility which under its laws or constitution such State may have towards its nationals or the inhabitants of its territory. In particular, a State cannot escape its responsibility under international law, if such responsibility exists, by appealing to the provisions of its municipal law.

II. The juridical basis of the international responsibility of a State.

It seems possible to take as the point of departure the proposition that recognition of a political unit as a member of the community governed by international law indicates that the States by which it is recognised assume that such unit will conform to certain standards of organisation and behaviour and will obey the standards and rules which in general govern the conduct of States. The community thus established between all such States implies for each of them the obligation to conform to such standards and rules in their relations with one another. It will follow that: (a) a political unit which declines to admit the obligation to conform to these standards and to obey these rules cannot claim to be considered as a member of the community governed by international law; (b) that a State which fails to comply therewith, as regards the person or the property of foreigners on its territory, incurs responsibility and must make reparation in such form as may be appropriate.

It would be desirable to know whether the principle above stated is regarded as correct, and, if not, on what principle the international responsibility of the State is based.

III. Acts of the legislative organ.

Does the State become responsible in the following circumstances:

1. Enactment of legislation incompatible with the treaty rights of other States or with its other international obligations? Failure to enact legislation necessary for the purpose of implementing the treaty obligations of the State or its other international obligations?

2. Enactment of legislation incompatible with the terms of concessions or contracts granted to or concluded with foreigners or of a nature to obstruct their execution?

3. Enactment of legislation infringing vested rights of foreigners?

4. Repudiation of debts?

IV. Acts relating to the operation of the tribunals.

Does the State become responsible in the following circumstances:

1. Refusal to allow foreigners access to the tribunals to defend their rights?

2. Decisions of the tribunals irreconcilable with the treaty obligations or the international duties of the State?

3. Unconscionable delay on the part of the tribunals?

4. Decisions of the tribunals which are prompted by ill will against foreigners as such or as subjects of a particular State?

5. In what other circumstances may a State incur responsibility on account of an unjust decision given by its tribunals?

V. Acts of the executive organ.

Does the State become responsible in the following circumstances, and, if so, on what grounds does liability rest :

1. Acts of the executive Government (higher authorities of the State) :
 - (a) Acts incompatible with the terms of concessions or contracts granted to or concluded with foreigners or of a nature to obstruct their execution ?
 - (b) Repudiation of debts ?
 - (c) Failure to exercise due diligence to protect individuals, more particularly those in respect of whom a special obligation of protection is recognised — for example : persons invested with a public character recognised by the State ?
 - (d) Unwarrantable deprivation of a foreigner of his liberty ?
2. Acts or omissions of officials :
 - (a) Acts or omissions of officials when acting within the limits of their authority ? If such acts or omissions are contrary to the international obligations of the State or tainted with illegality under the municipal law or marked by culpable negligence, how far is this fact to be taken into account ? Are there other factors which must be taken into account in order to establish responsibility on the part of the State ? Do the same rules apply to damage caused on the sea — for example : by a collision with a warship ?
 - (b) Acts of officials in the national territory in their public capacity (*actes de fonction*) but exceeding their authority ?
 - (c) Acts of officials in a foreign country, such as diplomatic agents or consuls acting within the apparent scope of, but in fact exceeding, their authority ?
 - (d) Acts or omissions of officials unconnected with their official duties ?
 - (e) Where a right of recourse against the official in question is excluded : (i) by some act on the part of the State, e.g., an amnesty or act of indemnity ; or (ii) by some rule of law, such as immunity from the jurisdiction of the courts ?

VI. Acts or omissions of bodies exercising public functions of a legislative or executive character (communes, provinces, etc.).

VII. Circumstances in which the acts of private persons causing damage to the person or property of a foreigner in the territory of a State may be the occasion of liability on the part of the State, and grounds on which such liability arises, if it does arise :

- (a) Failure on the part of the State authorities to do what is in their power to preserve order and prevent crime, or to confer reasonable protection on the person or property of a foreigner.
- (b) Failure to exercise reasonable diligence in punishing persons committing offences against the person or property of a foreigner.
- (c) If the acts were directed against a foreigner as such, should this fact be taken into account ?
- (d) If the foreigner who has suffered damage had adopted a provocative attitude against the persons who inflicted it, should this fact be taken into account ?

VIII. Responsibility of the State in the case of damage done to the person or property of a foreigner when the forces or officials of the State were engaged in suppressing insurrections, riots or mob violence ; property destroyed during the struggle ; closing of a port to commerce ; requisitions, etc.

IX. Damage done to the person or property of foreigners by persons engaged in insurrections or riots, or through mob violence. Is, in general, the State liable, or not liable, in such cases ?

What is the position :

- (a) Where negligence on the part of the Government or its officials can be established, or where connivance on the part of the latter can be shown ?
- (b) Where the Government pays compensation for damage done in such cases to its own nationals or to other foreigners ?
- (c) Where a rebellion is successful and the insurgent party which did the damage is installed in power and becomes the Government ?
- (d) Where the movement is directed against foreigners as such or against persons of a particular nationality ?

X. Responsibility of the State in the case of a subordinate or a protected State, a federal State and other unions of States.

XI. Circumstances in which a State is entitled to disclaim responsibility. What are the conditions which must be fulfilled in such cases :

(a) When the State claims to have acted in self-defence ?

(b) When the State claims to have acted in circumstances which justified a policy of reprisals ?

(c) When the State claims that circumstances justify the unilateral abrogation of its contractual engagements ?

(d) When the individual concerned has contracted not to have recourse to the diplomatic remedy ?

XII. Is it the case that the enforcement of the responsibility of the State under international law is subordinated to the exhaustion by the individuals concerned of the remedies afforded by the municipal law of the State whose responsibility is in question ?

XIII. National character of the claim.

It is recognised that the international responsibility of a State can only be enforced by the State of which the individual who has suffered the damage is a national or which affords him diplomatic protection. Some details might be established as regards the application of this rule.

Is it necessary that the person interested in the claim should have retained the nationality of the State making the claim until the moment at which the claim is presented through the diplomatic channel, or must he retain it throughout the whole of the diplomatic procedure, or until the claim is brought before the arbitral tribunal or until judgment is given by the tribunal ? Should a change occur in the nationality of the person making the claim, are there distinctions to be made according to whether his new nationality is that of the State against which the claim is made or that of a third State, or according to whether his new nationality was acquired by a voluntary act on his part or by mere operation of law ?

Are the answers given to the preceding questions still to hold good where the injured person dies leaving heirs of a different nationality ?

If in the answers given to the preceding questions it is considered that a claim cannot be upheld except for the benefit of a national of the State making the claim, what will be the position if some only of the individuals concerned are nationals of that State ?

XIV. Reparation for the damage caused.

Should this point form the object of a provision of the agreement to be reached ?

To meet the eventuality of the above question being answered affirmatively, what answers should be given on the following points :

(a) Performance of the obligation ?

(b) Pecuniary reparation ? What factors are to be taken into account in calculating the indemnity ? Actual proved losses ? Loss of profits ? Indirect damage : if this is not admissible, how is it to be distinguished from direct damage ? Moral damage ? May an indemnity be claimed by way of a mere penalty for the wrong done ? From what date may interest be granted ? Is account to be taken of expenses incurred for the purpose of obtaining reparation from the State responsible for the damage in question ?

(c) Reparation other than pecuniary ? Apologies ? Punishment of the guilty individuals ?

(d) When the responsibility of the State arises only from a failure to take proper measures after the act causing damage had been committed (for example : failure to prosecute the guilty individual), is any pecuniary reparation due from it to be limited to making good the loss occasioned by such omission ?

XV. Enquiry, conciliation, arbitration, judicial settlement.

Should this point form the object of a provision of the agreement to be reached ?

To meet the eventuality of the above question being answered affirmatively, what answers should be given on the following points :

(a) To what extent have : (i) an international enquiry, (ii) conciliation, (iii) arbitration been employed to settle disputes between States as to responsibility for damage caused to foreigners in their territories ?

(b) How far is recourse to such methods of procedure obligatory under general or special treaties ?

(c) Is it desirable that recourse to such methods of procedure, or certain of them, should be made obligatory ?

(d) Should jurisdiction be given to the Permanent Court of International Justice in preference to any other jurisdiction ?

[Distributed to the Council, the Members of the League and other Governments and the Delegates at the Assembly.]

25 AUG 1928

A. 14. 1928. V.

[C.P.D.I. 120 (1).]

Geneva, July 5th, 1928.

LEAGUE OF NATIONS

**COMMITTEE OF EXPERTS FOR THE PROGRESSIVE
CODIFICATION OF INTERNATIONAL LAW**

**LETTER DATED JUNE 28TH, 1928, FROM THE CHAIRMAN OF THE
COMMITTEE TO THE SECRETARY-GENERAL, REPORTING ON
THE WORK OF THE FOURTH SESSION OF THE COMMITTEE,
HELD IN JUNE 1928, AND COMMUNICATING TO THE SECRETARY-
GENERAL A QUESTIONNAIRE AND VARIOUS REPORTS.**

Note by the Secretary-General:

The Secretary-General has the honour to communicate to the Council and to the delegates to the Assembly, as well as to the Governments of the Members of the League and other Governments, the letter reproduced below from the Chairman of the Committee of Experts for the Progressive Codification of International Law, which gives an account of the work of the Committee at its fourth session and transmits to the Secretary-General a questionnaire and various reports adopted by the Committee.

In accordance with the procedure laid down for the work of the Committee, the questionnaire has been communicated to the Governments for their consideration (document C.343.M.101.1928.V).

The Committee's report on the recommendations of the Mixed Committee for the Repression of Counterfeiting Currency has been submitted to the Council (document C.344.1928.V).

The other documents mentioned in the Chairman's letter, namely, the report to the Council on the questions which appear ripe for international regulation and the report on the proposal made at the eighth session of the Assembly by the delegation of Paraguay, will be submitted for the consideration of the Assembly at its session of the present year in accordance with a decision of the Council which, on June 4th, 1928, authorised the Secretary-General to place these reports directly before the Assembly.

**LETTER DATED JUNE 28TH, 1928, FROM THE CHAIRMAN OF THE COMMITTEE OF EXPERTS
TO THE SECRETARY-GENERAL.**

The Committee, by its terms of reference, was required:

(1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment;

(2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received; and

(3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Committee, at its fourth session, held at Geneva from June 22nd to June 28th, 1928, has decided to make a report to the Council on certain subjects which appear to have become "sufficiently ripe" and on "the procedure which might be followed with a view to preparing eventually for conferences for their solution". It further instructs me to communicate to you the annexed questionnaire drawn up at the session by the Committee. This questionnaire is entitled "No. 12—Domicile".

This is the third communication of the kind made under the Committee's terms of reference.

In accordance with these terms of reference, the Committee will be obliged if you will be so good as to request the various Governments to send to you, within the period indicated in the questionnaire, their opinion upon the question whether and to what extent the regulation, by

international agreement, of the subject treated in the questionnaire is desirable and realisable in the near future.

If circumstances permit the Committee to meet at a sufficiently early date, you are requested to transmit the replies to it for examination, with a view to the preparation of a report to the Council under the Committee's terms of reference. Should this not be possible, the Committee requests you to transmit the replies direct to the Council in order that the latter may take such measures as may appear to it to be appropriate.

In a letter of April 2nd, 1927¹, I had the honour to inform you that the Committee, at its third session, felt that it should abstain from submitting new subjects for examination by sub-committees. Accordingly the Committee has, on the present occasion, had before it only the three reports of Sub-Committees, examination of which had, for various reasons, been adjourned. One of these reports forms the basis of the questionnaire above mentioned. The two others, which deal with the question of the application in international law of the notion of prescription and the question of the legal position of private non-profit-making international associations and private international foundations, have been examined by the Committee which, however, for various reasons, has found that it was not desirable to send questionnaires to the Governments on the matters treated in the reports.

The reasons which, at its third session, induced the Committee to abstain from undertaking the study of new questions, still exist.

Under these conditions, the Committee feels that, before resuming its activities with a view to pursuing the task entrusted to it, it should await new circumstances or instructions.

I have the honour to request you, in the name of the Committee, to transmit the above observations to the proper quarters.

The Committee begs to attach to the present letter two reports adopted by it, under special terms of reference, on the subject of the proposal made at the eighth session of the Assembly by the delegation of Paraguay and on the subject of Recommendations VII and VIII which were formulated by the Mixed Committee for the Repression of the Counterfeiting of Currency.

Geneva, June 28th, 1928.

(Signed) HJ. L. HAMMARSKJÖLD,
Chairman of the Committee of Experts.

¹ Document C. 200. M. 74. 1927 V.

Geneva, June 27th, 1928

LEAGUE OF NATIONS

**Committee of Experts for the Progressive Codification
of International Law**

QUESTIONNAIRE No. 12

Adopted by the Committee at its fourth session, held in June 1928.

DOMICILE

The Committee has the following terms of reference :

(1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment;

(2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received; and

(3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Committee decided to submit for examination by a sub-committee the following question :

“ Are there any questions connected with conflicts of laws on domicile which might, without encountering obstacles of a political nature, be settled in conventions ? If so, what are these questions, and how might they be solved ? ”

The Committee has now the honour to communicate to the Governments the report submitted to it by its Sub-Committee, which consisted of M. Barbosa de Magalhaes and Mr. Brierly. This report comprises a memorandum presented by M. Barbosa de Magalhaes and comments thereon made by Mr. Brierly.

While it does not contemplate the possibility of dealing with the difference between the systems of nationality and of domicile, the Committee submits to the Governments the question whether and to what extent it is desirable and realisable to attain, for the solution of conflicts of laws regarding domicile, the establishment in a convention of a body of rules analogous to that contemplated by questionnaire No. 1 dealing with the question of conflicts of laws on nationality¹.

It is understood that, in submitting the present subject to the Governments, the Committee does not pronounce either for or against the solutions suggested for various particular problems in the report.

It would be desirable that the replies of the Governments should reach the Secretariat of the League of Nations before March 1st, 1929.

The report of the Sub-Committee is annexed to the present communication.

Geneva, June 27th, 1928.

(Signed) Hj. L. HAMMARSKJÖLD,
Chairman of the
Committee of Experts.

¹ This questionnaire was communicated to the Governments under No. C.43.M.18.1926.V. It is also reproduced on page 8 of document C.196.M.70.1927.V (Report of the Committee of Experts to the Council on the Questions which appear ripe for International Regulation, adopted at the session of March-April 1927).

ANNEX.

REPORT OF THE SUB-COMMITTEE.

“ Are there any questions connected with the conflicts of laws on domicile which might, without encountering obstacles of a political nature, be settled in conventions? If so, what are these questions, and how might they be solved? ”

Rapporteur : M. BARBOSA DE MAGALHAES.

Member : Mr. BRIERLY.

I. MEMORANDUM PRESENTED BY M. BARBOSA DE MAGALHAES

[*Translation.*]

Formerly, in private international law, domicile was a matter of extreme importance. When the *theory of statutes* held undivided sway it was domicile that determined the law to be applied in matters coming within the scope of the *statute personal*, mainly questions concerning the status of the person and his civil capacity. As LOISEAU observed, domicile was the only safe test to determine the law applicable to the person; this was the test also applied to discover the law applicable to other legal relationships.

In certain countries — notably in France and Italy — political unity was not followed by juridical unity, and so long as this state of affairs lasted the question of domicile maintained its full importance; conflicts of laws, arising generally between individuals who were of the same nationality but were subject to different laws, had almost always to be settled on the basis of their domicile; the law to be applied to each individual from the point of view of his juridical status, was decided according to his domicile.

When, however, juridical unity was attained and relations between the various countries developed, conflicts of laws assumed an international character. Thereupon another theory has arisen which has gradually substituted nationality for domicile as a test for determining the law to be applied.

Nationality was already of some, though subsidiary, importance in Roman law, but in the French civil code (which on this point, as on many others, was soon copied by the codes of other States), and as a first consequence of the new ideas put forward by jurists (particularly the distinction drawn between domicile of *origin* and *acquired domicile*), nationality has become the main factor for determining the status and civil capacity either of nationals of the State who happen to be travelling or residing in another State or of foreigners travelling or residing in the State which has promulgated the code. These two theories — of domicile and nationality — have not only come to be the subject of unending and animated discussion but also to constitute the line of separation between various publicists and various systems of law.

Evolution, however, has pursued its course, and the theory of nationality has progressively gained a firmer and firmer foothold, both in doctrine and in legislation. Indeed, at the present time it may be said to be the dominant conception in both. Of course in composite States conflicts of laws still occur as between the laws of the various component States. Such conflicts, however, are matters of purely domestic concern, the solution of which has no bearing on international law, since the only question of importance to international law is: “ In what State possessing a distinct personality — that is to say, possessing rights and obligations in international law — is the person domiciled? ”

But, though it is now a secondary consideration, domicile is still a matter of considerable importance, because the domicile of individuals has to be determined for the solution of conflicts of law on many and various points — *e.g.*, the property of married persons, questions of succession, movables, bankruptcies, contracts, jurisdiction, etc.

Indeed, for the determination of nationality itself domicile has often to be taken into account, since domicile may be one of the factors governing the acquisition or loss of nationality, particularly in the case of legal entities, and it is always a necessary condition for the granting of naturalisation. In some countries also, as in France, the law of domicile may, on occasion, replace the law of nationality for the determination of the *statute personal*.

Domicile even affects the legal position of foreigners when, for instance, only those foreigners who are domiciled in a State are required to pay certain taxes¹.

PILLET, therefore, is surely right when he says that the concept of domicile is a necessary one “ and that it would be impossible to apply the law if there did not exist between a person and a definite place, the place where that person is principally established, a relationship recognised by law and justifying the presumption that the person is always present in that place ”, and, as DESPAGNET puts it, “ in our opinion, the theory of domicile, like the theory of nationality, is a preliminary question which has to be decided before any problems arising out of the conflict of laws can be solved ”.

¹ WAHL: “ La notion du domicile au point de vue fiscal international ”. *Dar.* 05, 80 (note on page 110 of VALÉRY).

At first sight we may be tempted to conclude that in this case we have neither to define the essence nor elucidate the theory of domicile, because, according to the resolution of the Committee, our task is to consider whether "there are any questions connected with the conflicts of laws on domicile which might, without encountering obstacles of a political nature, be settled in conventions". If so, what are these questions and how might they be solved?

If, however, we carefully consider the generic terms in which our mission has been defined, and examine, by way of comparison, the manner in which similar tasks have been dealt with by other Rapporteurs or the Committee itself, we shall perceive that it is our duty not merely to study the possibility of settling conflicts of laws on domicile by means of conventions but also the possibility of avoiding such conflicts by embodying certain ideas, principles or rules in an international convention, or, in other words, by a measure of uniform legislation on the subject.

It is fortunate that this should be so, because in this domain differences of opinion and political divergencies will be less acute, and it may therefore be easier to reach an agreement by convention on certain points.

With a view to fulfilling our duty conscientiously we propose to examine first the concept and theory of domicile, and then the manner in which actual conflicts of law may be settled.

There are two general points to be noted.

The first may seem to be merely a matter of curiosity, but it is nevertheless instructive and has a certain connection with the other; we refer to the fact that domicile, in spite of its importance, has never seemed greatly to interest international scholars, who have devoted very little attention to the question. LOISEAU has already observed this fact with regard to the older publicists, and it is the same with modern and contemporary writers.

One or two authors devote a few pages to the subject, but there are no complete works on the question apart from those of LOISEAU² and DICEY³. For the rest we have only a few short articles in law reviews⁴.

LOISEAU explains the fact as follows: "In every domain of thought, particularly in the domain of law, the ideas which people think least of analysing are the primary ones, because they are so common and so readily comprehensible. Reduced to its elements, the idea of domicile is not a difficult conception. The law of domicile, moreover, applied to everything connected with the *statute personal*; it was the only law concerned. This general and admitted fact rendered any discussion useless. Of course the ease with which domicile could be changed caused serious difficulties and many disputes. But all that the older authors could do was to complain of the extreme diversity of customs: they could not protest against changes of domicile, since one of the fundamental rights of man, as BOUHIER points out, is "to go where he pleases and make his domicile where he will".

Is this explanation satisfactory? Or, if it was satisfactory for the period about which LOISEAU writes, is it so now, in whole or in part? The point is not worth debating; we simply mention it because it leads up to our second observation.

Whereas some writers, like DICEY, refer to the divergence of opinion on this subject, and notably in regard to the very notion of domicile, both in legal systems and in doctrine, others¹, like PILLET, point out the fundamental concordance existing in doctrine and in legal systems on this subject. The consideration which this distinguished and undoubtedly authoritative international specialist put forward are these: "It should be noted that the idea of domicile as inherited by us from Roman law, and as admitted in our days in all civilised countries, is eminently suited to serve as a basis for international law. Domicile differs from nationality in that it is not a relationship of purely legal origin the elements of which depend on the very varied intentions of different legislators. Domicile is based on a fact, and the fact on which it is based is the same in all countries; it is always the principal character of the establishment set up by a person in a country, and the intention of that person to establish himself permanently there, which causes it to be said that the person is domiciled in the country in question. This conception is absolutely the same in all countries, and we therefore obtain the highly desirable result that, so far as domicile is concerned, the laws of all countries are concordant. If, therefore, we confine our attention to this elementary idea, we run no risk — as we do in the matter of nationality — of encountering conflicts which no international theory can settle".

¹ *Du domicile comme principe de compétence législative dans la doctrine et dans la jurisprudence française depuis le Code Civil*, Paris, 1893.

² *The Law of Domicile*.

³ CHAUSSET: "Du rôle international du domicile", in the *Journal de droit international privé* (Clunet), 24th year, 1897, Nos. 1-11, page 5. — Unsigned article on "La loi qui détermine le domicile d'après les jurisprudences américaine et anglaise" in the *Revue de droit international privé*, Vol. 4, 1908, pages 392 et seq.

⁴ LOISEAU (*loc. cit.*, page 116): "The existence of this legal 'seat' (*siège*) of the person is one of the general and permanent phenomena of the law. The needs it meets are so elementary that in almost all systems of law the conception of domicile is practically the same as it was in Roman law"; and again, on page 134, "the conception of domicile is the same in the law of all countries".

Where does the truth lie? Are there really numerous and acute differences of opinion on this point? Or is there, on the contrary, a certain unity of outlook which can justify the hope that it will not be difficult to attain uniformity on certain points and with regard to certain rules at least, if not with regard to all?

In our opinion the divergencies which really exist are not serious; at any rate they do not refer to fundamentals. They are merely differences of terminology, due to the fact that most writers, and even most legislators, have always been more concerned with originality than uniformity.

Even as regards the solution of conflicts of laws on domicile, divergences in doctrine are not on points of principle, so that a compromise might be reached.

Above all, we do not think that there are any serious obstacles of a political nature which would hinder the work.

Both in legislation and in the works of the various writers on international and municipal private law, the definition of domicile varies greatly. In the well-known appendix to his treatise, DICEY says that the object of the latter "is to compare the definition proposed in this work with some other definitions of domicile, and to consider what is the weight due to criticisms made by high authorities on all attempts to define domicile".

For our purpose we do not need to weigh the value of every definition of domicile offered by authors or by legal systems, ancient and modern, by comparing the definitions and criticising them. On the contrary we shall endeavour to collect these definitions into categories and then draw a general inference as to their relative value.

For instance, the French Civil Code, like various others which are based on it and have followed it on this point, lays down in Article 102 that "le domicile de tout Français, quant à l'exercice de ses droits civils, est au lieu¹ où il a son principal établissement".

Article 16 of the Italian Civil Code contains an identical provision: "In domicilio civile di una persona è nel luogo in cui essa ha la sede principale dei propri affari ed interessi".

Here, then, we have a first category of systems which regard domicile as the place in which the individual has his principal establishment — in other words, the centre of his affairs.

Most French and Italian authors merely reproduce the definition given in their code, adding a few comments thereto.

Article 41 of the Portuguese Civil Code defines domicile as "the place in which the citizen has his permanent residence"; the definition given in the Spanish Civil Code (Article 40) is the same: "El hogar de su residencia habitual".

We have here then another category, in which it seems possible to include the German Civil Code, for the latter, in Article 7, lays down that "where any person establishes his residence permanently (*sich ständig niederlässt*), there he establishes his domicile". But the word *permanently* (*ständig*) means more than "outwardly permanent"; it has been definitely interpreted to include the *intention* of prolonged or lasting commorancy².

We now have to see whether or not there is any implication of "intention" in the wording of the Portuguese and Spanish codes. If there is, we have only one category; if not, we have two categories, the German code forming the basis of a new category which will also include the Swiss, Brazilian, Peruvian and other codes which expressly refer to "intention".

Doctrine — that is to say the publicists, both in Portugal³ and in Spain⁴ — has decided that *intention to reside* is implied in the wording of their codes; that being so, we have only one category including all these systems, and also, probably, English law, although the idea of "domicile", according to the *Digest of English Civil Law*⁵, is rather vague. In this work it is stated that, under English law, domicile is the *country*⁶ in which a person resides with the intention of establishing his *home*⁷, and this conception corresponds to that already given by DICEY: "the place or country in which the person in fact resides with the intention of residence (*animus manendi*)⁸".

We have, then, two categories of definitions; that of the systems which regard domicile as the place in which the individual has his principal establishment, or, in other words, the

¹ In the Conseil d'Etat's first draft, the text of Article 102 was worded: "Le domicile de tout Français est le lieu où il a son principal établissement". "These two texts", says LOISEAU (*op. cit.*, page 115), "which are not interchangeable, are both equally correct, because each interprets one meaning of the word 'domicile'" (*cf.* PLANIOL: *Traité élémentaire de Droit Civil*, Vol. I, page 555).

² "The determination of domicile . . . implies, in addition to a material state, an intention of remaining indefinitely or for a long time. This is clearly shown by the wording of Article 7, under which permanent (*ständig*) residence is required" (*Code civil allemand, traduit et annoté*, published by the Comité de Législation étrangère, Paris, 1904, Vol. I, page 6; *cf.* MEULENAERE: *Code civil allemand et Loi d'Introduction, traduits et annotés*, page 3).

³ Dias FERRERIA: *Chilian Code, with comments*, 2nd edition, Vol. I, page 89; Guilherme MOREIRA: *Instituições de direito civil português*, Vol. I, page 201.

⁴ GOYENA: "Concordancias, motivos y comentarios del Código Civil Español T.I.", page 51.

⁵ The French text is quoted from the French version by BAUMANN and GOURÉ, Paris, 1923.

⁶ For the determination of domicile, English law regards as a *country* all territory governed by a distinct system of private law. Thus it may be a question of *Scotch* or *Irish* domicile, but not *British* domicile, except in the widest sense of the term.

⁷ "The statement in the text is generally accepted; but the difficulty of interpretation is great, and the definition of 'home' is continually changing with changes of social habits." (*Digest, loc. cit.*). However, the elements of a home are residence and the *animus manendi* (DICEY, *op. cit.*, page 332).

⁸ *Op. cit.*, pp. 1 and 42 *et seq.*, Appendix, Note I, p. 331.

centre of his affairs and interests; and that of those which hold domicile to be the place in which the individual has his residence, with the intention of residing there permanently.

But is there no element of *intention* in the first conception?

We propose to consider this point.

Basing their arguments on Article 103 of the Code Napoléon, the French publicists assert that domicile is determined, as LOISEAU has said¹, "by the fact that a person actually lives in a certain place and also intends to make it his principal establishment". PILLET² shares this view.

Several Italian publicists interpret Article 16 of their civil code³ in the same way, this view being in harmony not only with the requirement of "intention" laid down in Article 17 of the same Code for a valid change of domicile but also with the conception of domicile which has been handed down to us by Roman law.

Proceeding therefore with our endeavour to harmonise the various conceptions of domicile, and refusing to be influenced solely by the diversity of the phraseology or words employed, let us consider what precisely the difference is between the conception of domicile in the first group of systems and that in the second.

Under the first group, domicile is the place in which the individual has his principal establishment or centre of affairs and interests. Under the second, domicile is the place in which the individual has his permanent or habitual residence. As we have pointed out, both categories include the *animus manendi*.

To these two conceptions in the field of law correspond the same or similar conceptions in doctrine. For instance, some (ALBERIC ROLIN, PILLET, WEISS, etc.) adopt or develop the first view; while others, like VATTEL, PHILLIMORE, KINDSLEY, STORY, ORTOLAN, DUDLEY-FIELD, BUSTAMANTE, etc., adopt the second⁴.

But there are others again who combine the two conceptions: SAVIGNY, POTHIER, FIORE, PLANIOL, etc. Do these authors claim to combine the ideas of "residence" and "principal establishment"; or to explain one by the other?

One of the first publicists to put forward this complex theory was SAVIGNY, and his theory of domicile has the merit of showing us what his thoughts were, so that we may reply to the above question.

SAVIGNY considers "that the domicile of a person is the place which that person has freely chosen to be his permanent residence (and, consequently, the centre of his connections and affairs)".

Other writers who have followed SAVIGNY have dropped the word *consequently*, and have reduced the conception to what they hold to be its simplest terms (for instance, POTHIER: "the chief seat of his residence and affairs"). But the idea has survived, and FIORE has skilfully expressed it as follows: "A riguardo però della nozione giuridica del domicilio tutti sono concordi nell'ammettere, che esso denoti la località o il paese, nel quale una persona ha fissato la sede principale dei propri affari ed interessi, *di maniera che* il concetto di domicilio corrisponde a quello di dimora principale reale permanente"; and more clearly still, in commenting on POTHIER's definition, PLANIOL says: "Outre sa clarté cette définition a un autre mérite: elle fait apercevoir la double idée qui compose la notion du domicile; le domicile est considéré tantôt comme la résidence habituelle de la personne et tantôt comme le centre de ses affaires. Ce dualisme apparaît nettement quand on étudie les utilités pratiques que présente la détermination du domicile: les unes concernant la personne, les autres ses biens".

Some authors hold, therefore, that one of the two simple notions of domicile includes the other by implication, and that between the two there is no difference of principle but only a difference of form. In certain codes the equivalence of the two conceptions is expressly stated; thus the Civil Code of Soviet Russia contains the following definition of domicile: "the place in which a person, as a result of his function, his permanent occupation, or the situation of his property, has his permanent or principal residence"; the Italian Civil Code, after laying down in Article 16 that "il domicilio civile di una persona è nel luogo in cui ha la sede principale dei propri affari ed interessi", and that "la residenza è nel luogo in cui la persona ha la dimora abituale", lays down in Article 17 that "il trasferimento della residenza in un altro luogo coll'intenzione di fissarvi la permanente sede principale produce cangiamento di domicilio⁵". Article 32 of the Brazilian Code lays down that "if a natural person possesses several residences in which he resides at different times, or various habitual centres of affairs, one of these centres or residences shall be regarded as his domicile". The Mexican Civil Code lays down that "domicile is the place in which a person habitually resides; failing that, the place in which the person has the main seat of his affairs; or, failing that, the place in which he happens to be". The Peruvian Civil Code, under which domicile is constituted by the physical fact and the intention of residing, has it that intention may

¹ *Op. cit.*, page 116.

² *Traité pratique de Droit International privé*, Vol. I, page 300.

³ FIORE: *Diritto internazionale privato*, 5th edition, Vol. I, § 58; *Il Diritto internazionale codificato*, 5th edition, page 327; BIANCHI: *Corso di Codice Civile Italiano*, 2nd edition, Vol. IV, No. 91, page 273. Opposed to this view is BRUNETTI: "Domicilio civile, residenza, dimora" in "*Il Filangieri*", XXXVII, 1912, pages 481 *et seq.*

⁴ Many others again, following WESTLAKE, who holds domicile to be the legal conception of residence, give an entirely doctrinal view of domicile, regarding it as a legal link between a person and a given spot (AUBRY and RAU, ORTOLAN, Lord WESTBURY, etc.).

⁵ BRUNETTI, *loc. cit.*, in drawing up a very interesting table showing the evolution of conceptions of domicile, argues that the conception in Article 16 of the Italian Civil Code is independent both of residence and of the intention of remaining (*animus manendi*), and considers that it cannot be reconciled with Article 17.

be proved by the following facts: (1) an express declaration before the civil authorities; (2) two years of residence; (3) a principal establishment.

That is doubtless why other writers say that "the conception of domicile is the same in the law of all countries" (LOISEAU) or that the view taken of domicile in the French Civil Code "is common to most systems: to mention only the more recent, it is found in the Italian Civil Code of 1865, the Spanish Civil Code of 1889, the Swiss Law of June 25th, 1891, and the German Civil Code of 1896; it was the conception of Roman law . . ." (WEISS); or again, as PILLET has it, "the idea of domicile, as inherited by us from Roman law and as admitted in our days in all civilised countries, is eminently suited to serve as a basis for international law".

In view of the above, is it over-optimistic to hope that it may be possible to secure the acceptance of a definition of domicile in a convention? We think not, because, after all, the notion of domicile is still fundamentally to-day that which has been handed down to us by Roman law: "In eo loco singulos habere domicilium non ambigitur, ubi quis larem rerumque ac fortunarum suarum constituit, unde rursus non sit discessurus, si nihil avocet, unde cum profectus est, peregrinari videtur, quo si rediit, peregrinari jam destitit¹".

We therefore think that the common conception to be put forward might be worded as follows: "The domicile of a person is at the place where that person has his residence and the centre of his affairs, with the intention of remaining there permanently".

This conception is that of the domicile of choice (*domicile volontaire*), but there is, also, domicile by operation of law (*domicile légal, ou nécessaire*), which is the domicile determined by the law for certain persons; and besides this classification there is another which is of importance from the legal point of view: that of the domicile of origin and the "derived" domicile. The first is always by operation of law, because, as soon as a person is born, he has a domicile in the eyes of the law — that of the person on whom he is legally dependent — and this domicile is his domicile of origin. Subsequently it may change, either because he establishes his domicile of choice in another place (or let us say in another country), or because the law for some reason or other imposes another domicile upon him.

Not all systems of law contain express mention of these various forms of domicile, but they almost all define the domicile of origin and give rules to govern a change of domicile, by choice or by operation of the law, and all define — in a greater or smaller number of cases — the domicile by operation of law.

As we have seen, the conceptions formulated by legal systems and by publicists only refer to domicile of choice; this is a mistake, and it may cause — and indeed has caused — a certain amount of confusion.

We do not, however, consider it difficult to formulate one single definition which would embrace both kinds of domicile; it will be sufficient to say that "the domicile of a person is at the place where the law fixes it for him, or, failing a provision of law on the subject, at the place where he has his residence and the centre of his affairs, with the intention of permanence".

The question now arises whether any person can be without domicile. Authorities are not agreed on this point; but to the general question there can be only one reply, *viz.*, that such a case is possible owing to defective provisions of law. When the question is raised in connection with some particular country, it must be solved according to the laws of that country.

Thus, under French law the hypothesis may materialise, because from this point of view the *physical aspect* of the domicile is inadequately defined (*cf.* LOISEAU, *op. cit.* page 119; PLANIOL *op. et vol. cit.*, 596; ROLIN, *op. cit.*, pages 663 and 664; LAURENT, *Droit civil*, Vol. 2, page 223, etc.).

The case may also arise in Switzerland, although the Civil Code of that country lays down (Article 24) that "every person shall retain his former domicile until such time as he has created a new one", and that "the place in which a person resides shall be regarded as that person's domicile when the existence of a former domicile cannot be established or when the person has relinquished his domicile abroad and has not acquired a new domicile in Switzerland", because it may happen that a person does not possess a residence anywhere. It is also possible in Germany, whose Civil Code (Article 7, paragraph 2) says that "domicile ceases when the residence is relinquished with intention to relinquish the same".

The case cannot arise in Portugal or Brazil, as the Civil Codes of these countries make specific provision for persons who reside alternately in different places or who have various habitual centres of affairs (which is at present a common occurrence), the various residences being situated either in the same country or abroad. Furthermore, they provide for the case of a person who has no permanent residence (Portuguese Civil Code, Article 45) or who spends his life travelling and has no centre of affairs (Brazilian Civil Code, Article 33); it is specified that in such instances the domicile of the person shall be wherever he happens to be at the time. Nor can a case arise in England, for under the law of that country a person who acquires a domicile by intention or choice retains this domicile until he acquires another; and, if he abandons a domicile acquired *by his own act* without acquiring a new one, he reverts to the domicile he possessed at birth (*cf.* DICEY, *op. cit.*, page 5; *Digest of English Civil Law*, page 4).

We therefore have two solutions offered us — one by Brazilian law and the other by English law. Which are we to choose?

¹ Cod. X, 39, l. 7, De Incollis.

We think there can be no doubt that the former solution is easier to apply and is better adapted to the needs of modern life¹, although it requires modification and improvement.

It is often difficult, and sometimes impossible, to determine domicile of origin, and such domicile is generally not of the slightest interest to the individual concerned.

To decide that, where an individual possesses various residences in which he dwells alternately or several habitual centres of affairs, the individual in question shall be held to have his domicile in any one of these residences or centres may be satisfactory from the point of view of municipal law; it would not, however, be a suitable solution for international law, because the result of such a plurality of domiciles would be that, according as one court or another was dealing with the case, the laws of one or another foreign country might be applied — a situation which would lead to doubt and difficulty.

When an individual has several residences or several habitual centres of affairs, and when he resides in one place and has his habitual centre of affairs in another, we should fix on one definite spot as his domicile.

Let us consider the second case: ought we to prefer the place of residence or the centre of affairs? We think that there should be no absolute preference for one or the other and that distinction should be drawn: when the matter is one of "family rights" (*droits de famille*), the place of residence should be preferred; but when it is a matter of successorial rights, rights *in personam* (*droits de créance*) or rights *in rem*, we should prefer the habitual centre of affairs.

When the individual has several residences or several centres of affairs, he should, where "family rights" are concerned, be held to have his domicile at the place of his principal residence, and when the question is one of successorial rights, rights *in personam* or rights *in rem*, in the place where he has the main centre of his work or affairs.

The determination of the principal residence or main centre of affairs may be left to the wisdom of the judge, or, for the determination of the principal residence, it may be decided that the individual shall be domiciled in the place where he resides for the greatest part of the year; but we think that the former solution is preferable.

Finally, when the individual has no habitual residence or is continually travelling and has no centre of affairs, we might adopt the solution of the Brazilian and Portuguese codes and hold such person to be domiciled in the place where he happens to be.

At first sight it would appear that this solution would also solve another closely related question: whether an individual can have more than one domicile — a point on which laws and publicists disagree (we do not, of course, refer to the principle admitted by the law of almost all countries that a particular domicile for the exercise of certain rights or the fulfilment of certain obligations may be chosen by special agreement; we will revert to this point later).

Plurality of *general* domicile, which was allowed by Roman law, and which for instance is expressly sanctioned in paragraph 2, Article 7, of the German Civil Code, will in effect be excluded from municipal law, as it already is in the law of most countries (Swiss Civil Code, Article 23, paragraph 2; Portuguese Civil Code, decisions regarding Articles 43 and 45; French Civil Code, Article 102; Italian Civil Code, Article 16; English Law: DICEY, *op. cit.*, page 3, Article 3, *Digest of English Civil Law*, Vol. I, page 2, Article 4); but it will only disappear from international law when rules for the determination of domicile by operation of law have been rendered uniform, because at the present time one and the same person may have a domicile of choice in one country under the laws of that country and a domicile by operation of law under the laws of another, or even possess two or more domiciles by operation of law, under the laws of various countries.

This fact of the plurality of domiciles can be avoided if we decide which shall be the competent law for the determination of the domicile by operation of law.

This problem, it is true, comes within the domain of the conflict of laws, but we feel bound to examine it now, because on its solution will depend the solution of other problems which we shall have to consider presently.

If it is asked, or if it has to be decided, whether an individual has his domicile by operation of law in France, what is the law which should furnish the reply?

PILLET — the only writer, we believe, who has considered this problem — asks: "Should it be the relative clauses of that system of law from which the domicile by operation of law derives, and (as questions regarding that domicile arise in connection with persons subject to the authority of others) should it be the '*statute personal*' of those concerned which should be taken into consideration? Or should it be the law of the territory in which domicile is established?" And he replies: "The second of these solutions seems to us to be the safer", and he adduces short, but we think conclusive, arguments in favour of this solution, which, according to him, the French courts have adopted: "Domicile, like nationality, is one of the foundation-stones on which international private law reposes. In this respect, the law of every State must hold sole and undivided sway in its own territory."

But this leads us to the following conclusion: When, under the laws of a certain State, an individual has his domicile of choice in that State, and has, under the law of another State, his domicile by operation of law in that second State, it is the domicile by operation of law which should prevail.

This conclusion indeed is the result of the conception of domicile proposed by us above, in which we consider first of all the domicile by operation of law and turn to the domicile of choice only when the domicile by operation of law is lacking. That surely is the only acceptable doctrine in municipal law.

¹ This solution has been adopted by the law of other countries, including Mexico.

We think that it ought also to be admitted in international law, but in international law the following possibility has to be considered: A person may have two or even more domiciles by operation of law, under the laws of two or more countries. What should be the solution in this case? We do not think there can be any reason to regard one set of laws as having better claims than another; consequently there can be no question of preference. Nor do we think it would be easy to take into account the legal relationships from which the various domiciles by operation of law derive, in order to decide which of the latter should be preferred.

But we think that, for the sake of ease and convenience, it may properly be laid down that when an individual has a domicile by operation of law in two different States, the domicile of the State in which he is residing shall be paramount.

We have now to examine the question of *change of domicile*.

First of all, as no man can change his domicile unless he already possesses one, it is obviously necessary to determine the domicile of origin. Once that domicile has been fixed, a greater or less number of changes of domicile may successively occur, either by operation of law (*domicile légal*) or by choice (*domicile volontaire*).

Domicile of origin ought to be acquired by the mere fact of birth; but then, as there is no choice, the child's domicile is "*necessarium*" because it is determined by the law. It might seem at first sight that the domicile of the newly-born child is the place of its birth; but this rule could never be absolute, as derogations would have to be allowed in the case of children born at sea or when their parents were travelling, or in the case of children born in any unusual place. Indeed, for reasons which it is unnecessary to recapitulate (see LAURENT: *Droit Civil II*, No. 75), the domicile of minors has always been held to be that of the persons on whom they are legally dependent (French Civil Code, Article 108; Italian Civil Code, Article 18, No. 20; Soviet Civil Code, Article 11, paragraph 2; English law: DICEY, *op. cit.*, page 4, Rule 6; *Digest of English Civil Law*, Vol. I, pages 2 and 3, Articles 8 and 9; DUDLEY-FIELD Project, Articles 285 and 287; BUSTAMANTE Project, Article 24, etc.).

Of course, the various provisions referred to above and similar provisions in the laws of other countries are by no means identical; but all, succinctly or at length, in one form or another, say this; the domicile of minors is that of the persons on whom they are legally dependent.

Alone, this rule is not sufficient; but it would be a difficult and complicated matter to make provision for all the circumstances which might arise, in which it is insufficient (as in the case, for instance, of a legitimate child born at the domicile of its mother, who is only separated *de facto* from the father, when, under the relevant law — e.g. Portuguese Civil Code, Article 49, paragraph 2 — the domicile of a woman not judicially separated from her husband is not that of her husband).

But although such cases may be fairly frequent in municipal law, they will be rare in international law; we therefore think that it would be sufficient — and desirable — to adopt this rule: *the domicile of a minor who is still under authority (non émancipé) is that of the person on whom he is legally dependent*. Further on we shall see that this provision can be enlarged to include persons who have attained their majority but are not *sui juris*.

Having thus fixed the *domicile of origin* we have now to consider *change of domicile*.

In certain countries, as in Spain and Soviet Russia, the law makes no mention of this point; nor does the BUSTAMANTE Project refer to it.

The laws in other countries, as in Germany and Switzerland, do not refer at any length to the subject, and they do not state who may change his domicile and in what circumstances such change may be effected; but most of these laws contain some provisions on the last two points.

As regards capacity to change domicile, German law lays down, for instance, that "a person who is incapable of contracting or whose contractual capacity is restricted may not, without the assent of his legal representative, either establish or abandon a domicile". According to the *Digest of English Civil Law* (Article 10), English law is that "a minor cannot by his own act effect a change of his own domicile", or, according to DICEY (Rule 4), "a domicile once acquired is retained until it is changed: . . . ; (2) in the case of a dependent person, by the act of some one on whom he is dependent".

But no one of these rules is adequate. Systems which are silent on the point are indeed preferable; but from such silence the deduction should not be drawn that, in order to change domicile, it is sufficient to be under no general civil disability. The rule to be deduced is that *any person may change his domicile provided he is under no disability and has no domicile by operation of law* (because the latter domicile excludes a domicile of choice).

We think that this rule might be adopted in an international convention, which would then indicate the law to be applied, in case of conflict, to determine civil capacity.

It is the only provision which makes it possible to dispense with all other clauses on the subject, such as those contained in DUDLEY-FIELD's International Code, which, in addition to the fact that they are inadequate, would not all be readily accepted.

As to the manner in which change of domicile can occur, the general rule is that there must be an actual change of residence or habitat with the intention to reside permanently in the new locality (French Civil Code, Article 103; Portuguese Civil Code Article 44; Italian Civil Code, Article 17; Brazilian Civil Code, Article 34). But some laws make change of

domicile further depend either — as in Argentine law — on residence for a certain period or — as in Portuguese law — compliance with a formality — a declaration of change submitted to the public authorities either in the place which the individual is leaving or in the place to which he is proceeding (Portuguese Civil Code, Article 44). Under other legal systems this declaration merely constitutes a method of proving intention to change domicile, and in some cases it is merely one method of proof among several (French Civil Code, Articles 104 and 105; Brazilian Civil Code, Article 34; Italian Civil Code, Article 17).

Obviously the latter system is better, in that it does not make change of domicile depend on the fulfilment of any formality, and we think it may be adopted in an international convention.

But we should observe that it only settles the voluntary change of domicile; rules to govern a change resulting from the determination of the domicile by operation of law are not necessary.

These questions of change of domicile, particularly those which concern domicile by operation of law, are clearly of less importance in international than in municipal law, since domicile is more often changed in the same country than from one country to another.

There are very few cases of change in the domicile by operation of law as a result of public duties abroad which are not embraced by the exception allowed in the case of diplomatic and consular agents who enjoy so-called exterritoriality. This exception will be dealt with in the conventions to be concluded on diplomatic and consular privileges and immunities, but there should be some reference to it in a future convention on domicile.

In an international convention we should endeavour to facilitate proof of change.

This aspect of the question was one of the items on the agenda drawn up by ZEBALLOS in 1908 for an international conference on domicile, and at the Conference of the International Law Association, Buenos Ayres, 1924, the following resolution was put forward for international acceptance: "El establecimiento del domicilio de las personas físicas *sui juris* podrá comprobarse mediante un certificado de residencia de la autoridad pública del lugar, haciendo constar la intención de hacer domicilio de dicha residencia. Que el certificado establezca la fecha en que comenzó la residencia que causa domicilio, y que pueda ser requerido en un plazo mínimo de 90 días desde que se estableció" (that in the case of natural persons *sui juris* a certificate of residence issued by the public authorities of the place, containing a statement to the effect that the holder thereof intends to establish his domicile in that place of residence, shall be evidence of the establishment of domicile. That the certificate shall mention the date on which residence commenced for the purpose of the determination of domicile, and that it may be claimed within not less than 90 days as from the date on which residence began).

This proposal, which provides not only for proof of change of domicile but also proof of the new domicile which the change renders necessary, was supported by several members of the congress and referred to the competent committee. No final decision was reached on the subject; but the proposal is really worth careful consideration.

As we have already observed, even persons *sui juris* cannot all freely choose their domicile or change it; persons who possess a domicile by operation of law are in this position. A decision would have to be reached as to the authority competent to issue such a certificate; that would not be possible, as there are so many different authorities in the different countries. One of the weak points in the proposal, however, is precisely the expression "the public authorities of the place", for that would almost certainly mean that all public authorities, without distinction, would be entitled to issue the certificate.

The text should be made to read as follows: "by the public authorities of the place who are empowered to do so under the law of the country".

Again, as we have already said, we do not think it necessary to stipulate that a definite period should have elapsed before residence can be held to be fixed *cum animo manendi*, thus determining the establishment and change of domicile, though Argentine law requires a period of two years, which ZEBALLOS himself considers too long. The laws of most countries do not contain a stipulation of this kind, and, in view of the fact that intention may be proved by other circumstances, such a stipulation is unnecessary.

In short, the rule should be worded as follows: "Establishment or change of domicile may be proved by a certificate to the effect that the person concerned has fixed his actual residence and centre of affairs in a given place and intends to remain there indefinitely; this certificate must be issued by the public authorities empowered to do so by the municipal law of the place in which the person has established his residence".

It will be for the *lex loci* to determine presumption of intention and the manner and time of definite proof.

It is possible, of course, that the same person may produce two or more certificates of establishment and change of domicile; but here we should merely have to apply the rule formulated above for the case of an individual who possesses several residences or several centres of affairs, or who has his residence in one place and his centre of affairs in another.

It is in their conception of the domicile by operation of law that laws vary to the greatest degree.

Few are the countries whose laws do not contain one or more provisions on this subject,

the law of each country providing for different cases, according to the manner of life, habits and character of each people. There is practically no agreement on any one point in any considerable group of laws.

Thus, in the French Civil Code (Article 108), the domicile of minors is held to be that of the parents or guardian; in the Italian Civil Code, that of the father or mother or guardian (Article 18). In the Swiss Civil Code (Article 25), the domicile of children still under "paternal authority" is that of their parents, and the domicile of minors who are wards is that of the guardian; the German Civil Code lays down that the legitimate child has his father's domicile, the illegitimate his mother's, and the adopted child the domicile of the adopter. It is further stated that they retain these domiciles until they abandon them in valid manner, and that the legitimation and adoption after majority have no effect on the domicile of the child.

Article 47 of the Portuguese Civil Code lays down that the domicile of minors who are still "under authority" ("non émancipé") shall be that of their father or of their mother (according as they are under the authority of one or the other), or, if they have no parents, or if their parents are under a disability, that of their guardian; Article 36 of the Brazilian Civil Code establishes in a more general manner that the domicile of all persons *non sui juris* is that of their representatives. Article 11 of the Civil Code of Soviet Russia similarly provides that the domicile of minors and wards shall be that of their legal representatives, parents or tutors. The Chilean Civil Code is worded as follows: "El que vive bajo patria potestad sigue el domicilio paterno y el que su halla bajo tutela o curaduría, el de su tutor o curador" (a person living under "paternal authority" follows the paternal domicile, while a person under the authority of a guardian or curator follows his guardian's or curator's domicile). According to English law and practice, the domicile of a minor, whether legitimate or legitimated, is that of the father; the domicile of an illegitimate minor, or minor whose father is dead, that of the mother. As regards a legitimate orphan minor or an illegitimate minor whose mother is dead, there is some doubt as to whether his domicile is in the first case that of the parent who died last, or, in the second, that of the mother, or whether in both cases the domicile is that of the guardian (*cf.* DICEY, *op. cit.*, Rule IX, sub-rule 1; *Digest, op. cit.*, Articles 8 and 9, etc.).

In the Treaty of Montevideo it is laid down that persons *non sui juris* shall possess the domicile of their legal representatives (Article 7). In the Bustamante Project we find the following rule: the *domicilium necessarium* of the *paterfamilias* shall also be that of the wife and children, unless the latter have attained their majority or are legally free from parental authority, while the domicile of the guardian shall be that of the minor or of the persons removed from parental authority who are under his wardship, failing any contrary provisions of the personal law of those to whom the domicile of another is assigned (Article 23). The Dudley-Field draft contains provisions concerning original and secondary domicile. Thus, the original domicile of a child which is legitimate, or has been acknowledged by its father before its birth, is determined by the domicile of its father at the time of its birth; or, if its father is then dead or has no voluntary domicile, by the domicile of its mother. (Art. 285). The original domicile of an illegitimate child is determined by the domicile of its mother at the time of its birth unless previously acknowledged by its father (Art. 286). The original domicile of a child whose parents are unknown is the place of its birth, or where it is first found (Article 287); while the secondary domicile of the unemancipated minor child, if legitimate, or acknowledged by the father is that of the father, and, after the father's death, of the mother while she remains unmarried, except: (1) while another person than the parent is the guardian of the child; (2) while the father (or after his death the mother) has a committee of his person; (3) while the child has a voluntary domicile in a different place, pursuant to the provisions of Article 303, which lays down the rules to govern change of domicile (Article 290). The draft also lays down that "the domicile of the guardian, or, if there are several jointly appointed, that of the one first named in the instrument of appointment, is the secondary domicile of the ward" (Article 291), and that "the domicile of an unemancipated minor having no competent parent living may be changed by its guardian with a change of his own domicile, when acting in good faith and for its benefit" (Article 295).

It will be seen therefore that certain laws contain general provisions which apply even to persons who have attained their majority but are wards or *non sui juris*. But most laws make special provision for these individuals; Article 108 of the French Civil Code and Article 18 of the Italian Civil Code decide that a person who has attained his majority but is under disability (*le majeur interdit*) shall have the domicile of his guardian. The Swiss Civil Code states that "the domicile of wards shall be the seat of the guardian" (Article 25). The German Civil Code only contains the provision we have quoted above, namely: "A person who is incapable of contracting or whose contractual capacity is restricted may not, without the assent of his legal representative, either establish or abandon a domicile" (Article 8). Article 18 of the Portuguese Civil Code lays down that persons who have attained their majority but are wards shall have the domicile of their guardian. As for English law or practice, we quote from DICEY'S Book (Rule 9) the following rule, which is not, however, included in the *Digest of English Civil Law*: "the domicile of every dependent person is the same as, and changes (if at all) with, the domicile of the person on whom he is, as regards his domicile, legally dependent". In DUDLEY-FIELD'S Project, in addition to the provision of Article 291 which we have quoted above, we find the following: "The domicile of a person of unsound mind, or of one duly declared incompetent, is determined by that of the committee of his person; or if there are several jointly appointed, of the one first named in the instrument

of appointment " (Article 292); and " The derivative domicile of an adult changes with a change of the voluntary domicile on which it depends " (Article 294).

It is quite clear that from this medley of provisions, which apply both to minors and others who are wards, one general rule at least could be evolved which might meet with universal approval: *the domicile of a person non sui juris is that of the person on whom he is legally dependent.*

We believe that, in spite of its simplicity and brevity, it includes all cases, though it obviously leaves to the relevant municipal law (which must be that of the *statute personal*) to decide who is to be regarded as *non sui juris* and on whom such person should be legally dependent.

Further on we shall consider not only this special point but the whole question of domicile in cases which may be regarded as being a result of fraudulent practice.

Laws for the determination of the domicile of married women are even more dissimilar, and the dissimilarity in this case is one of substance as well as of form; in doctrine the dissimilarity is even greater. In this problem, as in all others connected with the rights of women, two absolutely contradictory currents of thought are opposed. It will therefore be preferable to follow the course adopted by the Committee in its discussions on nationality and refrain, at any rate for the present, from introducing into a draft international convention provisions which, on account of their novelty, would only be adopted in the face of serious objections, the objections themselves — though not strictly political — being of a nature to hinder, if not absolutely prevent, the conclusion of the convention.

The law of many countries contains no reference to the domicile by operation of law of public officials; in other countries, such as Germany, Portugal, Brazil, the Netherlands, France, the Argentine, Spain, and Mexico, the law contains certain provisions which are really of no interest from the point of view of international law.

In a general international convention, it will be sufficient to incorporate the following rules which could be accepted by all; "*Public officials, civil or military, occupying permanent posts in a foreign country in the service of their Government shall be regarded as domiciled in that country; and the domicile of diplomatic and consular agents, enjoying the privilege of extritoriality shall be their last domicile in their own country*".

Both of these rules are in harmony with prevailing ideas on the subject, and the second, which is to be found in Article 40 of the Spanish Civil Code, has already been enunciated by BUSTAMANTE in his *Draft Code of Private International Law*. Previous to this the Brazilian Civil Code (Article 41) contained a similar, though more complicated and far-reaching, provision: "Any Brazilian minister or diplomatic agent appointed to a post abroad who invokes extritoriality without stating where his domicile is situated in his own country may be treated at law as domiciled in the federal district or locality in Brazilian territory in which he last had his domicile".

There are many other provisions regarding domicile by operation of law in the various systems, but some settle certain cases in different ways, while others deal with different questions according to the various systems of public or private law, customs, and social, economic, political and other conditions.

We feel that it would be difficult to secure the adoption of any one of these rules or to formulate any new rule on the subject.

Before coming to the question of conflicts, another problem calls for our attention: that of the domicile of juristic persons.

We need not discuss the question whether juristic persons are or are not capable of possessing a domicile: the point is of some theoretical but of no practical value; for all are agreed that in the case of juristic persons, as in the case of natural or physical persons, the bonds which unite these persons with a given place must be determined. In addition, both doctrine and law generally define the domicile of juristic persons.

Generally also, doctrine and law identify the domicile of juristic persons with their nationality (*cf.* Spanish Civil Code, Article 41; Swiss Civil Code, Article 56; German Civil Code, Sections 24-30, last paragraph; Brazilian Civil Code, Article 35; Argentine Civil Code, Article 44; JENKS: *Digest*, Articles 19-20; DICEY, *loc. cit.*, Article 12; LE PAULLE: *De la condition des Sociétés étrangères aux Etats-Unis d'Amérique*, page 70; FIORE, ROLIN, PACIFICI, MICHOU, MAZZONI, BIANCHI, PILLET, CUQ, LEVEN, etc.).

That is a rule which might well be accepted by the various Governments in a draft convention, particularly in view of the fact that when domicile is not made to coincide with nationality, nationality itself is determined according to domicile. It would be subject — in the case of commercial companies only — to the differences in doctrine or law regarding the determination of the domicile of such companies which, according to some publicists and laws, depends on the "seat" of the company and, according to others, on the main centre of its affairs and interests. But latterly the first solution has made headway to the

detriment of doctrines which establish other tests for the determination of the nationality of commercial companies.

The concordance of domicile and nationality in the case of juristic persons, as proposed in the BUSTAMANTE Project, Article 25, should be adopted, because it has no drawbacks and is capable of forestalling difficulties and conflicts.

The above rule has, as we have pointed out, been incorporated in the law of several countries, and it might therefore, without difficulty, be included in the text of an international convention.

If therefore we say that the domicile of juristic persons, including commercial companies, is to concord with their nationality, it would seem that at the same time we solve, negatively, the problem whether such associations could, or even should, have more than one domicile, that is to say, whether their subsidiary enterprises, branches, or agencies abroad could or should have a domicile of their own in the country in which they are established. As they can have only one nationality, they can have only one domicile.

But the same practical reasons which induce us to identify the domicile of commercial companies with their nationality may also be an argument in favour of endowing their subsidiary establishments, branches or agencies with a separate domicile when the latter are established abroad.

In fact, the argument holds good, not only from the point of jurisdiction but also as regards the substantive law to be applied, which should be that of the domicile, since it is highly desirable, from the standpoint of trade, that these subsidiary establishments, branches or agencies should be governed by the law of the country in which they conduct business in so far as their acts in that country are concerned.

This is the attitude adopted by the law of certain countries. For instance, it is laid down in Article 35, paragraphs 1 and 2, of the Brazilian Civil Code that "when a juristic person possesses various establishments in different places, each of these establishments shall be held to be a domicile as regards all acts accomplished therein", and that "if the directors or managers have their seat abroad, the domicile of the juristic person shall, as regards the obligations contracted by each of its agencies, be the locality in Brazil in which the agency in question is situated". Similarly, the Treaty of Montevideo lays down that "branches or agencies established in one State and having their head offices in another State shall be regarded as domiciled in the locality in which they transact business and shall be subject to the jurisdiction of the local authorities in the matter of all business transacted by them" (Article 6).

Several publicists, like PILLET and CUQ, admit plurality of domicile¹ as regards subsidiary enterprises² and also as regards branches or agencies, but only from the point of view of jurisdiction and procedure³. But for these purposes as well as for fiscal reasons and for the fulfilment of certain formalities such as those connected with publicity, we need not necessarily assign a domicile to subsidiary enterprises, branches or agencies, because laws and treaties make express provision for these cases when they define the conditions for the recognition of foreign companies (cf. LEVEN : *De la nationalité des sociétés et du régime des sociétés étrangères en France*, pages 193 et seq.). It is not merely a question of subjecting these subsidiary enterprises, branches or agencies to certain municipal laws — that is to say, laws of the locality in which they transact business : it is a question of applying to them these laws as the *lex domicilii* when, in their international relations, this law and not the law of nationality is applicable.

It would therefore be desirable to add to the rule "The domicile of juristic persons, including commercial companies, shall concord with their nationality and be determined by the latter", this other rule : "The domicile of subsidiary enterprises, branches or agencies of foreign companies is at the place at which they transact business, and it is for the law of this place to determine whether the establishment of these companies situated there is to be regarded as a subsidiary enterprise, branch or agency."

Hitherto we have been referring to *general domicile*. We now have to consider the election of a *special domicile* for the performance of certain acts.

This domicile of election is not domicile in the true sense of the word ; nevertheless, the law of most countries (French Civil Code, Article 111 ; Italian Civil Code, Article 19 ; Portuguese Civil Code, Article 46 ; Chilean Civil Code, Article 69 ; Brazilian Civil Code, Article 42 ; Dutch Civil Code, Article 81 ; Japanese Civil Code, Article 24 ; Mexican Civil Code, Article 42 ; Argentine Civil Code, Article 101 ; Uruguayan Civil Code, Article 32 ; Venezuelan Civil Code, Article 6, etc.) regard it as such, and expressly allow persons to choose a special domicile for the performance of certain acts or for the application of the law in respect of all responsibility arising therefrom.

¹ This was already admitted by LAURENT : *Droit Civil* (Volume II, page 100) and by DEMOLOMBE (Vol. I, No. 375, page 606), who explain their view by saying that a company must be supposed to have chosen its domicile in the place where it transacts business with private individuals. French case-law has established the doctrine that a company has as many domiciles as it has branches (cf. BAUDRY-LACANTINIERE, *Précis de droit civil*, Volume I, No. 275).

² For the distinction between subsidiary enterprises, branches and agencies, see PILLET : *Traité pratique de droit international privé*, Vol. II, page 794 ; CUQ : *La Nationalité des Sociétés*, page 28 ; JEAN PERROUD : "Du changement de nationalité d'une société anonyme" in the *Journal de droit international privé*, 53rd year, 1926, page 561.

³ PILLET and FIORE are in agreement on this point.

Can such a provision be accepted in international law? We see no objection, and certain authorities on international law specifically mention special domicile¹. But (as under Article 46 of the Portuguese Civil Code) provision should be made for the case in which the law of a particular State lays down that a given act must be performed in a stipulated place.

Under the law of some countries, this election of domicile is only valid when certain formalities have been complied with, such as notice in writing (Italian Civil Code, Article 19), or a written document fulfilling certain conditions (Portuguese Civil Code, Article 46), while the Brazilian Civil Code (Article 42) only allows it in written contracts. But we feel that such a restriction is unnecessary and that no formalities should be required. As there is no reason to allow a stipulation for special domicile in certain contracts and not in all, so there is no need to impose formalities, because, in effect, we should merely be saying that where the law required certain formalities for such a stipulation in contracts, these formalities should be complied with.

If the rules we have proposed are adopted, conflicts in respect of domicile will disappear, for they will no longer be possible.

Possibly, however, some only of these rules will be accepted; in that case we shall have to endeavour to establish other rules for the solution of conflicts.

It is by the test of domicile that certain legal relationships have to be regulated, and numerous conflicts of law settled in applying the law of the State in which domicile is established; but the determination of domicile itself may give rise to conflicts of laws. These are the conflicts we have to consider now.

Let us suppose that it has been decided — for the solution of a conflict with regard to succession, for instance — that the *lex domicilii* of the deceased shall apply. If the deceased is an Italian who died in Brazil, by which law — Italian or Brazilian — should his domicile be determined? Supposing that the law of these two countries determines domicile in a different manner, the courts will be confronted with a conflict of laws on domicile, and, until this conflict has been decided, they will be unable to settle the case itself. As such conflicts of laws in the determination of domicile may arise in connection with every branch of private law, their solution by means of a convention is naturally a matter of high importance; it would constitute considerable progress in the codification of private international law.

But although there is no difficulty in deciding that the solution of these conflicts by a convention would be desirable, it is by no means easy to say whether it would be realisable, for the present at least.

Our fears that many obstacles would have to be overcome derive from the intense struggle now proceeding between the theories of *nationality* and *domicile*, and the influence which the determination of domicile still exerts in the international policy of numerous countries, particularly new States which are forming and developing by means of immigration. Are these obstacles insuperable? We think not; we do not see any strong motives of a political character or serious legal differences which could stand in the way.

We therefore propose to study the problem of domicile in this light and endeavour to formulate a few rules to serve as a basis for a draft convention.

As we have already pointed out, it is often necessary, in order to solve a conflict of laws or even a simple legal relationship at private international law, to revert to the law of domicile; but it may happen, when we seek to determine the domicile, that we find ourselves faced with two or more systems of law which can be invoked, as in the above example. If the laws in question define domicile in the same manner, no conflict arises, since the solution in each instance is the same whatever law be applied. But when the laws differ, it becomes necessary to decide which shall apply.

The conflicting legal systems may be: the law of the country of which the person is a national; the law of the court in which the case is to be settled; or the law of another country, or countries, in which the person is or may be held to be domiciled.

This fact explains the number and variety of proposals put forward for the solution of these conflicts: (1) some hold that the *territorial law (lex loci)* should apply; (2) others, considering that domicile forms part of the *statute personal*, urge that it should be determined by the *law of the country of which the person is a national*, subject in every case to the principles of international public order; (3) others defend the *independence of choice (autonomie de la volonté)* — that is to say they make determination of domicile depend solely on the will of the person himself; (4) a fourth group combines the *lex loci* and the "national" law methods.

It is hardly necessary to say that those who hold that the *statute personal* should be governed by the law of domicile and not by the law of the person's nationality are in favour of the first system. It is therefore those who maintain that the *statute personal* should be governed by the national law whose views are divided not only as between the three last systems but the first as well.

In point of fact it is the first which obtains most general approval, although all authorities are not agreed as to the "territorial" law which should apply; the majority, however, hold that the *lex loci* is the *lex fori*.

¹ ROLIN: *Principes du Droit international privé*, Vol. I, No. 439, page 662; PILLET: *Traité pratique de Droit international privé*, Vol. I, No. 147, page 304.

Before considering the respective merits of these systems we should state our view that the problem, in the light of our observations regarding the law which should apply for the determination of the *domicile by operation of law*, should be restricted to the *domicile of choice* — that is to say, to the selection of the law for the determination of the domicile of choice only.

The "independence of choice" system¹ is inadequate, for it does not in certain cases enable us to determine the domicile of a given person. A further drawback is that it does not afford a sufficiently solid foundation, because "choice" (*volonté*), although it exerts a great influence on the acquisition and change of domicile, is not the only element to be considered; the law not only determines all cases of domicile by operation of law but it also intervenes to set certain limits even to the exercise of this choice.

In the system which proposes that either the law of the country of which the person is a national or the "territorial" law should apply according to circumstances², a necessary distinction is drawn. But this distinction cannot be used to warrant the application of the law of the person's country (a solution which, as we shall see, is in no case justifiable).

We have to choose then between two main systems: the law of the country of which the person is a national, and the "territorial" law.

At first sight it would seem that sheer logic should lead all who adopt the system of the "national" law for the determination of the *statute personal* to follow this same law for the determination of domicile; but, as we have pointed out, this is not the case. As a matter of fact, in order to be able to appeal to logic we should first have to prove that the domicile of the individual is included in his *statute personal*.

In truth, domicile does not form part of the *statute personal*. Domicile is not an attribute of personality, and refers neither to a person's status nor his capacity; it is a fact, from which there derives a legal connection between a personality and a given locality; further, by its very nature, it is a territorial fact.

In municipal law — that is to say, within a State — the domicile of a person established at a fixed point in that State creates a legal bond between the person and the organisation, administrative, political, military, judicial, etc., of the State in which that fixed point of territory is included.

In international law, domicile established in a given State creates a legal bond between the domiciled individual and that State; domicile is the source both for the individual and for the State of reciprocal rights and important obligations.

That is why the determination of domicile which results in the creation of this legal bond is obviously a matter for the State with which the bond is established, since that State is far more intimately affected than the State of which the individual is a national. It is, therefore, the "territorial" and not the "national" law which should apply for the determination of domicile³.

But what "territorial" law?

We have already seen that there may be conflicts between the laws of States which, applying to the same individual, grant or refuse him domicile in their territory.

In this case which territorial law should apply?

The territorial law which, according to certain publicists⁴ should determine domicile is that of the State in which the cause is pending or in which the conflict has arisen — the *lex fori*.

Consequently, if, in an action brought in the Portuguese courts, we have to determine the domicile of an individual, it is according to Portuguese law that domicile should be determined.

This solution, however, can only be warranted by the above considerations, if the Portuguese courts take judicial cognisance of the fact that the individual has his domicile in Portugal, or if the individual claims to have, or the other side admits that he has, a domicile in Portugal. In the above circumstances Portuguese law is the only law which can decide whether an individual has his domicile in Portugal or not. If the decision is that he has, the question is solved absolutely; if it is that he has not, a decision must then be reached as to where he is domiciled. In this case should Portuguese law still apply? Clearly not, for nothing would justify the entirely erroneous suggestion that this is simply a question of fact.

In support of the *lex fori*, PILLET and NIBOYET (*op. cit.*, page 533) say: "Here the

¹ LOISEAU is in favour of this system (*op. cit.*, pages 132 *et seq.*)

² There are two varieties of this system; one in which a distinction is drawn according as to whether the individual whose domicile is to be determined is established or resides in the same territory as the court which is to decide the question, or in the territory of another country. The territorial law (*lex fori*) is to be applied in the first case and the law of the person's country in the second; this method is followed by VINCENT and PENAUD: *Dictionnaire de Droit international privé*, V. Domicile, Nos. 1 *et seq.*; and DESPAONET and DE BOECK: *Précis de droit international privé*, 5th edition, No. 157, page 500; this is also the view taken by the French courts, although WEISS says the latter display some hesitancy, and by the Belgian courts. The other method, according to which it is the matters to be regulated which determine whether we are to apply the law of the person's country, or the territorial law (which in certain cases is the *lex fori*) is followed by ALBERIC ROLIN: *Principes de droit international privé*, Vol. I, Nos. 432 *et seq.*, pages 634 *et seq.*

³ In favour of the "national" law are DURAND: *Essai de droit international privé*, page 373; VALERY: *Manuel de droit international privé*, page 113; and WEISS: *Traité théorique et pratique de droit international privé*, 2nd edition, Vol. III, page 323. As champions of the "territorial" law system we have Ch. BROCHER: *Cours de droit international privé*, Vol. I, pages 242 *et seq.*; PILLET: "Traité pratique de droit international privé", pages 298 and 300; FIORE: *Diritto internazionale privato*, Vol. I, page 442.

⁴ PILLET and NIBOYET: *Manuel de droit international privé*, page 533; DICEY: *Conflict of Laws*, § 113; WHARTON, *Conflict of Laws*, Vol. I, § 157.

This system — or the *lex fori* — is followed by American case law (though the cases are not numerous) and British case law, which is not uniform, because there have been two decisions in a contrary sense (*cf.* the anonymous article already quoted on the "Law for the Determination of Domicile according to American and English Case Law"). It is also followed by those who consider conflicts of laws of domicile as conflicts of qualification, and maintain that, save in exceptional circumstances, it is the *lex fori* which determines the qualification (*cf.* BARTIN: *Etude de droit international privé*; ARMINJON: *Précis de droit international privé*, etc.).

application of the lex fori on principle can easily be justified. When the legislator makes the application of a law depend on the existence of a domicile, it is naturally to his own conception of domicile that he refers. The notion of domicile is a definition of one of the elements of international doctrine; as such it forms part of the system of international law promulgated by the sovereign power. For instance, when the legislator makes succession to movables subject to the law of the domicile, he delimits, in this respect, the empire of his sovereignty. It is surely quite inadmissible that any foreign country should, because it has a different conception of domicile, be able either to extend or restrict the empire of French law in the matter of succession."

This argument in favour of the *lex fori* is a skilful one, but it only holds good when the question in point is whether the individual whose domicile is to be determined is or is not domiciled in the country of the courts which have to take the decision; it is of no avail in other cases, in which the application of the *lex fori* may produce absurd results, such as that of a French court deciding, in accordance with French law, whether a Russian is resident in China or Japan. It must surely be recognised that when the individual is not resident in France it can be of absolutely no interest to French law to determine what other country he lives in, and in any case French law is not in any respect qualified to settle the point.

Moreover, the *lex fori* might in such cases lead to the conclusion that a person who in reality has no domicile is domiciled in a certain country.

If in the Portuguese courts the question arose whether an individual was domiciled in Portugal or Spain, and if the courts applying Portuguese law, decided that he was not domiciled in Portugal, it is Spanish law which would have to be applied.

But supposing the question is to decide whether the person is domiciled in Portugal, Spain or France?

Here again it may happen that under Spanish law the person has no Spanish domicile, and that under French law he does possess French domicile. In that case both systems of law can apply and the result is perfectly satisfactory.

But if, according to Spanish law, the individual has his domicile in Spain, and if, according to French law, he has his domicile in France, the matter can be settled by applying one of the rules formulated below in Articles 3, 4 and 6 of the second draft.

But what is to happen if under both systems of law it is evident that the individual has no domicile in either of these two States? As in this case there is no "territorial" law — or at any rate no such law is ascertainable — for the determination of domicile, the rule set out below in Article 5 of the second draft should be applied.

From the above considerations we deduce the following rules: (a) it is the *lex fori* which is applicable to decide whether a person is or is not domiciled in the country of the court; (b) when it has to be decided whether the individual is domiciled in a country other than that of the court, the law of that other country is to be applied; (c) when it has to be decided whether the person is domiciled in two or more countries other than that of the court, the laws of these countries are applied, and if, when this has been done, the person is still found to possess more than one domicile, one of the rules set out below in Articles 2, 3 and 5 should be applied. If the conclusion is reached that the individual is not domiciled in any of these countries, his domicile shall be determined by the law of the court, or else, if necessary, the rule given below in No. 4 can be applied.

Thus, according to this system — which may appear complicated, though it is not so in reality — the law for the determination of domicile is the *lex loci*, which in certain cases may be the *lex fori*.

As it has not yet been incorporated into any body of law or even proposed by any international publicist (doubtless because the problem has hitherto not received all the attention it deserves), there is naturally some danger of its not being accepted by the various countries. But as there is no strong current of opinion in any direction which we can follow in seeking a solution, and as we can only suggest that solution which seems to us best suited for our purpose — namely, that in the case of conflict of laws it is the person's true domicile which should be ascertained — we venture to submit this method to the Committee.

There now remains the problem of the law which should be applied to decide whether there has been a change of domicile or not.

This is a question distinct from that of the mere determination of domicile, whether domicile of origin or acquired domicile, for possibly after it has been established that an individual possesses his domicile in a given country, the individual himself or some other interested party may claim that he has changed his domicile. In the case of change of domicile we must take into consideration other circumstances of law and fact.

In the first place we must distinguish between enforced change — that is to say, the change which results when a domicile by operation of law is imposed — and voluntary change — that is to say, change which has been decided and carried out by the mere choice of the person concerned.

The rule to be laid down should apply only to voluntary change.

Moreover, in order to be able to change his domicile, a person must be under no disability which would prevent him from so doing, and he must also comply with other conditions which the laws of most countries generally require.

Under what law can we decide whether the individual has capacity to change his domicile? As we have seen, such capacity is both general — that is to say, the individual must have attained his majority and be *sui juris* — and special — that is to say, he must have no domicile by operation of law.

General capacity should obviously be determined under the law of the country of which the person is a national, because it is a question of his *statute personal*. Special capacity should be determined, in conformity with the rule enunciated above, that when a person possesses a domicile by operation of law, that domicile shall outweigh the domicile of choice; when the rule is applied it will be seen that an individual who possesses a domicile by operation of law cannot change his domicile voluntarily.

We have merely, therefore, to decide what law should govern the other conditions on which change of domicile depends — that of the country which the person is leaving or that of the country to which he is proceeding.

Having thus defined the problem, we may look for a solution, in the first place among those which have been proposed in draft international codes and those which have been suggested by the few experts who have given an opinion on the subject.

BUSTAMANTE'S Project proposes the following rule: "Questions connected with the change of domicile of natural persons shall be settled in accordance with the law of the court should the latter be a court of one of the States concerned, or, failing this, under the law of the place in which it is claimed that the last domicile was acquired."

The solution proposed in the DUDLEY-FIELD Project is quite different: "The laws then in force of the nation within whose territory a person takes up his residence determines the age at which he may choose a domicile therein, the mental capacity requisite therefor, and what constitutes freedom and good faith".

According to ROLIN (*op. cit.* I, page 667), "The opinion put forward by Dudley-Field is very open to criticism, even as regards the principle that capacity should be governed by the law of domicile; for it is the law of the previous domicile, the domicile still existing at the time when the person desires to make a change, that we should in all logic consult. Dudley-Field himself recognises that it is contrary to the principles admitted at the present time. His object, so he says, in formulating this new rule is "to permit each nation to determine, through its own laws, who may have capacity to acquire a domicile within its territory". We do not see any necessity for this, particularly as regards age. In this connection we do not think that there is any need to depart from the principle, which is steadily gaining ground, that capacity should be determined by the law of the country of which a person is a national".

VALERY (*op. cit.*, page 116) suggests that the "national" law of the individual should govern the conditions of his change of domicile; but he also thinks that "the court in which the person concerned claims that he has transferred his domicile from one country to another is entitled and bound to decide whether such change of domicile is bona fide, whether it is not solely a pretext put forward to avoid compliance with a legal or contractual obligation, and whether it should be taken into consideration".

For ourselves, we prefer BUSTAMANTE'S rule, though, instead of restricting it to natural persons, we would suggest the restriction proposed by VALERY, namely, that the law which should determine the conditions necessary to enable a person *sui juris* and without domicile by operation of law to change his domicile is that of the State whose court has to decide the question, if that State is one of the States concerned; otherwise the proper law is that of the State in which the person had his domicile; but in all cases the court in which the person claims that he has changed his domicile is entitled and bound, according to its own laws, to decide whether the change is bona fide, whether it is not solely a pretext put forward to avoid compliance with a legal or contractual obligation, and whether it should be taken into consideration.

There have been several cases of "defrauding the law" in international law which have originated in or been carried through by change of domicile; though it may not entirely eliminate the danger, the above rule will certainly help to diminish the number of these cases.

We do not think there would be any objection — we think it would be even desirable — to extend this restriction by conferring these powers on the courts, not only in cases of change but also in cases of establishment of domicile.

We feel that we have demonstrated, though somewhat summarily, the possibility of the acceptance of the following:

DRAFT CONVENTION FOR THE DETERMINATION OF UNIFORM INTERNATIONAL RULES IN THE MATTER OF DOMICILE.

Article 1. — The domicile of a natural person is at the place which the law assigns to him, or, failing a provision of law on the subject, at the place where he has his residence and the centre of his affairs with the intention to remain there permanently.

Article 2. — Should the person have several residences or several habitual centres of affairs, he shall be regarded as domiciled, for the purposes of "family rights", at the place of his principal residence; and for the purposes of "rights *in personam*, rights *in rem* and successorial rights", at the place where he has the main centre of his work or affairs.

(*Paragraph.*) The determination of the principal residence or main centre of affairs shall be left to the wisdom of the court which is considering the case.

Article 3. — If the person has his residence in one place and the centre of his affairs and interests in another, he shall be held to be domiciled, as regards "family rights", in the place where he resides, and, as regards "rights *in personam*, rights *in rem* and successorial rights", in the place where he has the centre of his work and interests.

Article 4. — When a person has no habitual residence or spends his life travelling, without any centre of affairs, he shall be regarded as domiciled in the place where he happens to be.

Article 5. — When, under the laws of two or more States, a person has a domicile by operation of law in both or all of these States, the domicile of the State in which he is residing shall prevail.

Article 6. — The domicile of a person who is not *sui juris* shall be that of the person on whom he is legally dependent.

Article 7. — Public officials, civil or military, occupying permanent posts in a foreign State in the service of their Government shall be regarded as domiciled in that State; but the domicile of persons enjoying the privilege of extritoriality shall be their last domicile in their own country.

Article 8. — The domicile of juristic persons, including commercial companies, shall concord with their nationality and be determined by the latter.

(*Paragraph.*) The domicile of subsidiary enterprises, branches or agencies of foreign companies shall be at the place at which they transact business, and it shall be for the law of that place to determine whether the establishment of these companies situated there is to be regarded as a subsidiary enterprise, branch or agency.

Article 9. — Any person may change his domicile, provided he is under no disability and has no domicile by operation of law. Such change takes place when the person transfers his residence and centre of affairs and interests to another State with intent to remain there permanently.

Article 10. — Establishment or change of domicile may be proved by a certificate issued by the public authorities empowered to do so under the law of the State in which the domicile is established. The certificate shall be to the effect that the person concerned has there fixed his residence and centre of affairs and interests, with intent to remain there permanently.

Article 11. — When a special domicile has been chosen for the execution of a given act, or for the taking of action or the fulfilment of obligations arising thereunder, such domicile shall prevail, unless the law of the State in which the act was performed requires a definite place for the said execution or for the taking of the said action or fulfilment of the said duties.

Should the above draft not be accepted, or should some of its provisions the object of which is to avoid conflict of laws on domicile be rejected, we have the honour to propose as a basis of discussion the following :

**DRAFT CONVENTION FOR THE SETTLEMENT OF CONFLICTS OF LAWS IN THE
MATTER OF DOMICILE.**

Article 1. — The proper law for the determination of the domicile of a person is that of the State whose courts have to ascertain the fact; but when it has to be decided whether the person is domiciled in a State which is not that of the court, the law of that other country shall be applied, and, when it has to be decided whether the person is domiciled in one of two or more States which are not those of the court, the laws of these States shall apply; if when this has been done the person is still found to possess more than one domicile, the provisions of Articles 3, 4 or 5 shall be followed according to the circumstances; if the conclusion is reached that the person is not domiciled in any of these States, his domicile shall be determined in accordance with Article 6.

Article 2. — Questions connected with change of domicile except such as concern a person's capacity at law or the existence of a domicile by operation of law shall be settled in conformity with the law of the court if the latter be that of one of the States concerned, otherwise, in accordance with the law of the place in which it is claimed that the last domicile was acquired.

Article 3. — Article 2 of the previous draft.

Article 4. — Article 3 of the previous draft.

Article 5. — When, under the law of two States a person possesses a domicile by operation of law and two or more domiciles of choice, the domicile by operation of law shall prevail; when a person is domiciled by operation of law in two or more States, his domicile in the country in which he resides shall prevail.

Article 6. — Article 4 of the previous draft.

Article 7. — It shall be for the courts which have to ascertain establishment or change of domicile to decide, in accordance with their own law, whether the said establishment or change is *bona fide*, whether it is a pretext put forward to avoid compliance with a legal or contractual obligation, and whether it should be taken into consideration.

(Signed) BARBOSA DE MAGALHAES,
Rapporteur.

II. COMMENTS BY MR. BRIERLY.

Letter from Mr. Brierly of April 13th, 1928, addressed to M. Barbosa de Magalhaes.

All Souls College,
Oxford, April 13th, 1928.

My dear Colleague,

I have read your very interesting and learned report on Domicil and I think that I can perhaps state my own position most conveniently in the form of a letter to yourself.

The opening paragraphs of your report remind me very forcibly of the contrast between your general attitude to domicil as a Continental lawyer and mine as an Anglo-Saxon; and as I think that the main difficulty of a conventional settlement of the law will be found in this contrast, it will be well for me to deal with it as clearly as I can at the outset of my remarks.

You say, for example, that *formerly* "domicil was a matter of extreme importance"; but for us it is so still. You speak of "juridical unity" having been "attained" by States; but there is no juridical unity in the British Empire, or even between England and Scotland. You go on to say that in the course of evolution nationality, as contrasted with domicil, has become the dominant conception both in doctrine and legislation, but this is not true of English law; we regard the two conceptions not as rivals but as controlling different spheres, nationality being the test of *political* and domicil of *civil* status. In so far as domicil is tending to be of less importance with us than it was, it is yielding, I think, not to nationality but in some cases to the *lex loci contractus*, and in others to what our law calls "ordinary residence". Lastly, you say that the special problem raised by the existence of composite States raises conflicts of "purely domestic concern", and that the only question of importance to international law is, In what *State* is a person domiciled? This, again, is not our view; an English court would not be satisfied to know that a person was domiciled in the United States; it would require to know, for instance, whether he was domiciled in New York or in Tennessee.

In insisting on the importance of the contrast between an Anglo-Saxon system of law and others in regard to domicil, I should like to make it quite clear that I am not contrasting the merits of the two views. Quite frankly I think that the English law of domicil has important defects (e.g., the revival of the domicil of origin on the abandonment of the domicil of choice — to which you refer on page 6 of your report — is a very artificial doctrine), but it is not necessary for me to go into details on this point. I think, however, that my difficulties can be most clearly explained if I set out what I believe to be the place that domicil occupies in our legal thought. For convenience, I repeat a passage which I wrote on the subject for another purpose¹:

"A person's domicil is that country in which he either has or is deemed by law to have his permanent home. English law determines all questions in which it admits the operation of a personal law by the test of domicil. For this purpose, it regards the organisation of the civilised world in civil societies, each of which consists of all those persons who live in any territorial area which is subject to one system of law, and not its organisation in political societies or States, each of which may either be co-extensive with a single legal system or may unite several systems under its own sovereignty. All those persons who have, or whom the law deems to have, their permanent home within the territorial limits of a single system of law are domiciled in the country over which the system extends; and they are domiciled in the whole of that country, although their home may be fixed at a particular spot within it.

"Every person at birth becomes a member both of a political and of a civil society. The former determines his political status or nationality, on which depends his allegiance to a sovereign; the latter determines his civil status. This means that the law which governs the civil society into which he is born, the law of the country of his domicil, is attached to his person and remains so attached, wherever he goes, unless and until he ceases to be a member of that society; and this he can only do by becoming a member of another civil society, or changing his domicil, upon which the law of the new domicil becomes attached to him in the same manner.

"Every person has a domicil at every period of his life and no person has more than one domicil at one time."

¹ HALSBURY'S *Laws of England*, Title, "Conflict of Laws", page 182.

My own conviction is that the rules by which domicile is to be determined cannot conveniently be considered without any reference to the purpose for which domicile, when determined, is going to be used; and for us the cardinal fact is that we use domicile for the determination of the "statute personal", whereas you, in general, do not. Consequently, a Convention on the subject, though on the surface and in its terms it would be the same for all the signatory States, would actually have different effects for you and for us, for it would mean that we, but not you, were adopting certain rules for determining the "statute personal".

Accordingly, when an English lawyer comes to ask himself in what ways a Convention on domicile would affect English law, he must necessarily enquire how the proposed Convention would operate in those cases in which an English court is concerned to enquire into the "statute personal" of a party. What are those cases? I think they may be grouped under two headings:

(a) There are certain cases in which the jurisdiction of the court to hear the case depends upon the "statute personal", e.g., in English practice, it is the sole ground of jurisdiction in divorce, and an alternative ground of jurisdiction in any personal action, and in bankruptcy;

(b) There are certain cases in which it determines the substantive rules of law to be applied by the court, e.g., in English practice the distribution of the movable effects of an intestate, to some extent the capacity to contract, and to some extent the liability to death duties.

Now, I can see that an international Convention, of which the object would be to secure that uniform rules should be applied on one or other of these subjects, is possibly very desirable; it is obviously inconvenient, for instance, that it should be possible for the courts of one country to purport to dissolve a marriage which the courts of another persist in regarding as still subsisting; but it is not clear that a Convention defining domicile would have any such effect. What is clear, however, is that it would affect English practice in such matters; and if that is desirable, I think the change ought to be made on a consideration of its merits, and not as an incidental result of a Convention nominally made for another purpose.

From this special point of view of rules which for us would determine the "statute personal", I think that some of the proposals in the draft Convention which you suggest would be open to serious objections. May I give a few illustrations of inconvenient consequences which seem to me to be possible?

(a) An Englishman residing with his family in England, but having his centre of affairs and interests in Portugal, dies intestate. Under Article 3 of the first draft, English law would be obliged to distribute his movable effects, even those situated in England, according to Portuguese rules of intestacy.

(b) A Portuguese gives up his habitual residence in Portugal, and takes to a life of travel. He happens to die while in England, and therefore, under Article 4, while domiciled there. The English Treasury might claim legacy duty on his movable property even though situated in Portugal.

(c) You say (on page 15) that "general capacity (i.e., to change a domicile) should obviously be determined under the law of the country of which the person is a national, because it is a question of his "statute personal". For English law this would introduce an anomalous exception to our criterion of the "statute personal".

(d) I am in agreement with the first proposition of Article 1 of the second draft, i.e., that the proper law for the determination of domicile is the *lex fori*. But the later part of the article would produce an unsatisfactory situation for English law. Suppose that an English court is concerned with the distribution of the effects of an intestate. It decides, by applying English law, that the deceased was not domiciled in England. If it were not precluded from doing so by Article 1, the facts are such that it would wish to decide that he was domiciled in Portugal; but, after taking evidence of Portuguese law, it finds that that law would not admit Portuguese domicile. By what law, then, are the effects to be distributed if the deceased happen to have died, say, in France? I cannot think that it would be a suitable solution to say that French law, which is really in no way interested, must be applied, yet this result would be imposed by the article on an English court in the case supposed. Contrast this result with the course that an English court would in fact adopt in such a case under our existing rules of domicile. It would first decide, applying the *lex fori*, that the deceased

had been domiciled in Portugal, and it would then ask, not whether Portuguese law would regard the deceased as domiciled in Portugal but how Portuguese law would distribute the effects of this particular deceased person if it were called upon to do so; and it would proceed to distribute them in the same way. Obviously, in such a case the real question is whether it is more just to apply English or Portuguese law; I cannot think that the best solution would be to apply neither.

(e) It would, I think, be difficult for English law to accept a certificate of a foreign public authority as proof of a change of domicile, as you propose in Article 10 — at any rate, if I rightly interpret the proposal. I assume that you have in mind *conclusive* proof, and not merely evidence which the court should consider for what it may be worth. But the true value of the certificate will clearly depend upon the nature of the enquiry as a result of which it is issued. You say (page 9) that “it will be for the *lex loci* to determine presumption of intention and the manner and time of definite proof”; but by what procedure will the *lex loci* judge the sincerity of an alleged *animus manendi*? It seems to me that in a case of doubt a *judicial* procedure is alone competent to decide this point; but this would be altogether impracticable merely as a preliminary to the issue of a certificate. Such an act cannot, I think, be more than a *ministerial* act; and, while it might be good evidence of the *factum* of residence as regards *animus*, it could hardly prove more than that the applicant had *declared* an *animus manendi* to the competent authority. When one remembers that, according to our law, a change of domicile may affect liability to taxation, I do not think we could accept as conclusive proof that the change had taken place a document which, from the nature of the case, would really prove nothing more than that a person had made a declaration of the state of his mind to an official person. I am not necessarily supposing a case in which the certificate had been obtained by an actually fraudulent declaration; for even an honest declarant might well be mistaken in affirming that the state of his mind fulfilled the legal requirements of *animus manendi*, which, according to our notions at least, is a highly technical conception.

I think I have said enough to demonstrate that a Convention on “questions connected with the conflicts of laws on domicile”; which our Sub-Committee is charged to examine, must necessarily, in spite of its apparently restricted purview, raise issues for countries which accept domicile as the criterion of the “statute personal”, probably wider than, and certainly different from, those which it raises for countries which accept nationality for that purpose. I do not venture to express any opinion on the question whether such a Convention would be possible or desirable for the latter countries, but I do not think it could conveniently extend to both groups, since its effects would differ greatly in the two cases.

(Signed) J. L. BRIERLY.

Genève, le 16 août 1928

SOCIÉTÉ DES NATIONS

**Comité d'Experts pour la Codification progressive
du Droit international.**

**DEUXIÈME RAPPORT AU CONSEIL DE LA SOCIÉTÉ
DES NATIONS
sur les
QUESTIONS QUI PARAISSENT AVOIR OBTENU LE DEGRÉ
DE MATURITÉ SUFFISANT POUR UN RÉGLEMENT
INTERNATIONAL**

A la page 7, ligne 6: au lieu de « le projet de Convention », il faut lire: « le texte de la Convention ».

LEAGUE OF NATIONS

**Committee of Experts for the Progressive Codification
of International Law.**

**SECOND REPORT TO THE COUNCIL OF THE LEAGUE
OF NATIONS
on the
QUESTIONS WHICH APPEAR RIPE FOR INTERNATIONAL
REGULATION.**

Page 7, line 6: instead of "draft Convention", read "text of the Convention".

[Communicated to the Council, to the Members of the League, to other Governments and to the Delegates at the Assembly.]

A. 15. 1928.
[C.P.D.I. 117 (1)]

LEAGUE OF NATIONS

Geneva, June 27th, 1928.

COMMITTEE OF EXPERTS FOR THE PROGRESSIVE
CODIFICATION OF INTERNATIONAL LAW

SECOND REPORT

TO THE COUNCIL OF THE LEAGUE OF NATIONS

ON THE

QUESTIONS WHICH APPEAR RIPE FOR
INTERNATIONAL REGULATION*

(QUESTIONNAIRES Nos. 8 to 11.)

Adopted by the Committee at its Fourth Session, held in June 1928.

* This report is submitted direct to the Assembly in virtue of a resolution adopted by the Council on June 4th, 1928.

Publications of the League of Nations
V. LEGAL
1928. V. 4.

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**RESOLUTION ADOPTED (ON THE REPORT OF THE FIRST
COMMITTEE) BY THE ASSEMBLY AT ITS MEETING HELD
ON MONDAY, SEPTEMBER 22ND, 1924.**

The Assembly,

Considering that the experience of five years has demonstrated the valuable services which the League of Nations can render towards rapidly meeting the legislative needs of international relations, and recalling particularly the important conventions already drawn up with respect to international conciliation, communications and transit, the simplification of Customs formalities, the recognition of arbitration clauses in commercial contracts, international labour legislation, the suppression of the traffic in women and children, the protection of minorities, as well as the recent resolutions concerning legal assistance for the poor;

Desirous of increasing the contribution of the League of Nations to the progressive codification of international law;

Requests the Council :

To convene a committee of experts, not merely possessing individually the required qualifications but also as a body representing the main forms of civilisation and the principal legal systems of the world. This committee, after eventually consulting the most authoritative organisations which have devoted themselves to the study of international law, and without trespassing in any way upon the official initiative which may have been taken by particular States, shall have the duty :

(1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment;

(2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received; and

(3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

COMPOSITION OF THE COMMITTEE OF EXPERTS APPOINTED
BY THE COUNCIL.

Chairman:

M. HAMMARSKJÖLD (Sweden), Governor of the Province of Upsala.

Vice-Chairman:

Professor DIENA (Italy), Professor of International Law at the University of Pavia; Member of the Conseil du contentieux diplomatique at the Italian Ministry of Foreign Affairs.

Members:

Professor BRIERLY (Great Britain), Professor of International Law at the University of Oxford.

M. FROMAGEOT (France), Legal Adviser to the Ministry of Foreign Affairs of the French Republic.

His Excellency Dr. J. Gustavo GUERRERO (Salvador) ex-Minister for Foreign Affairs of the Republic of Salvador.

Dr. B.C.J. LODER¹ (Netherlands), former Member of the Supreme Court of the Netherlands; Judge and late President of the Permanent Court of International Justice.

Dr. BARBOSA DE MAGALHAES (Portugal), Professor of Law at the University of Lisbon; Barrister, former Minister for Foreign Affairs, Justice and Education.

His Excellency Dr. Adalbert MASTNY (Czechoslovakia), Czechoslovak Minister at Rome; President of the Czechoslovak Group of the International Law Association.

His Excellency M. MATSUDA (Japan), Doctor of Law; Japanese Ambassador at Rome.

Sir Muhammad RAFIQUE (India), former Judge of the High Court of the United Provinces.

Dr. Szymon RUNDSTEIN (Poland), Barrister at the Court of Appeal at Warsaw; Legal Adviser to the Ministry of Foreign Affairs.

Professor Walther SCHÜCKING (Germany), Professor at the University of Kiel.

Dr. José León SUAREZ (Argentine), Professor at the University of Buenos Aires; ex-Dean of the Faculty of Economic Science, etc.

Professor Charles DE VISSCHER (Belgium), Professor in the Faculty of Law at the University of Ghent; Legal Adviser to the Belgian Ministry of Foreign Affairs.

Dr. WANG CHUNG-HUI² (China), Deputy-Judge of the Permanent Court of International Justice.

Mr. George W. WICKERSHAM (United States of America), formerly Attorney-General of the United States; Member of the International Law Committee of the American Bar Association, and President of the American Law Institute.

¹ Replaced at the Fourth Session by Dr. Kusters, Member of the Supreme Court of the Netherland.

² Dr. Wang Chung-Hui was unable to be present at the Fourth Session.

REPORT TO THE COUNCIL OF THE LEAGUE OF NATIONS
ON THE QUESTIONS WHICH APPEAR RIPE FOR
INTERNATIONAL REGULATION.

(QUESTIONNAIRE Nos. 8 TO 11.)

Adopted by the Committee at its fourth session held in June 1928.

The Committee, by its terms of reference, was required :

(1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment ;

(2) After communication of the list by the Secretariat to the Government of States, whether Members of the League or not, for their opinion, to examine the replies received ; and

(3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conference for their solution.

In accordance with these terms of reference, the Committee addressed to all the Governments, through the Secretary-General, a second series of questionnaires on the following subjects : (1) communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters (Questionnaire No. 8) ; (2) legal situation of Consuls (Questionnaire No. 9) ; (3) revision of the classification of diplomatic agents (Questionnaire No. 10) ; (4) competence of the Courts with regard to foreign States (Questionnaire No. 11).

All these questionnaires, copies of which are attached to the present report (Annex I), indicated by draft conventions or in some other manner the extent to which, in the opinion of the Committee, the above-mentioned questions lent themselves to regulation by international agreement. The Committee has been at special pains to confine its enquiry to problems which it thought could be solved by means of conventions without encountering any obstacles of a political nature.

The Committee is now in possession of a large number of replies made by the Governments to the questionnaires. The Committee has studied these replies in conformity with its terms of reference.

This examination has only confirmed the Committee's view that, in general, the second and fourth questions above mentioned are now, in the words of the terms of reference, sufficiently ripe.

On the other hand, while noting that the majority of the replies received recommend that the third question above mentioned should be placed on the agenda, the Committee has found the contrary opinion to be so strongly represented that, for the moment, it does not feel it can declare an international regulation of this subject matter to be realisable.

As regards the first question above mentioned, the examination of the replies, although the great majority of these is favourable, has not led the Committee to conclude that it is at this moment possible to secure international regulation of the whole of the subject.

A multilateral convention establishing a general obligation for States to proceed in penal matters to measures of preliminary judicial investigation, and to communication of judicial and extra-judicial acts (*aux communications d'actes judiciaires et extra-judiciaires*), at the request of other States, is not at present realisable.

On the other hand, it is desirable and it would seem to be realisable that, in multilateral conventions dealing with crimes and offences of which the prosecution and repression are recognised to be of international interest, collaboration between States in the preliminary judicial investigation of such crimes and offences should be ensured to the extent compatible with the municipal laws of the contracting Powers.

It is in these circumstances and with these restrictions that the Committee feels able to recommend the formulation of general international rules concerning " the communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters ".

The procedure which might be followed with a view to preparing eventually for conferences to deal with the questions recommended should, it would seem, be the same as has already been adopted for three questions mentioned in the Committee's report of April 2nd, 1927 (document C.196.M.70.1927.V, page 7).

The Committee begs to annex to the present report all the replies to its questionnaires which it has received (Annex II), with the analyses of these replies prepared by the Secretariat (Annex III). The Committee further places at the disposal of the Council the Minutes of its proceedings containing material which may be of service in the preparation of eventual conferences and in the work of such conferences.

The Committee also begs to annex, for information, the draft Convention on Consular Agents adopted on February 20th, 1928, by the Sixth Pan-American Conference at Havana (Annex IV).

Geneva, June 27th, 1928.

(Signed) Hj. L. HAMMARSKJÖLD,
Chairman of the Committee of Experts.

Annex I

QUESTIONNAIRES ADOPTED BY THE COMMITTEE AT ITS
THIRD SESSION HELD MARCH-APRIL 1927.

QUESTIONNAIRE No. 8.

COMMUNICATION OF JUDICIAL AND EXTRA-JUDICIAL
ACTS IN PENAL MATTERS AND LETTERS ROGATORY IN
PENAL MATTERS.

The Committee has the following terms of reference :

(1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment ;

(2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received ; and

(3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Committee has decided to include in its list the following question :

“ Is it possible to establish, by means of a general convention, provisions concerning the communication of judicial and extra-judicial acts (*actes judiciaires et extra-judiciaires*) in penal matters and letters rogatory in penal matters ? ”

On this subject the Committee has the honour to communicate to the Governments a report submitted to it by a Sub-Committee consisting of M. SCHÜCKING, Rapporteur, and M. DIENA. The report comprises a memorandum by the Rapporteur, to which is appended a draft of a convention. The text of this draft has been modified by the Sub-Committee as the result of its discussion by the Committee of Experts.

The nature of the general question and of the particular questions involved therein appears from the report. The latter contains a statement of principles to be applied and of the solutions of particular questions which follow from those principles. The Committee regards this statement as indicating the questions which require to be solved in order to deal with the matter by way of an international agreement. All these questions are subordinate to the larger question set out above.

It is understood that, in submitting this subject to the Governments, the Committee does not pronounce either for or against the general principles set out in the report or the solutions proposed on the basis of these principles for various particular problems. At the present stage of its work it is not for the Committee to put forward conclusions of this character. Its sole, or at least its principal, task at present is to direct attention to certain subjects of international law the regulation of which by international agreement may be considered to be desirable and realisable.

In doing this, the Committee should doubtless not confine itself to generalities but ought to put forward the proposed questions with sufficient detail to facilitate a decision as to the desirability and possibility of their solution. The necessary details are to be found in the draft convention above mentioned (see page 35).

In order to be able to continue its work without delay, the Committee will be glad to be put in possession of the replies of the Governments before December 31st, 1927.

The Sub-Committee's report and the draft convention above mentioned are annexed to the present communication.

Geneva, April 2nd, 1927.

(Signed) HJ. L. HAMMARSKJÖLD,
Chairman of the Committee of Experts.

Annex to Questionnaire No. 8.

REPORT OF THE SUB-COMMITTEE.

Rapporteur : Professor SCHÜCKING.

Member : Professor DIENA.

“ Is it possible to establish, by means of a general convention, provisions concerning the communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters ? ”

[Translation.]

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INTRODUCTION.

DEFINITION OF THE PROBLEM.

At its second session, held at Geneva, the Committee of Experts for the Progressive Codification of International Law appointed a Sub-Committee — of which I had the honour to be made Rapporteur — to consider whether and how far it would be desirable and possible to conclude a convention concerning “ the communication of judicial and extra-judicial acts and letters rogatory in penal matters ”.

The question was formulated in the same terms as those used for the titles of the first two chapters of the Convention on Civil Procedure concluded at The Hague on November 14th, 1896, namely :

- (1) Communication of Judicial and Extra-judicial Acts;
- (2) Letters Rogatory.

It is true that the title of the Convention on Civil Procedure differs slightly from the terms in which the question submitted to me was formulated : the Convention of 1896 is called a “ Convention relating to *Civil Procedure* ”, whereas the question on which I have been asked to report refers to communications and letters rogatory “ *in penal matters* ”.

I do not regard this difference between the two formulas as of material importance. I have assumed that the question under consideration is confined to judicial co-operation in matters of procedure, and that the only difference between the subject with which I am dealing and the subject of the above-mentioned Hague Convention lies in the fact that the latter deals with judicial co-operation in *civil* procedure, whereas the subject I have been asked to consider relates to judicial co-operation in matters of *penal* procedure.

It is in this sense, and within these limits, that the problem is usually treated in textbooks and monographs on the subject.

VON MARTITZ: *Internationale Rechtshilfe in Strafsachen*, Vol. 2; LAMMASCH: *Auslieferungspflicht und Asylrecht*, Appendix; MEILI: *Lehrbuch des internationalen Strafrechts und Strafprozessrechts*; MONIER: *Les Commissions rogatoires en droit international* (Paris, 1909) (see also, in the latter, bibliography of previous French works on the subject); L. GESTOSO Y ACOSTA: *Nuevo Tratado de derecho procesual, civil, mercantil*; see also BREGEAULT: *De l'audition en matière criminelle des témoins en pays étranger* (Paris, 1878). Further information may be found in textbooks and monographs on extradition law, which deal incidentally with questions of international judicial co-operation. As regards judicial co-operation in international civil procedure, the only book of reference is the comprehensive work of MEILI and MAMELOCK: *Das internationale Privat- und Zivilprozessrecht auf Grund der Haager Konventionen*.

My examination of the problem was to a certain extent restricted by the fact that the Committee of Experts had previously decided that a kindred subject connected with international penal procedure, namely, the law of extradition, was not ripe for immediate codification. Accordingly, I have had to exclude certain questions which are on the borderline of the two subjects, *e.g.*, the question of the passage in transit of persons under arrest across the territory of a third country (so-called "provisional" extradition). In the report of the Committee of Experts, this matter was treated as a question of extradition law (see Report on Extradition, 4 (1)), whereas in technical works it is often included under judicial co-operation in penal matters, even when such co-operation is taken in its strict sense as excluding the laws of extradition (see MEILI, *op. cit.*, page 374, and, in particular, LAMMASCH, pages 702 *et seq.*).

I. THE PRINCIPLE OF THE OBLIGATORY CHARACTER OF JUDICIAL CO-OPERATION IN PENAL MATTERS AND THE RECOGNITION OF THIS OBLIGATION IN TREATIES.

The duty of States belonging to the comity of nations to help each other in the fulfilment of their judicial functions did not attain any degree of recognition until the nineteenth century. Since Hugo GROTIUS pronounced himself in favour of an obligation to grant extradition, a number of authors have advocated wider general co-operation in legal matters.

No detailed historical account exists of judicial co-operation in the strict sense of the word. There are at most a few accounts of the history of judicial co-operation to be found in works on the law of extradition; see LAMMASCH: *Auslieferungspflicht und Asylrecht*, pages 1 *et seq.* and 821 *et seq.*

It was not until the second half of the nineteenth century, however, that detailed regulations on this subject were embodied in inter-State treaties. Since then, a large number of inter-State conventions have been concluded, establishing reciprocal judicial co-operation in civil and penal procedure. Co-operation has, however, in two respects advanced rather further in the field of civil procedure. On the one hand, States have concluded a large number of special conventions with a view specifically or mainly to judicial co-operation in civil actions, and on the other hand the question of civil procedure has been made the subject of a collective convention — that concluded at The Hague in 1896. As regards penal procedure, the position is quite different in both respects. As far as I am aware, there is no special convention relating exclusively to judicial co-operation in penal affairs. It is true that an administrative agreement was recently concluded on December 16th, 1925 (*Reichsgesetzblatt*, 1926, II, page 89), between Germany and Poland dealing exclusively with judicial co-operation in penal matters, but this agreement — which has not been promulgated as a law — does not prescribe the conditions of such co-operation but simply the procedure by which it is to be carried out. The relevant principles of judicial co-operation in penal matters have, however, been embodied in inter-State treaties of the most varied character, more particularly extradition treaties, conventions providing for judicial co-operation in civil and penal matters, treaties of friendship and good-neighbourliness, treaties of peace, treaties of friendship and extradition and, lastly, treaties of friendship, commerce and navigation. No multi-State convention on penal procedure has been concluded on the lines of the above-mentioned Hague Convention on Civil Procedure.

For the purposes of this report there is no need to consider whether we should accept the views of those authors of works on international law who claim that there already exists a general custom in international law by which every State, even when not bound by convention, is under obligation to assist any other State member of the international

community in its administration of justice by assisting it in penal matters; or whether, on the other hand, we should accept the views of those who refuse to recognise the existence of any legal obligation unless formally laid down in an existing treaty.

As regards the position of this controversy in 1910, see MEILI: *Lehrbuch des internationalen Straf- und Strafprozessrechts*, page 374; see also von LISZT-FLEISCHMANN: *Völkerrecht*, page 353, who rejects in principle the obligation of judicial co-operation.

Even those authors who maintain that a custom exists in international law or those who prefer to base their arguments upon natural law do not, as a rule, go beyond laying down the principle of obligatory judicial co-operation in penal matters and leaving it to the individual States to formulate rules for the actual application of this principle. The mere acceptance of this rule by States is not a matter of great practical importance. Unless bound by a convention, States, even though they may not recognise the principle of a general and fundamental obligation, may nevertheless, in individual cases and within certain self-appointed limits, deny any obligation to render assistance in judicial matters. Where no treaty exists, then, every State has in practice the right to decide for itself how far it will recognise an international obligation to afford assistance in judicial matters. This juridical position, whereby, in the absence of a convention, each State has the sovereign right to decide for itself whether it will or will not accord its help in a specific case, is of particular importance to States which on principle refuse to conclude international treaties for judicial co-operation. It is interesting to note that certain States, though far from rejecting the principle of an obligation in international law as regards judicial co-operation, refuse on principle to conclude treaties on this subject, so that in practice they enjoy full freedom of decision as regards other States in all individual cases, despite the fact that they theoretically recognise the principle of an obligation under international law to afford their assistance to such States in judicial matters. This seems to be the attitude of the United States, for example.

Nevertheless, the practical needs of international life are leading States to afford each other assistance, even in penal matters. This fact is revealed in a large number of conventional provisions, even though, as we have already pointed out, no special convention yet exists relating exclusively to judicial co-operation in penal matters. If we study the history of conventional clauses of this kind, we find that they became more and more common during the second half of the nineteenth century. MONIER (*Les Commissions rogatoires en droit international*, Paris, 1909) states that the first provisions regarding "commissions rogatoires et remises de signification" occur in the conventions concluded by France in 1844 and 1846 with the Netherlands and the Grand-Duchy of Baden. It is possible, however, that a few conventions of this kind were concluded before 1844 between the various German States inside the German Federation. As I have already said, clauses of this nature became more and more common in conventions in subsequent decades of the nineteenth century, and deal with an ever-increasing number of special points connected with judicial co-operation in penal matters. It was not until 1869, however, that any treaties included a formal obligation in regard to the serving of writs in general, including the serving of writs upon accused persons. The first clause of this kind occurs in Article 13 of the Franco-Belgian Convention of 1869 and the Franco-Bavarian Convention, which was based on the model of the former. The total number of conventions concluded since 1844 is, I believe, 128 (see list of these conventions annexed to the present report). The most recent and most detailed provisions are to be found in the following Conventions: Convention of May 8th, 1922, between the German Reich and the Czechoslovak Republic on extradition and other forms of judicial co-operation in penal matters; Convention of July 12th, 1921, between Estonia and Latvia; Convention of April 19th, 1924, between Bulgaria and Roumania; Convention of November 26th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and Bulgaria; Convention of July 12th, 1921, between Latvia and Lithuania; Convention of February 12th, 1923, between Denmark and Finland; Convention of February 28th, 1915, between Paraguay and Uruguay. Unfortunately, I have been unable to obtain copies of a number of treaties on extradition and co-operation in judicial matters which, I understand, Italy has recently concluded but has not yet ratified.

The juridical notion of obligation to afford mutual assistance in the administration of the penal law also appears in the parallel provisions of the national laws of the various States which have adopted regulations in regard to judicial co-operation. Such rules exist in the general laws on judicial organisation and administration, as well as in special laws on penal procedure. (It is a remarkable fact that Articles 914 *et seq.* of the Code of Civil Procedure of the State of New York contain provisions regarding judicial co-operation in penal matters.) Lastly, provisions of this kind are to be found in ministerial decrees and circular instructions sent to diplomatic representatives and consuls abroad.

See also the declarations regarding judicial co-operation exchanged between the Austrian Government and the Swiss Federal Council on the subject of correspondence between the Imperial and Royal Courts and Public Prosecution Offices of the kingdoms and countries of the Austro-Hungarian Monarchy represented in the Reichsrat on the one hand and the Swiss judicial authorities on the other. These

declarations introduced modifications on certain very important points in the Extradition Treaty concluded on March 10th, 1896, between Austria and Switzerland. They are reproduced in *Normen über die internationalen Rechtsbeziehungen auf dem Gebiete des Zivil- und Strafrechts und über dem Rechtshilfeverkehr mit dem Auslande* (Vienna, 1910).

It is interesting to note that in negotiations for the conclusion of conventions such clauses applying to individual States have often played a part similar to that of autonomous Customs tariffs in the economic sphere; the tariffs are taken as a basis or framework for subsequent commercial agreements. A number of countries, having no legal provisions of their own on the subject, have developed a certain judicial usage. This is the case in the Anglo-Saxon countries and in Brazil.

Clearly, then, the idea of international judicial co-operation, based on rules of law, is undoubtedly making progress even in regard to penal matters. It would therefore seem particularly desirable to give this idea practical shape by means of a multi-State convention, as has already been done in the case of judicial co-operation in civil procedure. As early as 1812, Anselm FEUERBACH, the celebrated German professor of penal law, in preparing a draft treaty on relations between the judicial administrations of two neighbouring countries (§ 103, No. 1), included in the third part of the special provisions a clause providing for mutual judicial assistance in penal matters. Although the only immediate aim was to draw up a typical inter-State convention, Feuerbach's idea nevertheless tended towards the unification of the rules of law relating to the question.

The draft is worded as follows:

"The two States agree to afford each other judicial assistance both in civil and in penal matters in so far as the present treaty contains no special restrictions in those respects."

Further, the Austrian jurist, Domin PETRUSHEVETZ, in his *Précis d'un Code de Droit international* (Leipzig, 1861), gave a number of explanations of the term "commission rogatoire", the obligation to give evidence, and the costs of judicial co-operation in penal matters. Volume 13 of the publications of the International Association of Criminalists, which aims at securing the unification of large sections of penal law, includes an article by HONORAT entitled "Etude sur les moyens de réprimer la criminalité internationale". This article contains the following observations on judicial co-operation:

"The magistrates and judicial police officials of the different countries would have to be given the right to send each other letters rogatory and communicate with each other direct without being obliged to have recourse to the diplomatic channel through various ministries, a process which always involves a considerable loss of time" (page 266, No. 3).

Lastly, MEILL, who represented Switzerland at the Hague conferences for the conclusion of the Convention on Civil Procedure, writes as follows in his *Lehrbuch des internationalen Straf- und Strafprozessrechts*:

"The best method would be to unify the main principles and apply them to a fairly large territory (as in the Hague Conventions). This method would at any rate be preferable to that of bilateral conventions."

If we wish to regulate, on a collective basis, international co-operation in penal matters on the model of the International Convention on Judicial Co-operation in Civil Procedure, the latter Convention would, notwithstanding the differences between penal and civil procedure, prove a valuable guide to us on a number of important points.

Such a collective regulation of the subject will only be possible, of course, if the inter-State treaties and the different national codes and judicial usages reveal a certain consensus of juridical opinion as regards main principles.

I will now endeavour to show whether, and if so how far, this consensus of opinion exists.

II. CASES IN WHICH JUDICIAL CO-OPERATION IS GRANTED.

If we begin by turning to the individual problems connected with the question of judicial co-operation in penal matters, we may adopt the classification which the Belgian Government established when it prepared the model conventions which it concluded in the sixties of last century. This classification has been adopted in most of the conventions relating to this question. VON MARTITZ, in his comprehensive work, *Internationale Rechtshilfe in Strafsachen*, also adopted this classification as the basis of his study of the question. According to him, the subject is divided on the following lines:

(a) Requisitions in penal cases for the hearing of witnesses residing in the State applied to, irrespective of their nationality;

(b) Requisitions in penal cases regarding the summoning of witnesses or experts before a foreign tribunal;

(c) Requisitions in penal cases for the sending, under promise of return, of articles believed to constitute important evidence and papers or documents held by the administration applied to;

(d) Requisitions in penal cases regarding the official transmission (*notification, signification*) of sentences, judicial decisions, orders, decrees and instruments of all kinds relating to procedure, to persons who are under the jurisdiction of one of the two contracting States;

(e) The reciprocal communication of penal sentences passed by the courts of one party upon a national of the other for a crime or offence of any kind, for the purpose of registration after the sentence has become *res judicata*.

The discussion of the subject in the present memorandum is based on this scheme. It should be pointed out at once, however, that in certain respects the scheme is incomplete. In the first place, the chapters arranged by von Martitz sometimes require elaboration; for example, the question of the communication of extracts from criminal records (*Strafregister*) should be included under (e) "Reciprocal communication of penal sentences". Further, certain questions which should have been allowed separate chapters do not appear in the scheme at all. Thus it omits the question — which is mainly of a technical nature — whether, and if so to what degree, judicial co-operation in penal matters should be effected through the diplomatic channel or by direct communication between the judicial authorities (either the supreme authorities or those directly concerned), or by means of a procedure whereby the diplomatic representative of the applicant State would enter into direct communication with individual persons subordinate to the judicial administration of the State applied to. The question of costs also requires consideration. Another question affecting judicial co-operation is that of the language to be used in the various forms of application for assistance. Lastly, consideration will also have to be given to the question of the obligation of States to send each other, when required, the legal information necessary to enable international judicial assistance to be granted. If, as a result of future legal developments, international courts of law with penal powers are eventually established, there will arise the problem of the judicial assistance which the courts of individual countries should afford to such an international court. As, however, no such international penal judicature yet exists, we need not consider this question now, but will examine each of the other problems already mentioned on the basis of the scheme set forth above.

METTGENBERG rightly states ("Rechtshilfe, zwischenstaatlich, in Strafsachen", *Handwörterbuch der Rechtswissenschaft*, VON ELSTER and STIER-SOMLO, column 1299; the author has been kind enough to place the proofs of this work at my disposal) that the execution of a requisition for judicial co-operation comprises the following two stages: "First, measures taken in the home country, *i.e.*, the wanted person is interrogated and arrested; the object sought for is seized and placed in safe custody; the witness is summoned and his evidence taken; an enquiry is instituted and the results duly recorded. Secondly, measures taken abroad: the wanted person is handed over to the foreign authorities, who are also supplied with the evidence and the record of the case. Each of these individual measures of judicial assistance presupposes a decision to grant the requisition made by the foreign authorities".

The general arguments for and against codification cannot be examined until all the individual questions raised by the problem of judicial co-operation in penal matters have been considered.

(a) *Requisitions in Penal Cases regarding the Hearing of Witnesses of any Nationality resident in the State to which the Requisition is addressed.*

This is the simplest case of international co-operation in penal matters. State A desires a person residing in State B to give evidence in penal proceedings pending in State A. It is a case which is covered by all treaties on judicial co-operation in penal matters, and it is a typical instance where judicial co-operation is in principle provided for. Even the earliest treaty I have found on judicial co-operation in penal matters — that of November 7th, 1844 — contains the following provision:

"When, in the hearing of a case which is of a penal but not of a political character, one of the two Governments deems it necessary to hear witnesses domiciled in other States, letters rogatory for that purpose shall be sent through the diplomatic channel."

Another formula establishing a similar obligation is to be found in the next oldest treaty — that of April 16th, 1846, between France and the Grand-Duchy of Baden. Article 4 of this treaty reads as follows:

"The two contracting Governments undertake to cause writs to be served and letters rogatory to be executed both in civil and in criminal cases, subject to any provisions to the contrary in the laws of the country."

All existing treaties recognise this obligation.

Simple treaties of this kind on judicial co-operation were signed in the second half of the past century, particularly by France. There are the treaties concluded by France with Württemberg (January 23rd, 1853), with Hesse (January 26th, 1853), Portugal (July 13th, 1854), Austria (November

13th, 1855), Chile (April 11th, 1860), Sweden and Norway (June 4th, 1869), the Swiss Confederation (July 9th, 1869), Bavaria (November 20th, 1869), Italy (May 12th, 1870), Belgium (August 15th, 1874), Peru (September 30th, 1874), Luxemburg (September 12th, 1875), Denmark (March 28th, 1877), Spain (December 14th, 1874). See also the special judicial co-operation clauses of the revised Rhine Navigation Act of 1869 and the Elbe Navigation Acts of 1821 and 1841. The more recent conventions which, in addition to letters rogatory for the evidence of witnesses, provide for judicial co-operation in regard to other forms of evidence are mentioned elsewhere in the present report. (See p. 18 *et seq.*)

The same principle is applied in the laws of individual countries.

Belgium. — Article 139 of the Law of 1869 on Judicial Organisation reads as follows: "Judges may also send letters rogatory to judges of other countries, but they may only execute letters rogatory from other judges if authorised by the Minister of Justice, in which case they are bound to do so". See also the following extract from the memorandum sent by M. Verdussin (Public Prosecutor of Belgium) to the Minister of Justice on October 18th, 1877: "A judge who receives letters rogatory from another country must hold, in regard to the witnesses whom he calls, all the punitive and restrictive powers which he would hold if he were executing letters rogatory issued by one of his colleagues of his own country".

Italy. — Article 854 of the Code of Civil Procedure reads as follows: "When in penal cases measures of enquiry are to be taken at the request of foreign judicial authorities, such measures shall be taken by the Court of Appeal (*Chambre d'accusation*) or by a judge delegated by that court. In such cases the witnesses may, if required, give their depositions on oath". For special provisions relating to Italian consular jurisdiction, see Article 171 of the Italian Consular Law of January 28th, 1866.

I am indebted to Professor Diena for a correction on the subject of Italian legislation. I quoted Article 854 of the Code of Civil Procedure instead of the Code of Criminal Procedure; and I quoted the Code of 1865, which is no longer in force. The Code of Criminal Procedure now in force in Italy is that which has been in operation since January 1st, 1914. The provisions of Articles 635-639 deal with questions relating to the communication of judicial and extra-judicial documents in criminal cases and letters rogatory in criminal cases.

Netherlands. — The Law of July 6th, 1896, authorises the despatch of letters rogatory to other countries whenever the evidence of witnesses residing outside the Kingdom is required. This law also authorises Dutch consuls abroad to take the evidence of witnesses.

Great Britain and Ireland. — Decision of the Ministry of Justice of December 12th, 1900: "The authorities in Great Britain and Ireland shall afford judicial assistance in penal matters to foreign courts by taking the evidence of witnesses, but not of accused persons and not in penal cases of a political character. The hearing of the evidence of witnesses in penal cases shall have as its legal basis the Extradition Acts of 1870, 33 and 34 Vict. cap. 52, and 1873, 36 and 37 Vict. cap. 60. According to these Acts magistrates or justices of the peace are competent, on the requisition of a foreign court, to take the evidence of witnesses. The giving of false evidence is a punishable act. The giving of evidence is compulsory. In order to enable the authorities of Great Britain and Ireland to take action, the foreign tribunal must send through the diplomatic channel a requisition which must in particular mention the maximum sum to be expended in costs, and must be accompanied by an order of the court, sealed with the court's seal, indicating the nature of the case, the names and addresses of the witnesses to be heard and the general or special questions to be put to them. An English translation of the order of the court and any documents attached thereto must be provided. The court's documents must be duly authenticated, and the authentication clause must contain an affirmation that the court making the requisition is empowered to order the taking of evidence".

Turkey. — Decree of the Court of Justice, June 16th, 1847: "The service of writs and execution of other official acts shall be facilitated and simplified as far as possible".

United States of America. — There are no laws or judicial usages in the United States regarding the hearing of witnesses in penal cases pending in other countries, because the practice itself is either quite foreign to the institutions of individual States of the Union or is only admitted within certain limits for purposes of defence. In all criminal cases the American laws always specifically require that witnesses for the prosecution shall give evidence only in court and in the presence of the accused; they are allowed to do so elsewhere only in a few of the States of the Union. It is therefore questionable whether the courts in the United States would take any action to obtain the evidence of witnesses in criminal or penal cases pending before foreign tribunals. In any case, the evidence of such witnesses could be taken only in virtue of letters rogatory and not on the strength of a mere "commission", and when necessary the letters rogatory must state the exact nature of the alleged offence and what the requesting tribunal desires to prove by the evidence of the witnesses in question. Further, they must expressly state that the statement so obtained has legal validity in the country where the case is being tried. In these circumstances, it might be possible, if a satisfactory account of the case were given, to cause the competent court in the United States to order the evidence of a witness to be taken, unless, of course, the offence were of a political nature (extract from an advisory opinion given to the Imperial Austro-Hungarian Consul in New York and reproduced in *Normen über die internationalen Rechtsbeziehungen auf dem Gebiete des Zivil- und Strafrechts und über dem Rechtshilfeverkehr mit dem Auslande* (Vienna, 1910). See also Article 914 of the Code of Civil Procedure of the State of New York. This article reads as follows: "Either of the parties to an instance, process or procedure of any kind, civil or criminal, pending before a tribunal outside the State, whether in the United States or in a foreign country, may obtain, by the procedure prescribed in the above-mentioned sections, the deposition of a witness, and, together with such evidence, may obtain books which are kept in the State (of New York) but are to be used in the proceedings in the other country".

Argentine and Uruguay. — According to a report prepared in 1877 by the Austro-Hungarian Minister to the Argentine and Uruguay, the courts of those two republics only offer their assistance in judicial matters if the execution of the judicial acts in question is applied for by a requisition from the requesting court sent through the diplomatic or consular representative in the country receiving the requisition.

Austria. — Decree by the Ministry of Justice, June 16th, 1844, § 38: "The courts in the territory to which the present law is applicable shall execute requisitions for assistance received from foreign tribunals except where there exist instruments (treaties, governmental declarations, ministerial decrees) laying down provisions to the contrary".

¹ Translation; the original is not available in the Secretariat.

§ 33: "In penal cases the courts shall also, on request, agree to assist the competent foreign authorities, except where special ordinances exist containing provisions to the contrary. If the court of lower instance raises objections which are recognised as valid, the Ministry of Justice shall be asked for instructions." "Papers relating to cases of high treason, lese-majesty, offences against members of the Imperial House, breaches of the peace, forgeries of public bonds and the counterfeiting of coinage may not be communicated to foreign authorities except by permission of the Minister of Justice."

Spain. — See L. GESTOSO Y ACOSTA, *Nuevo Tratado de derecho procesal, civil, mercantil*, pages 309 et seq. Articles 193 and 194 of the Law of Criminal Procedure prescribe as follows: Article 193: "Letters rogatory addressed to foreign courts shall be transmitted through the diplomatic channel in the form prescribed by treaty or, in the absence of a treaty, in the form prescribed by the Government. In all other cases the principle of reciprocity shall be applied". Article 194: "The rules laid down in the preceding article shall also be applicable for the purpose of giving effect in Spain to letters rogatory from foreign courts requesting the execution of a judicial act".

Sweden. — The exchange of letters rogatory provided for by extradition treaties is governed by two Laws of March 6th, 1899.

Brazil. — As regards the methods of treating and executing in Brazil letters rogatory from foreign courts, the Brazilian Law of November 20th, 1894, No. 221, on judicial organisation has changed the previously existing legal position (except in regard to requests for the execution of sentences); letters rogatory from foreign courts will now always require the exequatur of the Federal Government before they can be executed in Brazil.

The above particulars afford sufficient evidence of a widely held legal opinion that requisitions from a foreign State for the evidence of witnesses should in principle be granted by the State to which they are sent. The nationality of the witness is quite irrelevant, so that the requisition is granted even where it relates to a person not possessing the nationality of the State applied to, but resident in its territory and therefore subject to its authority. Further; there is no doubt that the hearing of witnesses should be carried out in accordance with the laws of the State applied to. Its legal restrictions should be observed, the procedure it prescribes should be followed and the coercive measures it allows should be used. As regards this last point, it would in any case seem possible to subpoena a witness where the evidence is taken in execution of an inter-State treaty which has become law. Objections might be raised, however, in countries where there is no legal basis for the judicial assistance. In certain instances Lammasch recommends that depositions may be made compulsory by convention even where the laws of the State applied to do not allow a subpoena. These laws do not, perhaps, allow a subpoena to be served if the witness is not connected with the State either as its national or through being domiciled there, but is a national of the State making the requisition and is only staying temporarily in the State applied to. LAMMASCH (*op. cit.*, page 864) cites the instance of a witness taking a short journey abroad and so evading the obligation to give evidence in a case in which he might criminate himself.

It is important to note that recent treaties of judicial co-operation apply to requisitions for the evidence of witnesses in penal cases the clear and simple principle that the State applied to takes such evidence *on behalf of* the State making the requisition. The favourable treatment accorded in penal cases to requisitions for the evidence of witnesses is extended to other measures of enquiry. The older treaties actually enumerate all acts of this kind for which judicial assistance should be rendered (expert opinions, constats, searching of the person, communication of commissions to obtain evidence); but the most recent treaties do not as a rule contain such lists. Thus, the Extradition Treaty concluded on April 19th, 1924, between Bulgaria and Roumania declares in Article 19:

"When either of the Governments deems it necessary to hear witnesses domiciled in the other State or to take any other measure of judicial enquiry in the prosecution of a criminal case of a non-political nature, letters rogatory shall be sent for this purpose through the diplomatic channel and shall be executed in accordance with the laws of the country in which the witnesses are to be heard or the measures of judicial enquiry taken."

This treaty shows that the principle of judicial co-operation in penal matters is extended from the hearing of witnesses and kindred measures of enquiry to the examination of the accused themselves. The Treaty concluded on March 17th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and Czechoslovakia is even clearer on this point. Article 59 reads as follows:

"They shall in particular notify each other of measures regarding penal procedure and shall carry out measures of enquiry such as the examination of accused persons, witnesses and experts, judicial constats, searching of the person and sequestration . . . and the communication of documents and articles connected with the penal procedure."

In order to illustrate the general obligation to carry out all measures of enquiry, this article cites certain examples, notably the examination of the accused themselves. A similar clause exists in Article 14 of the Treaty of Extradition and Judicial Co-operation concluded on November 26th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and

Bulgaria, Article 14 of the Treaty of Extradition and Judicial Co-operation concluded on July 12th, 1921, between Latvia and Lithuania (this latter employs the words "carry out any other enquiry") and Article 14 of the Treaty of Extradition concluded on November 29th, 1923, between Finland and Sweden ("to take the evidence of witnesses . . . or to carry out any other investigation"). It is instructive, too, to consult the Treaty of May 8th, 1922, between Germany and Czechoslovakia on Extradition and Other Forms of Judicial Co-operation in Criminal Cases. Article 16 reads as follows :

"Holding of enquiries : The Contracting Parties undertake at the request of the competent authorities to hold enquiries and in particular to hear accused persons, witnesses or experts and to carry out judicial inspections or examinations and sequestrations."

The use of the words "in particular" shows that the various measures of enquiry are only cited as examples, and that in principle judicial co-operation is promised for all such measures. Moreover, these texts do not stipulate that the measures of enquiry in question are confined to measures which could be accomplished only by the *judicial authorities* of the State to which the requisition is addressed. They may also include the seizure of postal correspondence, a police search for a person, or application to the civil status office (*Standesamt*) for information. This position is the outcome of a very interesting process of development. Judicial co-operation in penal cases began with the hearing of witnesses in the interest of the requesting State, and has eventually been extended to cover all measures of enquiry in penal cases generally. All these measures have to be carried out in accordance with the laws of the State to which the requisition is sent — as we saw, indeed, in regard to the hearing of witnesses. In this connection an important point is raised in Article 17 of the Treaty of Extradition and Judicial Co-operation concluded on November 26th, 1923, between Bulgaria and the Kingdom of the Serbs, Croats and Slovenes. Under the terms of this article, the Ministries of Justice of the two contracting parties, if requested to do so, are to communicate to the competent authorities of the other State the texts of the laws in force in the jurisdiction of the State applied to. This measure is necessitated by the diversity and complexity of the various national laws on procedure.

It is true that the obligation of the State to which the requisition is sent to carry out at the request of the applicant State measures of enquiry of any kind — which obligation we have shown to be the outcome of a process of historical development — is subject to a limitation which has not yet been considered. In certain cases the execution of requisitions of this kind may be refused not only in the case of political offences but also whenever the requisition relates to an offence which is not extraditable. This restriction is included in the most recent treaties on the subject.

See, for example, the Treaty of Extradition and Judicial Co-operation concluded on July 12th, 1921, between Estonia and Latvia. Article 16 reads : "Whenever, in a criminal case in which extradition is admissible under the terms of the present Convention, the authorities . . . ask . . . that a witness be heard . . .". See also the corresponding clause of Article 19 of the Extradition Treaty between Bulgaria and Roumania, Article 16 of the Treaty of Extradition and Judicial Co-operation concluded on July 12th, 1921, between Latvia and Lithuania, Article 16, in conjunction with Article 17 (1), of the Treaty of May 8th, 1922, between Germany and Czechoslovakia on Extradition and Other Forms of Judicial Co-operation in Penal Matters. This last article reads : "The legal assistance provided for in Articles 14 to 16 may be refused if the obligation to extradite as defined in the provisions of the present Treaty does not apply to the criminal proceedings in respect of which such legal assistance is demanded".

Moreover, the most recent treaties leave no doubt as to the intention to extend the right of refusal, within the scope indicated, to all measures of enquiry whatever, whereas the practice in previous treaties, and indeed the former theory, often limited this — exceptional — right of refusal to certain specified acts of enquiry, not including the actual hearing of witnesses.

See, for example, the Extradition Treaty concluded on May 18th/31st, 1911, between Austria-Hungary and Bulgaria, Article 16 (2) of which reads as follows : "Nevertheless, when letters rogatory are issued with a view to the searching of persons or premises or the seizure of the *corpus delicti* or of evidence of guilt, they may only be executed subject to the reservation laid down in Article 8 (3) (rights of third parties) and only with reference to one of the acts enumerated in Article 2 (list of extraditable offences)". As regards literature on this subject, see in particular VON MARTITZ (*op. cit.*, page 724) : "If the object of the requisition is domiciliary visitation or sequestration, it cannot legally be executed except with reference to a crime or offence mentioned in the Extradition Law or the supplements thereto."

As already mentioned, a different view is taken in the most recent treaties, and the new theory that within the scope indicated the right of refusal extends to *all* measures of enquiry is also set forth in the more recent works on the subject (see MEILI, *op. cit.*, page 378). As regards the scope of this reservatory clause, the older treaties attempted to enumerate all exceptional cases where the right to refuse any assistance existed.

See, for example, Article 20 of the Extradition Treaty of September 29th, 1911, between Germany and Bulgaria, Article 17 of the Extradition Treaty of November 21st, 1910, between Switzerland and Greece. MEILI also adopts the method of enumeration (see *op. cit.*, page 378).

In the most recent treaties, on the other hand, the exceptions only cover offences which are not extraditable; yet a careful examination of the lists given in the older treaties shows that the offences enumerated therein really correspond to the category of extraditable offences. An attempt might be made to draft a formula of a purely general character, such as, for example, that the carrying out of measures of enquiry may be refused where it would affect national interests; but a wide formula of this kind would obviously be open to serious objections from the point of view of international legal security in this matter. Lastly, even if a general clause were drawn up to apply to non-extraditable cases, this does not necessarily mean in practice that assistance would always be refused in such cases. It simply establishes a right of refusal, and there is therefore nothing to prevent a State from still complying with a requisition and affording its assistance (as indeed certain States already do) in cases where the accused is in territory which comes under the authority of the requesting State. In certain circumstances, indeed, such action would be highly desirable — for example, where a national of the State applied to, lying under a charge in another country, could furnish proof of innocence. In negotiating a convention, therefore, the best course would be simply to take the general clause adopted in the most recent treaties and extend the scope of the right of refusal to those cases only in which extradition is not obligatory.

In connection with the question of the obligation resting upon the State applied to to carry out measures of enquiry, it should further be noted that cases may exist where this obligation cannot be allowed even in the absence of the reservation referred to above (non-extraditable offences). I refer to cases where the requisition of the foreign State should be rejected on the ground of incompetence. It has already been explained that the enquiries are carried out by the State applied to subject to its own laws. But these laws also determine what authorities are competent to receive letters rogatory and carry out enquiries, and they may also require that the authority competent to carry out the enquiries shall ascertain whether the *foreign* authority from which the letters rogatory came also possesses the necessary competence. In most States the laws on civil procedure probably establish this right to verify the competence of the *requesting* authority. It is also mentioned in national laws, jurisprudence and treaties. Thus a decree of the Austrian Ministry of Justice, dated June 18th, 1854, states that:

§ 38: "Judicial co-operation shall be refused if the act demanded by the requesting court does not come within the competence of the courts as determined by the relevant internal laws. If the act requested comes within the competence of another home authority, the court applied to may forward the request to such authority."

§ 39: "... In granting judicial co-operation no derogation from the existing internal laws can be allowed unless the requisition expressly asks that a certain procedure prescribed in the law of the foreign country be followed in the accomplishment of the act in question and such procedure in question does not prove to be prohibited by any of the internal laws of the country."

§ 40: "If the court to which the requisition is sent refuses its co-operation, or if in a case of judicial co-operation differences of opinion arise between the applicant court and the court applied to in regard to the methods of rendering such assistance or in other respects, the Court of Appeal from the court applied to shall on demand by the applicant foreign court or other foreign public authority give, without preliminary oral hearing, a decision as to the validity of the grounds for refusal, or as to the other points in dispute."

Most of the treaties concluded by France with other States in regard to letters rogatory in penal matters contain the following general provisions:

"The letters rogatory shall be executed by the competent officials, due observance being paid to the laws of the country in which the witnesses are to be heard."

See also a decision of the German Reichsgericht, dated November 21st, 1912 (*Journal de Droit international privé*, 1904, page 956). Compare also the Treaty between the German Reich and the Czechoslovak Republic of May 8th, 1922, on Extradition and Other Forms of Judicial Co-operation in Penal Matters. Article 16 of this Treaty reads as follows: "The Contracting Parties undertake at the request of the competent authorities to hold enquiries ...". See also Article 19: "The letters rogatory (see Articles 14 to 16) shall be dealt with in the manner prescribed for judicial acts of this kind, and with the employment of the necessary coercive measures, by those authorities of the Party applied to who are competent under their national laws to carry out such official acts in criminal proceedings in their own country."

Even assuming that the right held by the authority applied to to decide as to its own competence always implies the right to ascertain whether the requesting authority also is competent, this does not mean that the judicial authority taking measures of enquiry will *in all cases* be required to decide first whether the requesting authority is competent to ask the other State to carry out the enquiries in question. Some countries, *e.g.*, Brazil, in principle require the supreme judicial administrative authorities to decide this preliminary question. There are two possible solutions: Either the laws of a country will require the

supreme judicial authorities to examine only whether the requesting authority is competent, or they may also require those authorities to examine and decide whether the conditions in which the courts which are to carry out the measures of enquiry are competent have been fulfilled. In Germany, for example, all questions relating to the conditions governing the granting of judicial co-operation (*e.g.*, the competence of the requesting authority, the form of the requisition and, where necessary, the question of reciprocity) come within the competence of the supreme judicial administration, unless an actual treaty has been concluded containing clauses to the contrary. All these, however, are questions which solely concern the laws of individual nations and, like the procedure of extradition and exequaturs for the execution of the sentence of a foreign court, are treated in entirely different ways in different countries. The decisive factor is how far the courts are independent of the supreme judicial administration — in other words, how far their powers are separate. In practical co-operation in penal matters the influence of the supreme judicial administration on the procedure as a whole is particularly great in countries which are not bound by any convention, and where the assistance of tribunals and administrations is only granted on a basis of reciprocity. If a judge is not thoroughly familiar with the law of a foreign country, he will often find it very difficult to decide whether the requesting authority is really competent. In cases where assistance is granted on a basis of reciprocity the supreme judicial authorities will be best able to ascertain whether this condition is fulfilled. Thus paragraph 38 (3) of the above-mentioned Austrian Ministerial Decree of June 16th, 1854, contained the following stipulation :

“ Assistance may be refused if reciprocity is not granted. If the tribunal applied to is uncertain whether reciprocity is granted or not, it must apply to the Minister of Justice for a decision on the point, which shall be binding upon it. ”

Taking all the above into account and assuming that a general convention on these matters were being drawn up on the model of the Hague Convention on Civil Procedure, the clause on this subject would be worded on the following lines :

“ *Article 1. — Measures of enquiry.* — The Contracting Parties undertake, at the request of a competent authority, to take measures of enquiry. Such co-operation may be refused, however, if the penal proceedings for which it is to be rendered do not involve an obligation to grant extradition. Requisitions for judicial co-operation shall be executed by the authorities of the Party applied to which under its laws are competent to make such enquiries. The enquiries shall be carried out in accordance with the prescribed forms and with application of the proper coercive measures. ”

(b) *Requisitions in Penal Matters regarding the Summoning of Witnesses and Experts before a Foreign Tribunal.*

Treaties providing for judicial assistance in international penal cases often provide also that the State applied to shall, when requested by the foreign authority, simply serve an official summons upon witnesses or experts whose evidence the foreign tribunal wishes to hear. In point of fact, however, this official summons simply consists of the forwarding of a communication and has the effect of authenticating the act of communication. The receipt of the communication as such is not prejudicial to the witness or expert ; sometimes, indeed, it has the advantage of affording a witness an opportunity of helping in an enquiry regarding an offence in which he is in some way implicated. On the other hand, the foreign tribunal is more likely to obtain the evidence of a witness or expert in this way than if it could do no more than issue a purely fictitious or public summons. It is noteworthy that the older treaties — such as, for example, the Franco-Swiss Treaty of 1803 (Article 18), the Franco-Swiss Extradition Treaty of 1828 (Article 6), the Austro-Swiss Treaty of 1828 (Article 5), and Article 28 of the Draft Treaty on Judicial Co-operation, drawn up by Feuerbach — established a direct obligation to give evidence. But in view of the very great difficulties which would be involved by a journey to the seat of the foreign court trying the case, and in view of the reluctance of modern States to compel their nationals to obey orders from foreign States, the treaties now in force, however wide the obligations they contain in regard to the affording of judicial co-operation, leave the individual when summoned entirely free to decide whether or not he will obey the summons to appear before the foreign court. The more recent treaties repeatedly stipulate that the person concerned shall decide for himself whether he will appear before the foreign court or not, and the State to which the requisition is sent only undertakes to invite the person concerned to appear if he thinks fit.

Cf. Article 15 of the Treaty on Extradition and Judicial Co-operation concluded on July 12th, 1921, between Estonia and Latvia : “ When the Courts... demand ... the personal attendance of a witness ... and if the latter, after having received through that channel a summons to appear, signifies his consent to do so ... ” ; the Extradition Treaty between Bulgaria and Roumania dated April 19th, 1924, Article 17 : “ If it is considered necessary or desirable to summon a witness in a criminal case of a non-political nature, the Government of the State ... shall invite him to obey the summons served on him for this purpose by the authorities of the other State, but shall not be entitled to subject him to measures of coercion ” ; Article 61 of the Treaty on Judicial Co-operation concluded on March 17th, 1923, between the Kingdom

of the Serbs, Croats and Slovenes and Czechoslovakia : " The witnesses and experts ... who, upon receiving a summons, appear of their own free will " ; Article 15, paragraph 3, of the Treaty on Extradition and Judicial Co-operation concluded between the Kingdom of the Serbs, Croats and Slovenes and Bulgaria on November 26th, 1923 : " No witness or expert of any nationality whatsoever, who appears of his own free will before the judges of the State making application ... " ; Article 15, paragraph 2, of the Treaty of Extradition and Judicial Co-operation concluded on July 12th, 1921, by Latvia and Lithuania : " In case of voluntary attendance ... " ; Article 15, paragraph 2, of the Treaty of May 8th, 1922, between Germany and Czechoslovakia on Extradition and Other Forms of Judicial Co-operation in Penal Matters : " A witness or expert who voluntarily appears before the authorities of the requesting Party in response to a writ of summons served upon him by the authorities of the Party to which the requisition was sent ... " .

The requesting State cannot, on its own authority, subpoena a witness or expert having the nationality of a foreign State and residing in his country of origin, because it is an accepted principle that all powers of this kind held by any State stop at its frontiers ; neither can a State, when it receives a requisition to serve a writ of summons, compel its own nationals to place themselves at the disposal of a foreign State as witnesses or experts unless its nationals have been rendered subject to this obligation by a treaty which has been given the force of law. As has already been said, however, treaties of this kind are now no longer concluded. On this point, nevertheless, LAMMASCH interprets the treaties on judicial co-operation to mean that the contracting Governments are bound to invite a witness, whose personal attendance before the court of the other State is necessary, to go to the seat of the requesting tribunal, and to emphasise to him that this journey is necessary, in the general interests of justice (*op. cit.*, page 862). Unfortunately, he does not cite any authority for this assertion, and in my opinion no such sweeping obligation can be read into any of the more recent treaties which I have seen, although such an obligation might perhaps be desirable in the common interest of States for the purpose of the administration of justice. From the purely legal point of view, moreover, there would be no appreciable difference between the mere communication of a summons and an invitation to obey the summons, because it is obvious that the invitation cannot be accompanied by any threat of coercion ; a mere formal invitation would thus have no more than a moral value. VON BAR rightly says (*Lehrbuch des Internationalen Privat- und Strafrechts*, Stuttgart, 1892, page 329) :

" In order that the person cited, if mistakenly apprehensive of coercion on the part of the requesting State, may not under this mistaken impression comply with the summons of the requesting State, the correct course would be to mention *expressly* that no coercive measures will be employed either by the authorities serving the summons or by those ordering it. "

Von Bar considers it particularly necessary to apply this procedure in cases where the summons of the requesting authority customarily includes comminatory formulas. Various writers on the theory of international law have made suggestions involving the creation, on a more or less extensive scale, of power to compel experts or witnesses to appear in person before a foreign tribunal ; but these proposals have not perceptibly influenced recent treaties.

See LAMMASCH, *op. cit.*, pages 862 *et seq.* : " Although it is desirable that witnesses should not be compelled to appear before the tribunals of a foreign State in cases where the States concerned are far distant from each other, or are, for example, separated by an ocean, nevertheless it is going too far, in my opinion, to exclude its application altogether in relations between adjacent States, since the public interest would be sacrificed to the individual interest ; indeed, in some cases the highest conceivable form of personal interest might be sacrificed, namely, the interest of a wrongly accused person in proving his innocence.

" Until science, the electrical transmission of signs and sounds, the telegraph, the telephone, have advanced so far as to enable the competent court to hear a witness *not present*, it will, in my opinion, be necessary to adopt one of two methods of determining in this question the extent to which private interests should be protected, even to the detriment of the proper administration of justice. Either it may be agreed that witnesses are to be compelled to attend in the event of the jurisdictional districts in the two neighbouring States being adjacent, or the court which is asked to serve the summons may be left to decide in each case whether or not pressure should be brought to bear on a witness, taking account, on the one hand, of the need for his personal attendance and the importance of the case itself and, on the other, of the loss which he might sustain through prolonged absence from his domicile and the extent to which this loss would be repairable. Should the witness ultimately be compelled, the means of coercion used would obviously have to be the same as those applicable in the case of a writ served by the courts of the country itself, and he would have to be suitably indemnified. "

Whatever view be taken, it would be better, in order to facilitate the conclusion of a general convention in the near future, to avoid introducing in the draft any innovations so radical as these. If the person cited by a foreign State to appear as a witness or expert happens to be in custody in the State applied to, neither the unilateral consent of the person cited nor in the modern State the unilateral consent of the authorities who are in charge of him are in themselves sufficient to give effect to the summons (see on this subject the explanation given below on pages 20 *et seq.* in another connection). The question whether the State has the right to compel its *officials* to appear before foreign tribunals and give evidence (LAMMASCH, *op. cit.*, page 866, says that the State obviously possesses this right) will depend primarily upon the State concerned.

The usual method by which the writ of summons on the witness or expert is served by the State applied to on behalf of the applicant State is as follows : An original document issued by the applicant State, which is sent with the request for service, is handed officially

to the person concerned in the State applied to by the authorities of that State. Thus, Article 17 of the Extradition Treaty of April 19th, 1924, between Bulgaria and Roumania reads as follows :

“ If it is ... necessary ... to summon a witness ... the Government ... shall invite him to obey the writ of summons served on him for this purpose by the authorities of the other State ... ”

The State applied to has the right to examine the summons and ascertain whether the requesting State has included in it any comminatory formulas which are inadmissible, and in such cases the former State need not serve the summons. Further, it need not do so if the offence is not extraditable. In any case, the rules applicable to the serving of the summons will clearly be those of the State applied to, and that State will fulfil its international obligation if it serves the summons in accordance with its own law. Admitting that persons cited before foreign courts are not bound to appear, States who reciprocally agree to serve writs upon witnesses or experts will endeavour to reduce as far as possible the inconvenience of attendance in such cases by taking steps to settle the question of the expenditure which the persons in question will incur for the journey. The various conventions on this subject, however, differ from each other on points of detail.

Cf. Article 15 of the Treaty on Extradition and Judicial Co-operation concluded on July 12th, 1921, between Estonia and Latvia : “ When the courts or examining magistrate of one of the Contracting Parties, in criminal cases where, under the terms of this Convention, extradition is admissible ... demand ... the personal attendance of a witness ... and if the latter ... agrees to comply with the request, the expenses incurred by him for travelling and maintenance shall at his request be reimbursed to him, in accordance with the tariffs of the requesting country, by the judicial authorities of his place of residence and at the cost of the requesting country ... ” Extradition Treaty of April 12th, 1924, between Bulgaria and Roumania (Article 17) : “ The cost of the attendance of a witness shall in all cases be borne by the State making the application, and the request ... shall show the amount allowed to the witness for travelling expenses and subsistence, together with the amount of the advance which the State to which application is made may pay to the witness subject to repayment by the State making application. This advance shall be paid as soon as the witness has declared his willingness to comply with the writ of summons ”. Article 61, paragraph 3, of the Treaty of Judicial Co-operation concluded on March 17th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and Czechoslovakia : “ The writ of summons shall indicate the sum to be granted by way of travelling expenses and subsistence allowances. The person cited shall, if he or she desires, obtain an advance to cover travelling expenses and subsistence in the territory of the requesting State ”.

See also Article 15, second paragraph, of the Treaty of Extradition and Judicial Co-operation concluded on November 26th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and Bulgaria ; Article 15, first paragraph, of the Treaty of Extradition and Judicial Co-operation concluded on July 12th, 1921, between Latvia and Lithuania. See also Article 22 of the Treaty of Extradition and Judicial Co-operation concluded on May 8th, 1922, between the German Reich and the Czechoslovak Republic ; this Treaty contains a general clause by which the expenses caused by judicial co-operation will be chargeable to the party on whose territory the expenditure is incurred. On this point METTGENBERG, in his notable work entitled *Die Verträge mit der Tschechoslovakei über Rechtshilfe in Strafsachen* (Berlin, 1925), says : “ What each party actually bears is not the cost of the judicial co-operation but only the expenditure incurred in the territory of that party for the examination of requisitions for judicial assistance ”. See also LAMMASCH (*op. cit.*, p. 864) : “ The indemnity must be sufficient to cover the expenses of the journey and return, and subsistence at the place of trial. Where the witness in question obviously cannot travel alone (*i.e.*, in the case of children, invalids and, in some cases, women), the expenses of the person accompanying the witness must also be refunded. It is most important to calculate the exact amount and to make it fully adequate when the witness has no option as to appearing or not. Nevertheless, it must not be so large as to place the witness under an obligation towards the party — plaintiff or defendant — which has him cited ”. The expenses of witnesses are regulated in full detail in the Supplementary Convention of July 22nd, 1868, between France and Switzerland, and the Franco-Italian Declaration of July 16th, 1873.

As a rule, however, treaties concur at least on the point that the expenses occasioned by the witness's appearance before a foreign tribunal must always be borne ultimately by the requesting State itself, whereas — as will be further discussed below — every State is accustomed to defray the costs of the acts of judicial co-operation which it carries out in its own territory. The reason for this difference is that the expenses occasioned by the hearing of a witness in a foreign country result in reality from an act of judicial co-operation. Lastly, if a witness or expert decides to appear before the judicial authority of a foreign State in virtue of a summons served upon him by the State applied to, it will still be necessary to consider his juridical status in the foreign State. Both in theory and under the treaties, there is general agreement that he cannot be prosecuted in the foreign State for offences committed before the summons was issued. The same observation applies where the requesting tribunal suspects him of being a principal offender in the case under trial, of being an accomplice, of being accessory thereto, or of having helped to promote the offence. Indeed, the observation applies even where the witness or expert is liable to arrest under a sentence pronounced before he enters the territory. Nevertheless, in international practice there is some uncertainty as to the exact scope of this safe-conduct or immunity. Some agreements clearly and definitely extend the immunity to cover all criminal acts committed before the appearance of the witness in the foreign court. Thus no penal prosecution would be allowed even for acts committed between the date of the summons and that of the witness's appearance

in court, *i.e.*, on the journey or in the territory of the foreign State. In that case, however, the witnesses or experts would be allowed a position involving the chief consequences of diplomatic immunity. It is questionable whether such a step is really necessary, and whether the requesting State should not be allowed the right to prosecute such persons for indictable offences committed by them after they entered the territory. Expert opinion in general agrees that immunity can never be claimed if the witness or expert commits an indictable offence (such as perjury) in his evidence before the foreign judicial authority.

Cf. VON MARTITZ, *op. cit.*, p. 724: "If the party concerned obeys the summons, he shall enjoy immunity from any legal proceedings in respect of his participation in the offence in question, or any other offences committed previously. He has no immunity, therefore, if he commits perjury at the trial in question". See also TRAVERS, *International Penal Law*, p. 241. Many of the older treaties do not allow immunity to be withdrawn even in case of perjury. See Article 14 of the Spanish-Italian Treaty of 1868, and Article 9 of the Austro-Swiss Treaty of 1855; compare also LAMMASCH, *op. cit.*, p. 865.

The immunity obviously guarantees the witness or expert against other restrictions of this liberty, *e.g.*, compulsory discovery on oath. On the other hand, the immunity of a witness or expert appearing before a foreign court is necessarily subject to a time-limit. It is universally agreed that a criminal prosecution or the execution of a previous penal sentence which has become *res judicata* is allowed, if the witness or expert prolongs his stay in the foreign country beyond the period necessary to give his evidence and return. In doubtful cases the principle adopted is that of *tempus utile* in Roman law, although in some treaties the limit is fixed even more narrowly.

Article 61, second paragraph, of the Treaty of Judicial Co-operation concluded on March 17th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and Czechoslovakia reads as follows: "Such persons may not, however, plead this privilege if they fail to leave the territory of the requesting State within 18 hours from the time when the court no longer requires their presence". Article 15, third paragraph, of the Treaty of Extradition and Judicial Co-operation concluded on November 26th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and Bulgaria reads as follows: "No witness or expert ... may be prosecuted or held in detention ... until the expiration of 30 days from the date when his presence in the territory of the requesting State is no longer required".

Lastly, there remains the point whether and, if so, how far the State receiving the requisition may be bound to inform the requesting State whether the individual cited is willing to appear before the foreign court. In certain recent treaties a legal obligation of this kind is imposed upon the State receiving the requisition. It is certainly a convenience for the requesting State to have a communication of this kind attached to the notice of service of the writ, which would presumably have to be given in all cases; but the value of such a communication would be small, since the person cited might change his mind at any time, and no coercive measures could be brought to bear upon him.

If a general convention on judicial co-operation in penal matters should prove to be feasible and desirable, the juridical principles considered above might be summed up as follows (an attempt has been made to provide a suitable solution for controversial points):

"Article 2. — *Summoning of witnesses and experts.* — The Contracting Parties reciprocally undertake, at the request of a competent authority, to serve writs of summons upon witnesses or experts resident in their territory, irrespective of the nationality of such witnesses or experts. A witness or expert appearing voluntarily before an authority of the requesting Party in response to a writ of summons served upon him by the authority of the Party requested shall in no case, whatever his nationality, be subject, during his presence in the territory of the requesting Party, to criminal prosecution on a charge of having been a principal, an accomplice or an accessory or of having helped to promote the act in respect of which the criminal proceedings are taken or any other act committed before he entered the territory of the requesting State. In like manner, no sentence passed upon him on account of acts committed before he entered the country may be executed on his person nor may he be arrested for any infringement of the law which took place before his journey. The special position of the witness or expert as regards the jurisdiction of the foreign State shall be forfeited if he fails to leave the territory of that State within a reasonable time after having been heard. This time-limit may be fixed for him by the tribunal making the requisition.

"The State applied to may refuse to serve a writ of summons: (a) if the offence which is the subject of the proceedings in the applicant State is not an extraditable offence in the State applied to; (b) if the person cited is threatened with coercive or other prejudicial measures in the event of his non-appearance; or (c) if the applicant State does not provide a suitable indemnity for expenses.

"The State applied to must inform the applicant State of the response which the person in question makes to the summons."

It would not seem desirable in a general convention to impose upon States to which requests are sent an additional obligation to grant to the persons summoned an advance to cover their travelling expenses to the venue of the trial, though it is true that a few recent treaties do establish an obligation of this kind (see p. 29); but in these cases the signatory States are contiguous. Arrangements of this kind should be made by the States themselves by means of special conventions (see also below).

(c) *Requisitions in Penal Matters regarding the Communication, under Promise of their Return, of Objects which are regarded as constituting Important Evidence, and of Files and Documents which are in the charge of a Public Authority.*

In most treaties on judicial co-operation the assistance to be granted for the administration of justice also covers another point. Very often treaties provide that articles constituting evidence, and files and documents which are in the charge of a public authority, shall be sent to the requesting authorities of the foreign State, under promise of their return and provided there are no special objections to such action.

See, for example, Article 16 of the Treaty of Extradition and Judicial Co-operation concluded on July 12th, 1921, between Latvia and Estonia: "When, in criminal cases ... judicial authorities ... request ... communication of exhibits or documents, such requisition shall be complied with, provided that no serious objections exist, and that such evidence or documents will be returned". Article 18 of the Extradition Treaty of April 19th, 1924, between Bulgaria and Roumania: "When the production of exhibits or legal documents is judged necessary in a criminal case of a non-political nature ... the requisition therefor shall be made ... and shall be complied with unless there are special objections to this course. Such exhibits shall, however, be returned as soon as possible". Article 62 of the Treaty of Judicial Co-operation concluded on March 7th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and Czechoslovakia: "Communication of exhibits. — The authorities of the two Contracting Parties shall forward to each other, when requested to do so, articles possession of which has been obtained through the punishable offence in question or which constitute evidence; they shall be forwarded even if an order has been issued for their confiscation or destruction.

"If these exhibits are asked for in connection with the extradition, either direct or in transit, of a criminal, they must be sent whenever possible at the time when the extradition, direct or in transit, takes place. If the accused dies or escapes after his extradition has been granted, the obligation to send the exhibits is not thereby nullified ... The authority forwarding the exhibits may retain them provisionally if they are necessary for its own penal proceedings. The rights of third parties in regard to such exhibits shall not be affected.

"The Party sending the exhibits may stipulate that they must be returned as soon as possible. In this event, and if third parties have acquired rights over them, they must be returned without delay as soon as they are no longer required for the penal procedure in the applicant State."

Article 14 of the Treaty between Germany and Czechoslovakia on Extradition and other Forms of Judicial Co-operation in Penal Matters. "Communication of exhibits. — The Contracting Parties undertake at the request of a competent authority to send each other exhibits or articles which the person who committed the act which is the subject of the prosecution obtained by that act, or which are liable to seizure, destruction or confiscation ... If the objects in question are sent upon condition of their return, they shall on request be sent back without delay. In any case, the rights of third parties shall remain unaffected". (Cf. the admirable commentary of METTGENBERG, *op. cit.*, pages 38 and 40.)

In the first place, as regards the categories of objects which are sent as evidence, it is at once obvious that the formulas used vary considerably in different treaties. All treaties, without exception, grant judicial co-operation in regard to "exhibits", *i.e.*, actual objects used as evidence. Sometimes general terms, such as "document" or "judicial instrument" are added; nevertheless, many States make a rule of never parting with the originals of documents, but send, when asked, particulars as to the contents of such documents or copies of them. But if judicial co-operation is restricted in this way — and it might perhaps seem desirable to do so in a general convention — the action taken amounts to a "measure of enquiry", and the question need not be discussed further in a chapter on the communication of exhibits. On the other hand, it would seem desirable to add to the category of "exhibits" — as in the German-Czechoslovak Treaty — the category of "objects of which the accused has obtained possession through the indictable act he has committed, or which are liable to seizure, confiscation or destruction".

The obligation to grant the temporary loan of exhibits lapses under two conditions. First, we find in this question also the characteristic clause to the effect that the penal proceedings pending before the foreign court must relate to an extraditable offence; and, in addition, Governments generally think it necessary to reserve certain discretionary powers where the loan of the exhibit would in their view be particularly prejudicial. But such prejudice cannot cover the temporary infringement of the private rights of third parties; the common interest of all States in ensuring the proper administration of justice should override interests based on private rights (*cf.* METTGENBERG, *op. cit.*, pages 39 *et seq.*). It is clear, however, that the object in view in the treaties is simply the security of the State, or rather, in a wider sense, what is known in international private law as the reservation regarding public order. Article 4 of the Hague Convention on Civil Procedure gives valuable guidance on this point:

"The execution of the writ provided for in Articles 1, 2 and 3 can only be refused if the State on whose territory it is to be executed considers it liable to prejudice its own sovereignty or security." See the interpretation of this Article by MEILI and MAMELOK on page 328 of their work entitled *Das internationale Privat- und Zivilprozessrecht auf Grund der Haager Konventionen*.

The comprehensive nature of this principle clearly proves how important it is for the interpretation of a convention of this kind to have an international court of justice which can prevent the abuse of this reservation.

Cf. the admirable explanation of this point by M. POLITIS (*The Problem of the Limitation of Sovereignty and the Theory of the Abuse of Rights in International Relations*, pages 77 *et seq.*) and LAUN (*Das freie Ermessen und seine Grenzen*, *passim*).

In this connection there is another problem that requires consideration, namely, Does the obligation resting upon the authority applied to extend only to the temporary loan of things, or does it cover the surrender of persons as well? The persons in question would not, of course, be persons at liberty in the State applied to; generally speaking, the latter has no right and is under no obligation to compel persons found guilty to appear before a foreign court, any more than it can compel witnesses to do so. The only point at issue is whether the State is bound to surrender, provisionally and temporarily, persons found guilty in a foreign country or witnesses in a penal case abroad, if that State happens to hold such persons (as it might have charge of things) through having them in custody. In such a case there would, of course, be no question of extradition in the true sense of the word, *i.e.*, the sending of an accused person for trial abroad, but simply the temporary surrender of a prisoner to a foreign tribunal for purposes of confrontation with some person lying under a charge in the applicant country. In point of fact, a reciprocal engagement of this kind is contained in a large number of inter-State treaties.

Cf. Franco-Austrian Treaty of November 13th, 1855 (Article 11); Franco-Bavarian Treaty of November 29th, 1869 (Article 14); Treaty between France and Hesse-Darmstadt, January 26th, 1853 (Article 12); Franco-Italian Treaty of May 12th, 1870 (Article 14); Treaty between France and Lippe-Deimold, April 11th, 1854 (Article 13); Franco-Luxemburg Treaty of September 12th, 1875 (Article 16); Franco-Portuguese Treaty of July 13th, 1854 (Article 12); Treaty between France and Saxe-Weimar, August 7th, 1858 (Article 12); Treaty between France of the one part and Sweden and Norway of the other, June 4th, 1869 (Article 11); Franco-Swiss Treaty of July 9th, 1869 (Article 15); Treaty between France and Waldeck-Pyrmont, July 10th, 1854 (Article 12). Among recent treaties see the Treaty of Extradition and Judicial Co-operation between Estonia and Latvia, July 12th, 1921 (Article 16): "When, in criminal cases . . . the judicial authorities or examining magistrates . . . ask for the surrender, for the purpose of confrontation, of an alien arrested in the territory of the other Party . . . such request shall be granted, unless any serious objection exists, but on condition that such person shall be sent back . . ."; the Treaty of Judicial Co-operation concluded on March 17th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and Czechoslovakia (Article 61, second paragraph): "If the person cited is serving a term of imprisonment in the State applied to, the temporary extradition of such person may be demanded of the supreme judicial administrative authority of that State, provided that he is sent back at the earliest possible moment. Such a request can only be refused for major reasons, and, in particular, if the prisoner himself objects to extradition". *Cf.* also the Treaty of Extradition and Judicial Co-operation concluded on November 26th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and Bulgaria (Article 15, 4th paragraph) and the Treaty of Extradition and Judicial Co-operation signed on July 12th, 1921, between Latvia and Lithuania; Article 16 of this last treaty reads as follows: "When, for the purpose of confrontation . . . the . . . authorities . . . request . . . the surrender of an alien arrested in the territory of the other Party, this request shall be complied with unless there is any grave objection, provided that such person . . . is duly sent back". See, lastly, Article 23 of the Extradition Treaty of September 29th, 1911, concluded between Germany and Bulgaria.

It is true that this application is contingent upon the absence of special circumstances. Unless States have settled by treaty this question of the temporary surrender of prisoners to foreign courts, and unless such treaties have been given the force of law, it would seem, as we have already said elsewhere, that according to the positive public law of most modern States the temporary surrender of a prisoner to a foreign court without his consent is a step of very doubtful legality, at any rate when the prisoner is a national of the State applied to. The question that arises is this: What are the rights of the public authorities over persons whom they hold in detention? Can they take such persons temporarily abroad without their consent? In my view they cannot. In some countries, *e.g.*, Belgium, according to the Law of Extradition (*cf.* VON MARTITZ, *op. cit.*, pp. 723 *et seq.*, and TRAVERS, *op. cit.*, pp. 247 *et seq.*), the surrender of prisoners to foreign authorities is expressly forbidden. The question whether such a measure in regard to persons in detention is constitutional or not does not even arise in the case of countries which have concluded and given legal force to international treaties expressly excluding the obligation to surrender such persons. Indeed, there are a number of treaties which definitely give a negative reply to this question.

In the model conventions which the Kingdom of Belgium concluded in the second half of the nineteenth century, it is forbidden to send imprisoned persons abroad for the purpose of confrontation (*cf.* VON MARTITZ, *op. cit.*, p. 724).

Thus no generally accepted legal opinion exists, and it would therefore be impossible in a general convention to bind States to a juridical obligation of this kind. Since in modern legislation the policy of every country is to place foreign residents as far as possible on the same footing as nationals of the home country — except as regards political rights — no convention would be acceptable if, by prescribing an obligation to grant temporary surrender, it created a *privilegium odiosum* to the detriment of aliens.

As regards the temporary surrender of exhibits for penal proceedings pending before a foreign court, all that should be included in a general convention would be the following provisions:

“ Article 3. — *Surrender of exhibits.* — The Contracting Parties undertake, at the request of a competent authority, to hand over reciprocally to one another any articles which are in the charge of their public authorities and are believed to constitute important evidence, or of which the person who has committed the punishable offence in question has obtained possession through his act, or which are liable to seizure, destruction or confiscation.

“ If surrendered subject to their being returned, such exhibits or articles shall on request be restored without delay. In all cases the rights of third parties shall remain unaffected.

“ If the surrender of such articles is applied for in connection with the extradition or passage in transit of some person, they shall, whenever possible, be surrendered at the time when the extradition or passage in transit takes place.

“ The requisition for assistance may be refused: (a) if the penal proceedings for which it is made do not relate to an extraditable offence, or (b) if, in view of the interests at stake, there are special reasons for not allowing the surrender of the exhibit or articles in question. ”

- (d) *Requisitions in Penal Matters regarding the Official Communication (“ Notification,” “ Signification ”) of Decrees, Judicial Decisions, Orders, Ordinances, and Instruments of Procedure of all Kinds to Persons who are Nationals of one of two Contracting Parties.*

Certain treaties render judicial co-operation obligatory not only in the cases mentioned in the previous chapter but also in regard to a number of other acts of procedure, such as the communication of sentences passed in the applicant State on persons residing in the State applied to. Judicial co-operation is sometimes granted, too, for the notification of judicial decisions, *e.g.*, decisions fixing the amount of the expenses chargeable to the person to whom the document in question is communicated, provisional penal sentences passed with the object of concluding a penal case by summary procedure, writs of summons served upon accused persons—in short, all orders which may have to be communicated to private individuals in the course of penal proceedings.

Whenever the notification of such acts of penal procedure normally produces certain legal consequences, these consequences cannot take place in the country applied to, despite the notification of the act, since the order emanates from a public authority of another country, and is therefore necessarily inoperative. In the jurisdiction of the State applied to, therefore, the significance of the notification can only be to give information to the party concerned, *e.g.*, it may inform him that proceedings against him have been instituted or terminated in the State making the requisition. Moreover, the serving of a notice does not involve the State receiving the requisition in any legal obligation any more than it does private individuals resident in its territory. Thus, the communication of a penal sentence passed in a foreign State could never have the legal consequences of a sentence passed by a court of the home country and having the force of *res judicata*; it could not, for example, have the effect of preventing the prosecution of the same person by the requested State if the other conditions necessary for taking proceedings were fulfilled. It has not yet been found possible to conclude in regard to civil procedure a general convention on the executory force and recognition of the validity of judgments rendered in foreign courts, and it would therefore seem still less likely that such a convention could be concluded in regard to penal procedure.

In some circumstances, however, the position is quite different from the point of view of the State making the requisition. If it has obtained judicial co-operation for the communication of its acts of penal procedure to a national of another State, it cannot be prevented from attaching to the communication of the act the legal consequences which, according to its own laws, would follow the communication of the act in question. This position may, from the legal point of view, prove highly prejudicial to subjects of foreign States. Suppose, for example, that according to the laws of the requesting State a penal judgment rendered by default becomes *res judicata* in virtue of the notification after the expiration of a certain period; the requesting State could consider the judgment of which it had given notice as *res judicata* after the expiration of that period. If the judgment ordered the confiscation of property belonging to the foreign national and situated in the territory of the requesting State, the latter might then proceed at once to confiscate the property. Indeed, if the foreign national were so rash as to enter the territory of the requesting State, that State could at once cause the penalty to be carried out on his person in virtue of the sentence, which, of course, would have become *res judicata*. In such a case a State which never surrenders its nationals for penal prosecution by a foreign court would actually, by serving the notice of the penal sentence passed by that court, have helped a foreign State to prosecute one of its own nationals. As has already been pointed out, this would only happen when the laws of the requesting State made the validity of the penal sentence contingent upon its notification to the party sentenced. LAMMASCH (*op. cit.*, page 844) rightly objects that a general obligation to grant international judicial co-operation so wide in scope as that prescribed in Article 13 of the Franco-Swiss Treaty of July 9th, 1869, and Article 14 of the Spanish-Swiss Treaty, could quite conceivably admit of such consequences. These conventions stipulate that the notification of a sentence in a foreign country will produce the same effects as if notice had

been served in the requesting State itself; indeed they expressly provide for the above-mentioned consequences, which are so dangerous for nationals of the State to whom the requisition is sent. In practice, moreover, these clauses have proved difficult to apply. In one case where the Court of Belfort (France) sentenced a Swiss national to imprisonment and payment of damages, the Swiss Government notified the person concerned, in accordance with the obligation it had assumed under the Treaty, but at the same time drew up a protocol in which the person declared that he refused to receive notice of the sentence, as it had been rendered in error. The Federal Council communicated this protocol to the French Minister at Berne, intimating that the execution of the French judgment would not be recognised in Switzerland (*cf.* TRAVERS: *International Penal Law*, Vol. IV, pages 279 *et seq.*). But if there exists a conventional obligation to serve notice of a judgment rendered by a foreign court, and to accept without restriction the effects of such notification as laid down by the laws of the foreign country, the recipient of the notification cannot refuse to receive the document on account of the nature of its contents, nor has the State applied to the right to dispute, on account of the attitude adopted by its national, the legal effects of the notification as laid down in the laws of the requesting State. In view of undesirable consequences of this kind which follow from a general obligation to notify acts of procedure, one of the most recent treaties — the Extradition Treaty of April 19th, 1924, between Bulgaria and Roumania — contains (Article 20) the following clause:

“ If one of the Contracting Parties deems it necessary to give notice of legal proceedings to a person in the territory of the other Party, the communication shall be effected through the diplomatic channel to the competent authority in the State to which application is made, which shall return through the same channel a document certifying that the notification has been made, or give the reasons preventing such notification. Sentences passed by the courts of one of the Contracting Parties on nationals of the other Party shall not, however, be notified to the latter. The State to which application is made takes no responsibility in respect of the notification of such legal proceedings. ”

It is very questionable, however, whether it is sufficient to make exceptions in the case of sentences alone in order to avoid the harmful consequences which may ensue for the individual when the State to which he belongs gives an undertaking to a foreign State to notify all the latter's acts of procedure, and to agree that the latter may attach to such notification all the legal consequences involved thereby under its law. The notification of acts other than judgments might also prove prejudicial to the parties concerned. Thus the validity of the confiscation of the accused's property in the course of penal proceedings might be conditional upon notification of the judicial order to that effect. It is clearly on account of serious consequences such as these that most treaties do not lay down any obligation to notify accused or sentenced parties of acts of procedure of any kind, *i.e.*, decrees, judgments, orders, etc. It is in the interest of the private party concerned, as well as of the State applied to, to be officially informed of penal measures taken by a foreign State against such party or against one of the nationals of the State applied to. In these circumstances, States might after all be subjected, on condition of reciprocity, to an obligation to serve notices of this kind, but this obligation would have to be kept within proper limits. Besides the exceptions in regard to non-extraditable offences (which would of course apply here too) and in regard to “ public order ”, it would have to be agreed that the requesting State may not attach to notices served by way of international judicial co-operation on a person who is charged or has been condemned the consequences to his prejudice which ordinarily would follow in its territory from the service of such notices. It seems very doubtful, however, whether States could be induced to renounce explicitly, by a clause of this kind, the legal consequences which, under their domestic laws, would normally follow from a notification of this kind.

If the juridical effects of a notification are renounced, even as regards only notifications made in a foreign country, the effect is virtually to place aliens in a more privileged position than nationals, which would be contrary to the fundamental principle that all persons are equal before the law. For this reason, it would be preferable not to include in the convention any clause regarding the official notification of decrees, judgments, orders, ordinances, or acts of procedure of any kind emanating from a foreign State.

- (e) *Reciprocal Communication, for Registration after the Sentence has become Res Judicata, of Sentences passed in one State upon a National of the Other for a Crime or Offence of any Kind.*

Lastly, judicial co-operation may take the form of the exchange of communications relating to penal sentences. As METTGENBERG very rightly observes, this act differs from other acts of judicial co-operation in that it does not require the presentation of a requisition in each particular case, but is performed regularly and automatically. Mettgenberg makes the following observation on this point (*op. cit.*, col. 1302):

“ Notification of sentences to foreign countries is not connected with any specific penal procedure, but is given solely for the information of the Government of the country of origin and for the purpose of making the necessary entries in the criminal record. The kind of sentences usually notified are those which are entered in the German criminal record. More recent conventions provide for the exchange of other information relating to the sentences notified for entry in the criminal record. Cf. Article 20 of the Treaty between Germany and Czechoslovakia on Extradition and Judicial Co-operation in Penal Matters :

“ The Contracting Parties undertake to communicate to each other decisions in penal matters which have become *res judicata*, which the authorities of one Party pass upon nationals of the other Party and which, according to the laws of the country whose authorities gave the decisions, must be entered in the criminal record. The Contracting Parties will communicate to each other all information relating to decisions of this kind entered in the criminal record.

“ The method of communication will be as follows: A copy of the penal decision or information to be entered in the criminal record is sent to the other Party, the exchange being effected through the Reich Minister of Justice and the Ministry of Justice at Prague.

“ The same clauses appear in the German-Polish Convention on Reciprocity, dated December 16th, 1925, which has already been mentioned on several occasions. See also Article 17 of the Convention on Judicial Co-operation, concluded on March 17th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and Czechoslovakia, Article 21 of the Extradition Treaty of April 19th, 1924, between Bulgaria and Roumania, Article 18 of the Treaty on Extradition and Judicial Co-operation concluded on July 12th, 1921, between Estonia and Latvia, and Article 26 of the Extradition Treaty between Germany and Bulgaria, dated September 29th, 1911. According to this treaty no communications are exchanged in the case of mere contraventions.”

This last clause is interesting for the following reasons: In all the cases of judicial co-operation considered in the foregoing chapters, the authorities receiving a requisition examine the substance of the case in order to ascertain whether the crime or offence in question is extraditable or not and in the latter case judicial co-operation is refused; but information is communicated in penal cases even where the offence for which sentence was passed is not an extraditable one. Consequently, contraventions ought also to be notified, and if they never are notified it is only for purely practical reasons and because they are regarded as too unimportant. The same principle — *i.e.*, that cases are not specially examined to determine whether the offender can claim the right of asylum, but that judicial co-operation is afforded in all cases without exception — applies to cases where special information from the criminal record of the State applied to is asked for because the information supplied by the notifications normally given under the terms of a treaty is insufficient. This procedure would always be followed when State A prosecutes a national of State B residing in the territory of B. The State in which the proceedings are being taken will not, as a rule, possess any criminal record of the person in question, since he is a national of a foreign State. Yet it might be very important for the prosecuting State to ascertain in the course of the proceedings whether the accused had already received a penal sentence in his own country. It is quite true that the requisition for such information only represents one special instance of the measures of enquiry referred to above; nevertheless, whether the requesting State asks the other State for particulars from the Civil Register (*Standesregister*) regarding the civil status (*Personenstand*) of the accused, or whether it wishes to obtain information as to previous convictions entered in the public criminal record of the State applied to, the legality or otherwise of the act remains the same. Thus, although most treaties expressly lay down an obligation to furnish extracts from the criminal record in addition to the obligation to notify penal sentences, this stipulation is really superfluous, and is only due to the historical fact that originally the measures of enquiry for which States granted judicial co-operation were strictly limited.

In the cases examined so far, judicial co-operation has been the outcome of an undertaking given by the contracting States to communicate to each other information as to sentences passed by the courts of either State on nationals of the other State and, where necessary, to supply extracts from the criminal record of persons of their own nationality who were being tried by a court of another contracting party; nevertheless, some international conventions prescribe for specific criminal cases of international importance an obligation to notify certain criminal sentences to all the States concerned, without necessarily ascertaining whether the person sentenced belongs to the State to which the notification is sent. It was thought necessary to provide a clause of this kind in the International Convention of May 4th, 1910, regarding the suppression of obscene publications. This Convention lays down that in every State special central services are to be instituted to collect all information (including sentences, therefore), and these services are authorised to communicate with the central services of other countries with a view to the exchange of this information.

As already mentioned, certain conventions exist providing that sentences passed for contraventions will not be notified. It should be added that there are other conventions which only make notification absolutely necessary in the case of sentences by which the offender is deprived of his liberty; see Article 16 of the Treaty of Extradition and Judicial Co-operation concluded on November 26th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and Bulgaria. In view of the differences existing between the penal systems and laws of the different countries, it would seem undesirable to introduce restrictions of this kind in the convention. The signatory States to a convention of this kind should make the necessary reservations themselves at the time of signing. There are, of course, certain fundamental objections to the inclusion of reservations in such a general convention; cf. Max HUBER in the *Festgabe für Otto von Gierke*, 1913; WEHBERG, "America and the Permanent Court of International Justice" in *La Revue de Droit international et de Législation comparée*, 1923; RAPISARDI-MIRABELLI, *I limiti d'obbligatorietà delle norme giuridiche internazionali*, Catania, 1922.

In the light of the above, it would seem possible for States to agree to the following clause on this matter:

"Article 4. — *Communication of penal sentences and of extracts from criminal records.*
— The Contracting Parties undertake to communicate to each other penal sentences which have been passed by the authorities of one of the Parties on nationals of the other and have become *res judicatæ*, and which, according to the regulations of the Party by whose authorities they were passed, must be entered in the criminal record.

"The Contracting Parties reciprocally undertake to execute requisitions for the communication of extracts from criminal records."

III. CHANNELS OF COMMUNICATION IN CASES OF JUDICIAL CO-OPERATION.

In the previous chapters, after a few preliminary observations, we have merely examined the cases in which international judicial co-operation is granted in penal matters. We have next to consider by what means the international engagements already in force are fulfilled. In the preliminary observations it has already been said that there are three methods of affording this co-operation, which not merely exist in theory but are also adopted in practice. The first is that of the "diplomatic channel". By this term is meant the exchange of communications between one Government and another through their Ministries of Foreign Affairs and their representatives in other countries. The second method is that of the direct exchange of communications between the judicial authorities. This proceeding, which in some ways is more expeditious, can in its turn be carried out in three different ways. First, the supreme judicial administrative authority of the requesting State may negotiate direct with that of the State applied to; this method is very similar to that of the diplomatic channel. Secondly, the international action taken may emanate from the judicial authority which is dealing with the case and which requires assistance from abroad. This authority, however, does not apply direct to the judicial authority in the other country which is competent to afford the required assistance; there are certain judicial authorities which are appointed to receive letters rogatory from other countries and have to ascertain in each case whether the conditions which, under international law, govern the granting of the judicial assistance are fulfilled. This method was laid down by the often-mentioned Treaty between Germany and Czechoslovakia (Article 18 in conjunction with Article 3 of the Additional Protocol). The same stipulation also exists in the German-Polish Convention of December 16th, 1925, on Reciprocity, by which letters rogatory are to be sent to the public prosecutors of the State applied to. The third form in which the second method (direct communication between the judicial authorities) can be applied consists in allowing the judicial authority of the requesting State not merely to act itself but to apply direct to the judicial authority of the State to which the letters rogatory are sent. This authority then has to execute the act referred to in the letters rogatory. This method is, of course, the shortest and simplest. Lastly, the countries of Anglo-Saxon law have evolved yet another method. The diplomatic representative of the requesting State acts on behalf of his Government; he applies not to the Foreign Office of the other State but direct to the party concerned, the competent judicial authorities, the advocates and notaries. Historically the diplomatic method was that originally followed, and it is still the method normally and regularly employed. As has already been observed, this method is necessarily slow and cumbersome, and burdens the services intended for the transaction of diplomatic affairs with a large number of matters of trifling importance. For these reasons, the Institute of International Law, at Zürich in 1877, recommended that questions of judicial co-operation should be settled not through the diplomatic channel but by direct communication between judicial authorities (meeting of September 18th, 1877). Nevertheless, this method is not entirely unobjectionable. As a rule, the Foreign Ministry is anxious that it alone should represent the country in all international relations, that all State "service matters" of an international character should pass through the Ministry of Foreign Affairs, or at any rate

that that Ministry should decide how far another State department should act on its behalf in certain categories of international affairs. This view was clearly set forth in a circular letter issued by the French Minister for Foreign Affairs on December 19th, 1891 :

“ It shall be the special duty of the Minister for Foreign Affairs to determine whether relations with the foreign State making the requisition, and in particular whether the advantages of reciprocity coincide on this special point, or whether French interests in the case in question are such as to authorise derogations from the ordinary laws and the immunities which may be granted to requisitions transmitted through ambassadors. ”

There are indeed sound reasons in favour of this view. If the duty of executing treaties of judicial co-operation by direct communication is assigned to the judicial authorities, the latter will in that respect act as international organs ; but, it is doubtful whether they possess all the qualifications necessary for that purpose, and a certain degree of control by the central authorities would seem desirable, if only to ensure that international treaties are interpreted in a uniform manner. It is interesting to note in this connection that even in international judicial co-operation in matters of civil procedure the principle of authorising direct exchanges of communications between judicial authorities has not secured universal acceptance, despite the fact that a recommendation in that sense was made at the first Hague Conference for the Codification of International Private Law (1893).

According to the Hague Convention on Judicial Co-operation in Civil Procedure, letters rogatory are to be transmitted through the agents of the foreign services (consuls), who, at the request of the competent judicial authorities of their country of origin, communicate with the judicial authorities of the country to which they are accredited. This Convention expressly stipulates, however, that the signatory States to the Convention may also require that letters rogatory which are to be executed in their territory shall be transmitted through the diplomatic channel. At the same time, any two signatory States may, if they wish, agree to have letters rogatory transmitted direct between their respective authorities (Article 9 of the Convention on Civil Procedure). It is remarkable that a State so democratically constituted as Switzerland should insist that all requests for notification and letters rogatory should be transmitted, not through the consuls, who would ordinarily be competent, but through the diplomatic channel, except in relations with certain States where provision is made in special conventions for direct communication (*cf.* MEILI-MAMELOCK: *Das internationale Privat- und Zivilprozessrecht auf Grund der Haager Konventionen*, page 331).

In penal procedure considerations of public order are naturally more important than in disputes which only concern the *meum* and *tuum* of private citizens. It has not even been found possible to conclude a general convention on civil procedure providing for direct exchanges of communications between judicial authorities ; it would seem entirely out of the question, therefore, to do so in a general convention on judicial co-operation in penal matters. If a general convention is to be concluded at all, it must follow precedent and stipulate that the diplomatic channel is to be used for purposes of judicial co-operation. But it might leave the individual States to conclude private agreements in regard to some or all categories of judicial co-operation, stipulating, for example, that the transmission of the communication to the authority applied to or to the party concerned shall be effected not through the diplomatic channel but through the consular representative of the requesting State. Such private agreements might equally well organise a system of direct communications either between the central judicial administrations of the two States or between the judicial authority requiring assistance from the foreign court and certain intermediary authorities of the State applied to, or, lastly, between the judicial authorities themselves. The question as to which authority would, according to the method chosen, ultimately examine the form and contents of the letters rogatory and give a decision thereon may be settled by the law of the individual countries, and need not be discussed here (as regards the German law on this subject, *cf.* METTGENBERG, *op. cit.*, column 1287). Here, too, it would clearly be most desirable to stipulate that decisions of individual States as to the application and interpretation of the Convention, from whatever State authorities they might emanate, should be re-examinable by an international authority.

One important point which should be embodied in the general Convention itself is that private agreements may be concluded simplifying the forms of judicial co-operation in penal matters ; otherwise it might be argued that the general Convention marked not an advance but a retrogression. For, although, as we have seen, the employment of the diplomatic channel is in accordance with past usage, nevertheless a number of private agreements already exist establishing a simplified procedure, at any rate in certain specified cases. In fact neighbourly relations or particularly active traffic between two States may give rise to special needs which require a simplification of the procedure of international judicial co-operation.

As regards the older treaties, see, for example, Article 12 of the Franco-Swiss Extradition Treaty of July 9th, 1869 : “ If in the course of penal proceedings one of the two Governments . . . considers that certain measures of enquiry are necessary, letters rogatory (a requisition) shall be sent for that .

purpose through the diplomatic channel . . .". According to MÈILI (*op. cit.*, page 377), the French and Swiss Governments, in order to avoid the delay caused by the employment of the diplomatic channel, have concluded a *modus vivendi* as follows: "(1) The authorities of either of the two States may apply direct for extracts from criminal records and penal sentences; (2) in urgent cases correspondence may be exchanged direct, provided that the requesting authority at once informs, in Switzerland, the Federal Department of Justice and Police, and, in France, the Ministry of Justice. But correspondence may never be exchanged direct in cases of a political character, however urgent."

Direct communication between authorities is allowed in the Convention of 1856 between Switzerland and Austria-Hungary, and Article 3 of the Italian-Swiss Protocol regarding the Execution of the Treaty of 1868. According to this latter instrument, the Italian Courts of Appeal, the Swiss Federal Court and the supreme court of every canton may correspond direct with each other in all matters relating to the transmission and execution of letters rogatory in civil and penal matters. The Settlement and Consular Treaty concluded in 1868 between Italy and Switzerland expressly mentions citations, notifications of acts, depositions or evidence of witnesses, reports of experts, papers relating to judicial interrogations and in general all documents issued in regard to civil and penal matters in the territory of either country in execution of letters rogatory issued by the judicial authorities of the other country (Article 9). By a circular letter of July 18th, 1903, from the Swiss Federal Council to the Governments of the cantons, it was made permissible, in relations with the German Government under Articles 12 and 14 of the Extradition Treaty between Germany and Switzerland and the Convention of December 1st-10th, 1898, to transmit requests for extracts from the criminal record direct. According to MÈILI (*op. cit.*), correspondence also may be exchanged direct; (1) by the Agreements between Russia and Austria, between the Courts and Public Prosecutors of Lemberg and Cracow of the one part and Warsaw of the other (this arrangement has lapsed as the result of the political events which led to the formation of the Polish State); (2) between the judicial authorities in the jurisdiction of the Kiel Court of Appeal and the Danish authorities in urgent cases, but only on questions of fact to the exclusion of matters of principles (this arrangement also recently ceased to apply). See further Article 2, paragraph 2, of the Franco-Dutch Extradition Treaty, by which the colonial administrations of the two States may communicate direct in questions of judicial co-operation in penal matters; see also LAMMASCH (*op. cit.*, pages 867 *et seq.*), who gives the following account of the former usage in this matter: "For the transmission of letters rogatory the great majority of treaties prescribe the diplomatic channel. Nevertheless, the courts of a number of States quite often correspond direct, and this practice has not been entirely stopped despite all the ministerial orders prohibiting it. In many cases the diplomatic channel is so slow that recourse to it would be quite useless. In cases of this kind the courts are perhaps quite justified in corresponding with each other direct; and frequently they obtain the required information at once by this method. Gradually, as the restrictions to which the execution of letters rogatory is still subject in some countries are abolished and judicial co-operation becomes the rule, with only a very few exceptions, the objections to the direct exchange of correspondence between courts will disappear."

Some recent treaties, *e.g.*, the Treaty on Extradition and Co-operation concluded on July 12th, 1921, between Estonia and Latvia, prescribe the diplomatic channel as the medium for acts of judicial co-operation. The same clause exists in the Extradition Treaty of April 19th, 1924, between Bulgaria and Roumania. Article 59, paragraph 1, of the Convention on Judicial Co-operation concluded on March 17th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and Czechoslovakia, however, contains the following clause: "If required, the Contracting Parties shall afford each other judicial co-operation in criminal matters, as a rule by direct communication between the requesting judicial authorities and the judicial authorities to which the request is sent". The use of the diplomatic channel is prescribed in the Treaty of Extradition and Judicial Co-operation concluded on March 26th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and Bulgaria and the similar Treaty of July 12th, 1921, between Latvia and Lithuania. Under Article 18 of the Treaty of May 8th, 1922, between Germany and Czechoslovakia on Extradition and Other Forms of Judicial Co-operation in Penal Matters, the letters rogatory provided for in Articles 14 and 16 must as a rule be transmitted direct from one authority to the other. Article 1 of the Convention on Judicial Co-operation concluded on February 28th, 1915, between Paraguay and Uruguay stipulates that letters rogatory must be sent through the diplomatic channel or through the consular representatives. The same rule is laid down in Article 17 of the Extradition Treaty of November 21st, 1910, between Switzerland and Greece.

In accordance with the above, the following article may be embodied in a general convention:

"Article 5. — Channel through which judicial co-operation may be effected. — Requisitions for judicial co-operation between States and the replies thereto granting the assistance required shall be sent through the diplomatic channel, unless the States concerned have mutually concluded special agreements providing a more convenient channel of communication for such judicial co-operation."

Finally, it may be observed that simplification of the process of judicial co-operation is particularly desirable in regard to the notification of penal sentences.

IV. Costs.

The question of judicial co-operation in penal matters necessarily raises another point: Who is to bear the costs of the proceedings? The most obvious solution would seem to be to charge the costs to the State on whose behalf and at whose express request assistance has been given. This indeed was the view which first prevailed, but it was soon ousted by other considerations. In judicial co-operation, as in other spheres of international life, the principle of reciprocity has come to the fore, particularly as the calculation of expenditure incurred in granting assistance in the State applied to would, in certain cases, be a complicated process costing more than the operation would be worth. METTGENBERG (*op. cit.*, column 1301) enters into an interesting discussion of this question of costs; *cf.* also LAMMASCH, *op. cit.*, pages 869 *et seq.* The following treaties prove that the principle of reciprocity soon became generally adopted; the most recent conventions contain the following clauses:

See Article 17 of the Treaty of Extradition and Judicial Co-operation concluded on July 12th, 1921, between Estonia and Latvia: "The Contracting Parties mutually undertake to forgo all claims for the repayment of expenditure incurred by them within their territory . . . for the examination of witnesses . . . the surrender of persons, exhibits and documents . . .". Article 19 of the Bulgaro-Roumanian Treaty of Extradition of April 19th, 1924: "The respective Governments renounce all claims for the refund of expenditure arising from the execution of letters rogatory with the exception of sums disbursed to witnesses and experts".

Article 66 of the Treaty of Judicial Co-operation concluded on March 17th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and Czechoslovakia: "The expenditure arising from a requisition for extradition or some other request for judicial assistance in criminal matters shall be borne by the Contracting Party on whose territory the expenditure has been incurred. Expenditure arising from a request for the consultation of experts or the giving of an opinion . . . shall be repaid by the Party making the requisition". Cf., lastly, the German-Czechoslovak Treaty of May 8th, 1922, on Extradition and other Forms of Judicial Co-operation: "The costs of providing legal assistance under the terms of the present Treaty shall be borne by the Party in whose territory they are incurred. The costs . . . occasioned by an advisory opinion given by experts or legal faculties shall be funded by the Party making the requisition". A similar provision is found in the German-Polish Convention on Reciprocity dated December 16th, 1925, to which we have referred on several occasions.

Now it is precisely on the necessity for a uniform settlement of this question that the publicists have laid special stress:

Cf. MEILL, *op. cit.*, page 397: "Particular attention should be drawn to the desirability of an agreement between States concerning the costs of judicial co-operation; it is not necessary, however, that such assistance should be entirely gratuitous".

If we take, as the basis for a general convention, the policy adopted in most recent treaties, then, in the cases of international judicial co-operation which here concern us — excluding, that is to say, everything connected with extradition — we need make but one exception to the principle of reciprocal free assistance. This would be when the State applied to was asked to obtain the advisory opinion of experts.

Article 6 of a general convention might therefore be worded as follows:

"Article 6. — *Costs incurred in the course of judicial co-operation.* — The costs occasioned by judicial co-operation afforded under the terms of the present Convention shall be borne by the Party in whose territory the expenditure is incurred. Expenditure occasioned by a request for an expert opinion shall be refunded by the Party making the requisition."

V. QUESTION OF LANGUAGE.

As regards the language in which the requisition sent to the foreign State or to its authorities should be drawn up, it has now become customary in international relations for each State to use its own official language, attaching to the document a translation in the language of the country applied to, for the latter's convenience. International treaties, where they touch on this matter directly, contain in most cases only very brief provisions. They all, however, adopt the standpoint that letters rogatory should be drawn up in the official language of the State making the requisition.

Cf., as regards most recent treaties, Article 22, paragraph 2, of the Bulgaro-Roumanian Extradition Treaty, concluded on April 19th, 1924: "Letters rogatory . . . together with documents to be communicated . . . drawn up in a language other than that of the court to which the requisition is addressed, shall be accompanied, in the case of Bulgaria by a Bulgarian translation and in the case of Roumania by a Roumanian translation . . .". Article 63 of the Treaty of Judicial Co-operation concluded on March 17th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and Czechoslovakia contains, on this subject, the following provision: "Requests for judicial aid shall be drawn up in the national (official) language of the State making the requisition . . .".

Detailed provisions concerning the question of language are only, as far as I am aware, to be found in the German-Czechoslovak Treaty of May 8th, 1922, concerning Extradition and Judicial Assistance: This treaty contains the following final provision:

"Article 23. — *Language to be used in requisitions for judicial co-operation.* — Requisitions and documents annexed thereto shall be drawn up in the national (official) language of the applicant Party. For the purposes of the present Convention, the term 'national official language' shall be taken to mean the Czech or Slovak language on the Czechoslovak side and the official German language on the German side. Documents drawn up in the national language of the applicant Party shall, except in the case of the requisitions and communications provided for in Articles 9, 20 and 21 of the present Convention, be accompanied by an official diplomatic translation or an authenticated translation by a sworn interpreter in the national language of the Party applied to. No translation need be provided in the case of annexes to requisitions intended for a national of the applicant Party. In cases in which the claimant authorities have very great difficulty in obtaining a translation, the authorities applied to shall afford them every assistance in their power. The costs incurred in procuring the translation shall be borne by the applicant Party."

As this special provision — that no translation is required in the case of annexes intended for a national of the claimant party — is a departure from general usage, its embodiment in a general convention cannot be recommended. In the first place, any dispensation from the sending of translations complicates, both in form and in fact, the examination of the letters rogatory by the authorities of the State applied to. It is, moreover, possible that a national of the applicant party to whom an official communication is to be sent in the territory of the State applied to may be ignorant of the official language of the State which makes the requisition. On the other hand, we think it would be desirable to include in a general convention the clause of the German-Czechoslovak Treaty which, with a view to meeting any special difficulty which a State may sometimes experience in having to attach a translation to the letters rogatory, lays down that the authorities applied to shall afford the claimant State all possible assistance in obtaining a translation, subject to the repayment of the costs of such assistance.

Article 7 of the Convention might therefore be drafted as follows :

“ Article 7. — Language to be used in judicial co-operation. — Requisitions and annexes thereto shall be drawn up in the official language of the party making the requisition.

“ A translation in the official language of the party applied to, and certified to be accurate by a diplomatic representative or sworn translator, shall be attached to documents drawn up in the official language of the party making the requisition.

“ Should the applicant authorities find it particularly difficult to obtain a translation, the authorities applied to shall afford them every assistance in their power. The costs incurred in obtaining the translation shall be borne by the applicant Party.”

VI. OBLIGATION TO FURNISH INFORMATION ON POINTS OF LAW.

It is interesting to observe that modern conventions also deal with another point :

Article 23 of the Extradition Treaty concluded on April 19th, 1924, between Bulgaria and Roumania : *“ The Ministry of Justice of one of the Contracting Parties shall supply the Ministry of Justice of the other Party, on request, with the text of the laws in force in its territory ”*. Article 17 of the Treaty of Extradition and Co-operation, concluded on November 26th, 1923, between the Kingdom of the Serbs, Croats and Slovenes and Bulgaria : *“ The Ministry of Justice of either Contracting Party shall communicate to the authorities of the other, on request, the text of the laws in force in its territory ”*.

We have already referred above to another case in which the State applied to, before complying with the request contained in the letters rogatory, may need to consult certain laws of the State making the requisition, particularly laws regarding criminal procedure. Such will be the case, for instance, when the competence of the State making the requisition seems to be in doubt. Several modern treaties provide for this case by laying down that the State making the requisition must provide the State applied to, on request, with the text of all laws applicable in given circumstances. It would seem to be desirable to establish the same obligation in a general convention. Naturally each State must be left to decide what authorities shall provide the foreign State with the information required ; States will therefore be perfectly free to transmit such information through the diplomatic channel or through some other department — the Ministry of Justice, for instance.

Cf. paragraph 86 of the Prussian Law putting into force the Reich Law on Judicial Organisation : *“ The judicial administration shall be competent to provide information regarding the law applicable in Prussia ”*. For this purpose the Administration of Justice has appointed the Ministry of Justice itself.

The Convention should therefore be completed by the following article :

“ Article 8. — Communication of information. — The Contracting Parties undertake to provide each other, in penal cases, with information regarding the laws in force in their territory.

“ They shall inform each other as to which authorities will supply this information.”

VII. IS A GENERAL CONVENTION POSSIBLE ?

It is clear from the foregoing pages of this report that in the matter of international judicial co-operation in penal cases there is already in existence a large body of legal principles relating to many important questions which are commonly accepted and have found expression in a large number of inter-State treaties. It would therefore seem possible to codify these principles in a collective agreement. In the general interest, moreover, such a codification is not only possible but desirable, since international solidarity is bound to be strengthened if the present system of inter-State agreements is merged in a collective agreement which would be tantamount to the establishment of a worldwide law. The

only cases not covered by this proposal would be those where inter-State treaties differ from each other so far that the common rules which could be laid down in the collective agreement would necessarily be far out-distanced by the more advanced legal principles established in the private agreements of individual countries. Here codification would, from the standpoint of positive law, simply mean retrogression.

Cf. the noteworthy exposition of this point by Charles DE VISSCHER: "La Codification du Droit international", Volume I of the *Recueil des Cours de l'Académie de Droit international*, 1925, pp. 386 *et seq.*

In the present instance, as the analysis of the individual sections of the subject shows, there is no danger in this respect. There may, however, be special objections to codification. In this connection we should first consider whether the subject of judicial co-operation within the limits contemplated is so closely linked with the law of extradition that the codification of the rules discussed here regarding judicial co-operation in penal matters should be abandoned on the ground that the Committee of Experts has pronounced itself against the codification of the law of extradition. There are good reasons for replying in the negative. Most cases of judicial co-operation in penal matters have really nothing to do with extradition. If, for example, in a penal case abroad a witness has to be heard or a citation notified in the State to which the requisition is sent, the character of such an act is entirely different from that of extradition. There is only one connection between these acts of judicial co-operation and the law of extradition, namely, that judicial co-operation within the limits specified above may be refused if the penal procedure relates to a non-extraditable offence. This is the only link between judicial co-operation and extradition; and wherever, in addition to the collective agreement, there exists a private extradition treaty between the requisitioning and the requisitioned State, this difficulty is at once solved. Only in the event of absence of legal relations in regard to extradition between two States could the reservation clause constitute an open door through which the State applied to could in the particular case escape from the co-operation promised in principle to the applicant State under the general Convention. But ought the attempt to conclude a collective agreement to be abandoned simply on account of this possibility? Moreover, even in the absence of an inter-State extradition treaty, certain legal practices and usages are observed with the object of determining which offences are not extraditable. The main difficulty here lies in the definition of a political offence — a very controversial point.

Cf. the two principal publicists who deal with this very controversial subject: LAMMASCH: *Obligatory Extradition and the Right of Asylum*, and VON MARTITZ: *International Judicial Co-operation in Penal Matters*.

If these difficulties gave rise to divergencies of view between States as regards the application of the reservation clause, there is nevertheless reason to hope that in view of the widespread tendency at the present time to submit legal questions, and particularly questions relating to the interpretation of international treaties, to an international jurisdiction, States will bring their differences before an international tribunal or, in the case of a private convention, will come to an agreement as to the cases in which they will or will not grant extradition. There is reason to hope, therefore, that the difficulties raised by the reservation clause will somehow be removed; and that further progress will be achieved in the field of international law. In any case there is no reason to regard the codification in question as unrealisable simply because this reservation clause is still somewhat elastic. It is undoubtedly possible from the technical point of view to settle by means of a special convention all questions relating to judicial co-operation in penal matters without touching upon the law of extradition. But as regards judicial co-operation in the strict sense of the term, as regulated by the older treaties dealing with a wider subject — as already mentioned, most of them are extradition treaties — the question arises as to how the new rules laid down in a collective agreement will stand as regards the rules of the older treaties. The first principle which will have to be applied is: *Lex posterior derogat legi priori*. If, however, it happened that in a special agreement between two States engagements in regard to judicial co-operation had been undertaken which went beyond the obligations laid down in the collective agreement, the States in question might expressly retain these engagements by means of a reservation on a reciprocal basis, made at the time of accession to the collective agreement, or else by means of special supplementary clauses agreed upon by the parties. In this respect also, therefore, there could, in my view, be no objection to a collective agreement.

It is most important that a way should — and it naturally will — be left open for these supplementary agreements. In practice the necessity for these supplementary agreements will mainly arise between contiguous States, since their position as neighbours will render such special conventions desirable. It would conduce to the smooth working of judicial co-operation if, for example, the competent judicial authorities were allowed under these agreements to communicate with each other direct.

Cf. the examples of the practice of States cited on page 29.

The practical needs of neighbouring States have already led to the adoption of arrangements intended to facilitate judicial co-operation in penal matters; thus, for example, the forms for the communication of extracts from criminal records are sometimes worded in two

languages. At the same time, it must be pointed out that certain widespread practices have arisen with the object of avoiding the necessity of applying to neighbouring States for judicial co-operation; the judicial authorities of one country use existing means of communication to get into touch with the nationals of another country. Thus, since the Post Office, being an institution which under public law possesses certain privileges and monopolies, but fulfils its obligations by virtue of contracts of private law, carries and distributes correspondence for foreign nationals, what is there to prevent a foreign State from utilising this institution and posting to a foreign national communications of all kinds connected with penal proceedings? The foreign judicial authority may also use this channel to try to induce a national of a neighbouring State to appear as a witness in its courts or to communicate in writing information in regard to proceedings pending before it. If these measures are not official and only consist of the direct communication of information, and are free from coercion or threats of any kind, there is little to be said against them whether from the point of view of public law or of international law. Moreover, such action may sometimes be the quickest means of achieving the desired object. If, however, the judicial assistance of another State is still to be claimed, it would seem most desirable in the interests of justice that not only adjacent States but all States should conclude supplementary agreements providing a simpler and more rapid procedure for especially urgent cases of judicial co-operation.

It would seem, then, that there are no definite objections to the conclusion of an international convention on judicial co-operation, and accordingly I venture to recommend to the Committee the draft convention appended hereto.

I trust that the Sub-Committee will consider the present memorandum a suitable basis of discussion. In conclusion, I desire to express my sincerest thanks to my Secretary, Dr. Paul Guggenheim, who has afforded me invaluable and zealous assistance in preparing this memorandum.

Berlin, October 12th, 1926.

(Signed) Walther SCHÜCKING,
Rapporteur.

TEXT OF THE DRAFT CONVENTION.

Article 1 (pages 13-18).

MEASURES OF ENQUIRY.

The Contracting Parties undertake, at the request of a competent authority, to take measures of enquiry. Such co-operation may be refused, however, if the penal proceedings for which it is to be rendered do not involve an obligation to grant extradition. Requisitions for judicial co-operation shall be executed by the authorities of the Party applied to which under its laws are competent to make such enquiries. The enquiries shall be carried out in accordance with the prescribed forms and with application of the proper coercive measures.

Article 2 (pages 18-21).

SUMMONING OF WITNESSES AND EXPERTS.

The Contracting Parties reciprocally undertake, at the request of a competent authority, to serve writs of summons upon witnesses or experts resident in their territory, irrespective of the nationality of such witnesses or experts. A witness or expert appearing voluntarily before an authority of the requesting Party in response to a writ of summons served upon him by the authority of the Party requested shall in no case, whatever his nationality, be subject, during his presence in the territory of the requesting Party, to criminal prosecution on a charge of having been a principal, an accomplice or an accessory, or of having helped to promote the act in respect of which the criminal proceedings are taken or any other act committed before he entered the territory of the requesting State. In like manner, no sentence passed upon him, on account of acts committed before he entered the country, may be executed on his person, nor may he be arrested for any infringement of the law which took place before his journey. The special position of the witness or expert as regards the jurisdiction of the foreign State shall be forfeited if he fails to leave the territory of that State within a reasonable time after having been heard. This time-limit may be fixed for him by the tribunal making the requisition.

The State applied to may refuse to serve a writ of summons: (a) if the offence which is the subject of the proceedings in the applicant State is not an extraditable offence in the

State applied to; (b) if the person cited is threatened with coercive or other prejudicial measures in the event of his non-appearance, or (c) if the applicant State does not provide a suitable indemnity for expenses.

The State applied to must inform the applicant State of the response which the person in question makes to the summons.

Article 3 (pages 22-24).

SURRENDER OF EXHIBITS.

The Contracting Parties undertake, at the request of a competent authority, to hand over reciprocally to one another any articles which are in the charge of their public authorities and are believed to constitute important evidence or of which the person who has committed the punishable offence in question has obtained possession through his act, or which are liable to seizure, destruction or confiscation.

If the surrender of such articles is applied for in connection with the extradition or passage in transit of some person, they shall whenever possible be surrendered at the time when the extradition or passage in transit takes place.

If surrendered subject to their being returned, such exhibits or articles shall on request be restored without delay. In all cases, the rights of third parties shall remain unaffected.

The requisition for co-operation may be refused: (a) if the penal proceedings for which it is made does not involve an obligation to grant extradition, or (b) if, having due regard to interests at stake, special reasons justify refusal to surrender the exhibits or articles in question.

Article 4 (pages 24-27).

COMMUNICATION OF PENAL SENTENCES AND OF EXTRACTS FROM CRIMINAL RECORDS.

The Contracting Parties undertake to communicate to each other penal sentences which have been passed by the authorities of one of the Parties on nationals of the other and have become *res judicatae*, and which, according to the regulations of the Party by whose authorities they were passed, must be entered in the criminal record.

The Contracting Parties reciprocally undertake to execute requisitions for the communication of extracts from criminal records.

Article 5 (pages 27-29).

CHANNEL THROUGH WHICH JUDICIAL CO-OPERATION MAY BE EFFECTED.

Requisitions for judicial co-operation between States and the replies thereto granting the assistance required shall be sent through the diplomatic channel, unless the States concerned have mutually concluded special agreements providing a more convenient channel of communication for such judicial co-operation.

Article 6 (pages 29 and 30).

COSTS INCURRED IN THE COURSE OF JUDICIAL ASSISTANCE.

The costs occasioned by judicial co-operation afforded under the terms of the present Convention shall be borne by the Party in whose territory the expenditure is incurred; expenditure occasioned by a request for an expert opinion shall be refunded by the Party making the requisition.

Article 7 (pages 30 and 31).

LANGUAGE TO BE USED IN JUDICIAL CO-OPERATION.

Requisitions and annexes thereto shall be drawn up in the official language of the Party making the requisition.

A translation in the official language of the Party applied to and certified true by a diplomatic representative or sworn translator shall be attached to documents drawn up in the official language of the Party making the requisition.

Should the applicant authorities find it particularly difficult to obtain a translation, the authorities applied to shall afford them every assistance in their power. The costs incurred in obtaining the translation shall be borne by the applicant Party.

Article 8 (page 31).

COMMUNICATION OF INFORMATION.

The Contracting Parties undertake to provide each other, in penal cases, with information regarding the laws in force in their territory. They shall inform each other as to which authorities will supply this information.

TEXT OF THE DRAFT CONVENTION
AMENDED AS THE RESULT OF DISCUSSION BY THE COMMITTEE.

Article 1.

MEASURES OF ENQUIRY.

The Contracting Parties undertake, at the request of an authority competent according to the law of that authority, to take measures of enquiry. Such co-operation may be refused if the State applied to considers it prejudicial to its sovereignty or security or if the act furnishing the occasion for the co-operation is regarded by the State applied to as a political offence. Requisitions for judicial co-operation shall be executed by the authorities of the Party applied to which under its laws are competent to make such enquiries. The enquiries shall be carried out in accordance with the forms prescribed by the law of the country and with application of the proper coercive measures.

Article 2.

SUMMONING OF WITNESSES AND EXPERTS.

The Contracting Parties reciprocally undertake, at the request of a competent authority, to serve writs of summons upon witnesses or experts resident in their territory, irrespective of the nationality of such witnesses or experts. A witness or expert appearing voluntarily before an authority of the requesting Party in response to a writ of summons served upon him by the authority of the Party requested shall in no case, whatever his nationality, be subject, during his presence in the territory of the requesting Party, to criminal prosecution on a charge of having been a principal, an accomplice or an accessory, or of having helped to promote the act in respect of which the criminal proceedings are taken or any other act committed before he entered the territory of the requesting State. In like manner, no sentence passed upon him, on account of acts committed before he entered the country, may be executed on his person, nor may he be arrested for any infringement of the law which took place before his journey.

Each Contracting State may declare that, subject to reciprocity, it will grant the temporary surrender of persons in custody who are required to appear before the Court of the State making the requisition. Such requisition may not be refused if the applicant State undertakes to return the person in question as soon as possible and the person raises no express objection to appearing.

The special position of the witness or expert as regards the jurisdiction of the foreign State shall be forfeited if he fails to leave the territory of that State within a reasonable time after having been heard. This time-limit shall be fixed for him by the tribunal making the requisition.

The State applied to may refuse to serve a writ of summons : (a) if the offence is a political offence ; (b) if the person cited is threatened with coercive or other prejudicial measures in the event of his non-appearance ; (c) if the applicant State does not provide a suitable indemnity for expenses ; (d) if the State applied to considers that the summons is prejudicial to its sovereignty or security ; (e) if the person cited is not regarded by the law of the State applied to as a competent witness or as a witness who may be compelled to give evidence in the matter at issue.

The State applied to must inform the applicant State of the response which the person in question makes to the summons.

Article 3.

SURRENDER OF EXHIBITS.

The Contracting Parties undertake, at the request of a competent authority, to hand over reciprocally to one another any articles which are in the charge of their public authorities and are believed to constitute important evidence or of which the person who has committed the punishable offence in question has obtained possession through his act, or which are liable to seizure, destruction or confiscation.

If the surrender of such articles is applied for in connection with the extradition or passage in transit of some person, they shall whenever possible be surrendered at the time when the extradition or passage in transit takes place.

If surrendered subject to their being returned, such exhibits or articles shall on request be restored without delay. In all cases, the rights of third parties shall remain unaffected.

The requisition for co-operation may be refused : (a) if the State applied to considers it prejudicial to its sovereignty or security or if the act furnishing the occasion for the co-operation is regarded by the State applied to as a political offence ; (b) if, having due regard to the interests at stake, special reasons justify refusal to surrender the exhibits or articles in question.

Article 4 (deleted).

Article 5.

CHANNEL THROUGH WHICH JUDICIAL CO-OPERATION MAY BE EFFECTED.

Requisitions for judicial co-operation between States and the replies thereto granting the assistance required shall be sent through the diplomatic channel, unless the States concerned have mutually concluded special agreements providing a more convenient channel of communication for such judicial co-operation.

Article 6.

COSTS INCURRED IN THE COURSE OF JUDICIAL ASSISTANCE.

The costs occasioned by judicial co-operation afforded under the terms of the present Convention shall be borne by the Party in whose territory the expenditure is incurred; expenditure occasioned by a request for an expert opinion shall be refunded by the Party making the requisition.

Article 7.

LANGUAGE TO BE USED IN JUDICIAL CO-OPERATION.

Requisitions and annexes thereto shall be drawn up in the official language of the Party making the requisition.

A translation in the official language of the Party applied to and certified true by a diplomatic or consular representative or sworn translator shall be attached to documents drawn up in the official language of the Party making the requisition.

Should the applicant authorities find it particularly difficult to obtain a translation, the authorities applied to shall afford them every assistance in their power. The costs incurred in obtaining the translation shall be borne by the applicant Party.

Article 8.

COMMUNICATION OF INFORMATION.

The Contracting Parties undertake to provide each other, in penal cases, with information regarding the laws in force in their territory. They shall inform each other as to which authorities will supply this information.

LIST OF THE MOST RECENT TREATIES.

The present Annex contains a list of treaties on judicial co-operation concluded since 1844, but the list is not exhaustive. It begins with the treaties given in the tables of contents of the various volumes of de Martens' *Recueil*, starting from volume 12 of the second series. In addition to the treaties enumerated in the second and third series (the latter is published by H. Triepel) of de Martens' *Recueil*, all the treaties on the subject given in the League of Nations *Treaties Series* have been included.

The treaties concluded before 1844 which have been used in preparing the present work have been taken from the technical literature of the subject.

Nouveau Recueil général des Traités de DE MARTENS.

SECOND SERIES.

- Vol. 12. Argentine-Paraguay, Extradition Convention, March 6th, 1877, Articles 15-18, pp. 460 *et seq.*
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Addendum.

M. Rundstein kindly informs me that the following treaties concerning judicial assistance, of the existence of which I was unfortunately unaware when I drew up my report, have recently been concluded :

(1) Treaty concerning Judicial Assistance between Poland and Czechoslovakia, dated March 6th, 1925 (Articles 32-59 and §§ 5-8 relate to penal cases). The Polish and Czechoslovak languages are authentic. The text is reproduced in the *Legal Gazette of the Polish Republic*, 1926, No. 14/80.

(2) Treaty concerning Judicial Assistance between Poland and Austria, dated March 19th, 1924 (Articles 55-81 relate to penal cases). The Polish and German languages are authentic. The text is reproduced in the *Legal Gazette of the Polish Republic*, 1926, No. 84/467.

(3) Convention concerning Extradition and Judicial Assistance in Penal Cases between Czechoslovakia and Roumania, with Additional Protocol, dated May 7th, 1926. The French is authentic. The text is reproduced in the *Legal Gazette of the Czechoslovak Republic*, 1925, c. 172, pages 711-720.

February 14th, 1927.

(Signed) SCHÜCKING.

QUESTIONNAIRE No. 9.

LEGAL POSITION AND FUNCTIONS OF CONSULS.

The Committee has the following terms of reference :

(1) To prepare a provisional list of the subjects on international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment ;

(2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received ; and

(3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Committee has decided to include in its list the question of the Legal Position of Consuls.

The Committee reached this decision on the basis of a report submitted to it by a Sub-Committee consisting of M. GUERRERO, Rapporteur, and M. MASTNY. This report was fully discussed by the Committee and, as a result of the discussion, the conclusions were modified in certain respects in order to bring out more clearly those questions for which it is hoped a solution may be found.

The particular questions falling within the general subject of the legal position of consuls which the Committee thinks might advantageously be dealt with in a general convention are indicated in the report and in the modified conclusions, which contain a statement of principles to be applied and of the solutions of particular questions which follow from these principles.

The Committee has the honour to request the various Governments to inform it whether they consider that these questions, or some of them, could advantageously be examined at the present moment with a view to the conclusion of a general convention, which, if necessary, could be completed by particular agreements between groups or pairs of States.

It is understood that, in submitting this question to the Governments, the Committee does not pronounce either for or against the general principles set out in the report and the observations of the opinions expressed therein on the basis of those principles. At the present stage of its work, the sole, or at least the principal, task of the Committee is to direct attention to certain subjects of international law the regulation of which by international agreement may be considered to be desirable and realisable.

In order to be able to continue its work without delay, the Committee will be glad to be put in possession of the replies of the Governments before December 31st, 1927.

The Sub-Committee's report, together with the modified conclusions, is annexed to this communication.

Geneva, April 2nd, 1927.

(Signed) HJ. L. HAMMARSKJÖLD,
Chairman of the Committee of Experts.

Annex to Questionnaire No. 9.

REPORT OF THE SUB-COMMITTEE.

Rapporteur : M. GUERRERO.
Member : M. MASTNY.

" Is it possible to establish by way of a general convention provisions as to the legal position and the functions of consuls, and, if so, to what extent ? "

[Translation.]

The institution of consulates, which is much older than that of embassies, has passed through various phases in the course of its history. Its original aim, however — the protection of nationals in a foreign country — has never changed.

In Egypt, so far back as 726 B.C., the Greeks enjoyed the right of appointing magistrates to judge between them in accordance with their own laws.

At about the same time, there existed in certain parts of India special judges for foreigners; it was also the duty of these judges to watch over the foreigners' interests.

In Greece, there were the *proxenoi*, who existed as early as the sixth century before Christ. The *proxenoi* possessed attributes and prerogatives which were practically the same as those possessed by consuls in countries where there is a system of capitulations. They entertained foreigners and decided disputes between foreign merchants. They enjoyed inviolability, exemption from taxation, and were given the rights of a citizen in the town they represented.

There is, however, one essential difference between the modern consul and the *proxenos*; the latter continued to be a private individual and was not regarded as holding public office, except in the case of the *proxenoi* magistrates at Sparta.

In Rome, also, foreigners were subject to a special jurisdiction. In early times it consisted in the institution of patron and client; later, it was the jurisdiction of the *prætores peregrini*; but when the latter were first created the *proxenoi* had long been in existence in Greece; indeed, the *prætores peregrini* were only appointed when Rome began to be invaded by foreigners.

It was in the Middle Ages, owing to the development of international trade between the West and the East, that the institution of consuls assumed its present form. The Italian Republics were the first to establish consuls, and shortly afterwards the southern cities of France followed their example.

The legal status of these consuls was, in almost every instance, settled by treaty. In Moslem lands, consuls were invested with wide powers and numerous functions. They enjoyed the same prerogatives as ambassadors: extra-territoriality; exemption from taxes and tribute; immunity, both civil and criminal; the right of asylum; the right to conduct religious services in the consulates, etc.

We do not propose to consider here the case of consuls in countries where there is a system of capitulations. This system, moreover, may already be regarded as little more than an historical memory.

The question to be examined is that of the legal position of consuls.

At first sight, this question would seem to be of minor importance from the international point of view; but in past centuries it has formed the subject of controversy, and at the present time it is still often discussed. It is always a matter of stronger States claiming, on behalf of their consuls, privileges which they themselves refuse to grant to the consuls of smaller States. Not so very long ago a great Power arrogated to itself the right to force the Government of a small State to cancel a decree revoking the *exequatur* granted to a consul who had become involved in a conspiracy. Even between two great Powers conflicts regarding the legal position of consuls may occasionally arise. France and England have experienced difficulty in connection with the arrest of a British consul at Papaète. Disputes, less serious indeed but always unpleasant in international relations, often occur in all countries.

Consequently, a collective agreement regarding the legal position of consuls would indubitably be of considerable help in promoting those good relations which should exist between States.

The question we first have to consider is whether the consul is or is not a "public minister".

The answer to this question is the point on which all the rights and prerogatives of consuls depend, and it is undoubtedly in the negative. In giving this opinion, we are merely endorsing a standpoint which has long been that of the chancelleries and jurisprudence of almost all countries.

Between diplomatic agents, who are true public ministers, and consuls there are essential differences from their nomination to the time when their mission ends.

The former are provided with credentials addressed by the head of their State to the head of the State to which they are accredited. They are entitled to certain prerogatives as soon as they arrive and enjoy all their prerogatives in full as soon as they have presented their credentials.

Consuls, however, carry Letters Patent, signed, it is true, by the head of the State, but drafted in the form of a letter of attorney or mandate to transact business with the civil, administrative and judicial authorities. Unlike diplomatic agents, consuls are not recognised as such directly they present their Letters Patent, but only when they have received their *exequatur*.

The jurisdiction of diplomatic agents always extends over the whole country to which they are accredited. That of consuls is limited by their Letters Patent and the *exequatur* granted them.

Diplomatic agents have a representative character which consuls do not possess. The latter, except in a few cases, do not transact business with the Minister for Foreign Affairs, but only with the local authorities of their area.

Whereas the former are political agents, the latter are only civil agents.

The attributes of diplomatic agents and of consuls differ to such an extent that it is hard to find any analogy between them, other than the protection which both diplomatic agents and consuls are bound to accord to their nationals.

Diplomatic agents are responsible for the major interests of their nation, good international understanding, and the preparation of treaties which guarantee those interests and consolidate goodwill.

Consuls are concerned with developing trade and watching over the interests of their nationals.

It is clear, therefore, that the former must, if they are to carry out their mission properly, possess certain prerogatives and privileges which originate in the representative character with which they are invested, whereas it is sufficient for consuls to possess the legal status which is indispensable for the discharge of their less-important duties.

We will consider separately each of the prerogatives which have given rise to discussion :

Exequatur. — Only when the exequatur has been granted may the consul communicate with the authorities and, generally speaking, perform his other duties. He cannot claim any privilege until he has received this document. The exequatur may be refused, or even withdrawn, without giving his Government a right to demand explanations from the Government of the country to which he has been accredited.

Inviolability of the consular archives. — This privilege, which must certainly be accorded to consuls, is indispensable to enable them to carry out their duties. The documents in the archives are the property of the foreign Government which installed the consulate, with the approval of the Government of the country. It would be a lack of courtesy towards the former Government if the secrecy of the archives were violated on any pretext whatever. Moreover, all countries, except England, recognise the inviolability of consular archives.

Immunity from civil jurisdiction. — This immunity, and indeed all immunity from jurisdiction, depends on the fiction of extra-territoriality which can really only apply to diplomatic agents. Consuls, accordingly, are subject to local jurisdiction, and indeed a civil action would hardly prevent a consul from carrying on his duties.

As he possesses no immunity from civil jurisdiction, a consul should be subject to attachment of his property as security for his personal debts.

Immunity from criminal jurisdiction. — It would seem that, as a consul could not carry out his duties if he were placed under arrest, he should be allowed immunity in criminal matters. Against this, it may be argued that as the consul and the consulate are not the same thing, the arrest of the consul would not mean the discontinuance of the work of his country's consular service.

Such cases have often arisen in various countries, and judicial decisions have answered the question in the sense of disallowing any immunity, either civil or criminal, for consuls. We may quote the decision of the Court of Aix of April 14th, 1829, that of the Court of Rouen of June 27th, 1849, and the judgment delivered by the Tribunal de la Seine on January 21st, 1875. The last-mentioned judgment laid down that although consuls are entitled to carry out their duties without hindrance, they are, nevertheless, subject to the jurisdiction of the French Courts in all that concerns their private actions.

The foregoing observations, with respect not only to immunities but to all the privileges which should be refused to consuls, may be modified by bilateral treaties.

Right of asylum. — This right is a prerogative which need not be discussed ; it is quite inadmissible. No State would admit such a privilege, and at the present time it ought no longer to exist, in however limited a form, even in the case of diplomatic agents.

Taxation. — The custom is to exempt consuls from direct and, occasionally, indirect taxation. Where no treaty exists, however, this privilege could not be claimed as a right. It is granted subject to the principle of reciprocity. We would propose to lay down that " consuls de carrière " not engaging in any form of trade in the country to which they are appointed should be exempted from taxation.

None of the foregoing remarks apply to consuls who are chargés d'affaires, since the second character invests them with the privileges and rights which international law accords to diplomatic agents.

Although the question of precedence is entirely unconnected with the legal status of consuls, we must mention it in this report because it forms the subject of a question submitted to our Committee for the Progressive Codification of International Law.

The rule applied to diplomatic agents should also be observed in the case of consular officials ; that is to say, they should take precedence in each class according to the date of their exequatur.

Nevertheless, we would draw a distinction between " consuls de carrière " and honorary consuls who are not nationals of the country which appoints them.

In the present stage of development of the institution of consuls and in the interest of the prestige of the career, the latter class of consuls should no longer exist. In point of fact, most honorary consuls of foreign nationality are far busier with their personal affairs than with those of the country which has conferred the title upon them, and as they generally engage in commerce in their consular area they occasion appreciable loss to other merchants. The commercial invoices submitted to them enable them to obtain valuable information which is of great use to them in their private affairs. They are thus able to compete on an unfair basis with the traders in their area. Moreover, nationals of the country which appoints these foreign consuls do not obtain from them the protection to which they are entitled and which they would always obtain from a consul of their own nationality.

Most of the countries in Europe have none but professional consuls, and it is to be hoped that other States will follow this example.

As honorary consuls of foreign nationality are not really public officials — for only

nationals can be that — we propose that “consuls de carrière” should be given precedence over honorary consuls of foreign nationality of the same class, without taking into consideration the date of the exequatur. This means that honorary consuls-general will always come after other consuls-general in the town.

From the above it may be inferred that the regulation of the legal status of consuls by international agreement is not only desirable from every point of view but is even indispensable, in order to avoid disputes which the absence of definite rules on the matter must certainly cause.

We do not think it necessary to define the functions of consuls by way of a convention, because these functions are perfectly well known and do not give rise to any disagreement, and because the determination of such functions is rather a matter of domestic law, since each State is alone able to determine the functions of its own officials.

(Signed) J. Gustavo GUERRERO,
Rapporteur,
A. MASTNY.

CONCLUSIONS AMENDED AS THE RESULT OF DISCUSSION IN THE COMMITTEE.

Exequatur. — Only when the exequatur has been granted may the consul communicate with the authorities and, generally speaking, perform his other duties. He cannot claim any privilege until he has received this document. The exequatur may be refused, or even withdrawn, without giving his Government a right to demand explanations.

Consular archives and correspondence. — The consular archives are inviolable. The same rule should apply to official correspondence.

Immunity from civil jurisdiction. — The immunity from civil jurisdiction which is accorded to diplomatic agents cannot be applicable in a general manner to consuls who should only enjoy such immunity in connection with the exercise of their functions.

Immunity from criminal jurisdiction. — Consuls do not possess this immunity.

Right of asylum. — Consuls do not possess this prerogative.

Taxation. — Exemption from direct taxes should be accorded to “consuls de carrière”, not carrying on any trade in the country where they exercise their functions.

None of the foregoing remarks apply to consuls who are chargés d'affaires, since the second character invests them with the privileges and rights which international law accords to diplomatic agents.

Although the question of precedence is entirely unconnected with the legal status of consuls, we must mention it in this report because it forms the subject of a question submitted to our Committee for the Progressive Codification of International Law.

The rule applied to diplomatic agents should also be observed in the case of consular officials; that is to say, they should take precedence in each class according to the date of their exequatur.

Nevertheless, we would draw a distinction between “consuls de carrière” and honorary consuls.

We propose that “consuls de carrière” should be given precedence over honorary consuls without taking into consideration the date of the exequatur, which means that honorary consuls will always come after other consuls in the town.

From the above it may be inferred that the regulation of the legal status of consuls by international agreement is desirable from every point of view, and is even indispensable in order to avoid disputes which the absence of definite rules on the matter must certainly cause.

The question of consular functions is reserved for later examination.

QUESTIONNAIRE No. 10.

REVISION OF THE CLASSIFICATION OF DIPLOMATIC AGENTS.

The Committee has the following terms of reference :

(1) To prepare a provisional list of the subjects on international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment;

(2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received; and

(3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Committee has decided to include in its list the following questions :

“ Is it desirable to revise the classification of diplomatic agents made by the Congresses of Vienna and Aix-la-Chapelle ? In the affirmative case, to what extent should the existing classes of diplomatic agents be amalgamated, and should each State be recognised to have the right, in so far as existing differences of class remain, to determine at its discretion in what class its agents are to be ranked ? ”

The Committee reached this decision on the basis of a report submitted to it by a Sub-Committee consisting of M. GUERRERO, Rapporteur, and M. MASTNY. This report has been fully discussed by the Committee. It is to be understood that the Committee has not felt that it should at present pronounce upon the actual proposals presented in the report.

The Committee has the honour to request the various Governments to inform it whether they consider that these questions could advantageously be examined at the present moment with a view to the conclusion of a general convention.

In order to be able to continue its work without delay, the Committee will be glad to be put in possession of the replies of the Governments before December 31st, 1927.

The Sub-Committee's report is annexed to the present communication.

Geneva, April 2nd, 1927.

(Signed) HJ. L. HAMMARSKJÖLD,
Chairman of the Committee of Experts.

Annex to Questionnaire No. 10.

REPORT OF THE SUB-COMMITTEE.

Rapporteur : M. GUERRERO.

Member : M. MASTNY.

“ Is it desirable to revise the classification of Diplomatic Agents made by the Congresses of Vienna and Aix-la-Chapelle ? In the affirmative, in what form should this revision be made ? ”

[Translation.]

The classification of diplomatic agents which has hitherto been universally accepted in international relations is over a century old. It was established by the Regulation signed at Vienna on March 19th, 1815, between the eight Powers signatory to the Treaty of Paris of 1814 : Austria, France, Great Britain, Portugal, Prussia, Russia, Spain and Sweden.

This is the text of the regulation :

“ In order to avoid the difficulties which have often arisen and which might occur again by reason of claims to precedence between various diplomatic agents, the Plenipotentiaries of the Powers which have signed the Treaty of Paris have agreed to the following articles and feel it their duty to invite the representatives of other crowned heads to adopt the same regulations.

“ *Article 1.* — Diplomatic officials shall be divided into three classes: that of ambassadors, legates or nuncios ; that of envoys, whether styled ministers or otherwise, accredited to sovereigns ; that of *chargés d'affaires* accredited to ministers of foreign affairs.

“ *Article 2.* — Only ambassadors, legates or nuncios shall possess the representative character.

“ *Article 3.* — Diplomatic officials on extraordinary missions shall not by this fact be entitled to any superiority of rank.

“ *Article 4.* — Diplomatic officials shall rank in each class according to the date on which their arrival was officially notified. The present regulation shall not in any way modify the position of the Papal representatives.

“ *Article 5.* — A uniform method shall be established in each State for the reception of diplomatic officials of each class.

“ *Article 6.* — Ties of relationship or family alliances between Courts shall not confer any rank on their diplomatic officials. The same shall be the case with political alliances.

“ *Article 7.* — In acts or treaties between several Powers which admit the *alternat*, the order in which the ministers shall sign shall be decided by lot.

“ The present regulation was inserted in the Protocol concluded by the plenipotentiaries of the eight Powers which have signed the Treaty of Paris at their meeting on March 19th, 1815.”

Three years later (in 1818), Austria, France, Great Britain, Prussia and Russia met in congress at Aix-la-Chapelle and laid down that ministers resident should form an intermediate class between agents of the second and third categories.

The following is the text of the Protocol of November 21st, 1818, regarding ministers resident :

“ In order to avoid the possibility of unpleasant disputes with regard to a point of diplomatic etiquette for which the Annex to the Decision of Vienna, regulating the question of rank, seems to have made no provision, it is decided, as between the five Courts, that the ministers resident accredited to them shall take rank as an intermediate class between ministers of the second class and *chargés d'affaires*. ”

The preambles to these agreements show that their authors had two aims in view : the first was a mere pretence, while the other was real.

The first was ostensibly a desire to prevent disputes regarding precedence, though these could have been avoided without drawing up a graduated classification based on a fiction as weak as it is illogical, since the question of precedence was settled by Article 4 of the same Regulation of Vienna, namely, according to the date of the official notification of arrival to the country to which the diplomatic agents were accredited.

The other desire — which was certainly a real one — was to ensure a higher rank for the representatives of the great Powers.

As a matter of fact the plenipotentiaries, in conference at Vienna, first attempted to establish a classification of States and thus fix the order of precedence. When they saw how difficult a task this would be, they fell back on the classification of diplomatic agents.

The real meaning of the scale drawn up by the plenipotentiaries in 1815 is summarised in Article 2 of the Vienna Regulation : “ Only ambassadors, legates or nuncios shall possess the representative character ”.

What was then meant by the representative character ? The right to represent the person of a sovereign and to have personal audience of the sovereign to whom the diplomat was accredited.

This definition, which, according to Pinheiro-Ferreira, defined nothing, was absolutely false, even at the time of its introduction, because, first, ambassadors did not represent the personal interests of their sovereign, and, secondly, it was only when they were accredited to one of the few absolute monarchies that ambassadors could transact business without the intervention of the Minister of State.

We might discuss this matter at some length, but since this is not a question of examining the opinions current at that period but of applying to modern international relations the opinion which prevails to-day, we will not waste time in pointing out the errors of those who denied a representative character to diplomatic agents of the second, third or fourth categories.

In the present state of international law, the sovereign is no longer a crowned head placed at the apex of supreme power. The nation alone is sovereign, and only the nation's interests are entrusted to diplomatic agents. The latter, therefore, whether they are nationals of a great Power or a small State, a monarchy or a republic, or whether they be called ambassadors or ministers, all derive their mission from the same source. The interests which they have in their keeping are identical ; the aim which they pursue is the same.

The credentials by which ambassadors and ministers plenipotentiary are accredited are absolutely identical, as are their rights and duties, the privileges and immunities granted them and the methods of communication with their own Governments and those to which they are accredited.

Therefore there is no longer any reason to place ambassadors in a higher category than ministers.

It may even be concluded that adoption of the classification of Vienna and Aix-la-Chapelle is unconstitutional in States in which the constitution recognises no other sovereignty than that of the nation.

If the false conception of the representative character which established a difference between ambassadors and ministers led to much criticism in the course of the last century, no fiction can possibly justify to-day the maintenance of different terms to designate persons who hold the same public office.

All writers on the subject share this view We will quote some of them.

Klüber said in 1819 that, by reason of the matters with which he has to deal, a diplomatic agent must always be regarded as the immediate representative of his Government and that he consequently possesses the representative character. This quality, he adds, is essential and the same for all ministers to whatever class they belong.

Pinheiro-Ferreira wrote in 1830 that there ought no longer to be any ambassadors in diplomacy, because under the constitutional form of government which existed in all countries, it was recognised that direct negotiations between sovereigns were no longer desirable. And, he added, "when once this class (ambassadors) has been abolished as unconstitutional, as well as the ceremonial attaching to it, which is no longer in keeping with the customs and ideas of our times, the appellation "ambassador" will naturally devolve on the ministers who are at the present time held to belong to the second class but who will henceforth occupy the highest diplomatic rank."

Pradier-Fodéré, referring to this passage in Pinheiro-Ferreira, says "the fulfilment of this hope would be in keeping with the modern trend of thought. It is certain that at the present time there should be only one category of public minister, since ministers no longer represent a master but only the interests of their nation, and because nations alone are sovereign."

Our eminent colleague José Leon Suarez wrote in 1919 that, since the only source of diplomatic representation is national sovereignty, and since such sovereignty is absolute, it is clear that there can be only one "representative character" and that logically, therefore, only one class of representative ought to exist.

Albertini goes further and does not admit that there is any difference between a *chargé d'affaires* and an ambassador.

Fiore wrote on the same subject: "As Calvo wisely observes, it is very difficult to define the difference between diplomatic agents of the second class and those of the first class. Both are accredited in the same manner by their sovereign or by the head of the executive Power. Originally there was some excuse for the distinction between ambassadors and envoys, because it was admitted that the former were entitled to treat direct with the sovereign himself, whereas the latter, though accredited to the sovereign, could only treat with the Minister for Foreign Affairs. It was accordingly supposed that a person having such high authority as to be able to deal with the sovereign direct must be superior in rank to a public minister. To-day any such distinction would be erroneous, because Governments are now organised on a different basis and sovereigns are unable personally to direct international affairs. Consequently the attributes of the second categories of diplomatic agents are the same, the difference of title being merely hierarchic and honorary. As regards the privilege of treating with the sovereign direct, public ministers, to whatever class they belong, are entitled at the present time under all circumstances to have audience with the sovereign of the Court to which they are accredited on matters connected with political relations between the two States, though they rarely avail themselves of this privilege."

Baron de Szilassi, in his *Manuel pratique de Diplomatie moderne*, calls the ambassadorial system the ambassadorial "morgue". "The difference of rank which still subsists at the present time between ambassadors and ministers plenipotentiary is due to historical traditions rather than to the importance of the posts. Many a minister has a more important and more delicate task to carry out than his colleague who may be an ambassador in another capital, with duties merely representative. I think it would therefore be entirely logical to employ a collective term to designate all the diplomatic representatives belonging to this class, including the representatives of the Holy See."

All these writers, except the last, expressed their opinion long before the League was founded. Since the latter has inaugurated a system in which the equality of States is a fact, and since international law is developing a new spirit, it would indeed be more than strange if we continued to observe an obsolete tradition which has only survived through the negligence or complacency of so-called second-class States.

It cannot be argued that it was the collective will of the States, in adopting the classification of Vienna, to transform this tradition into a rule of international law. The establishment of numerous embassies between small States, whether monarchical or republican, proves a definite intention to abandon the spirit which formed the basis of the 1815 agreement.

We therefore propose that ambassadors, legates or nuncios should be included in the same class and designation with envoys or ministers plenipotentiary, including resident ministers. These latter agents have, moreover, almost entirely disappeared from diplomatic nomenclature. It is very rare for a Government to give its representatives a title conferring on them the same responsibilities and the same duties as the other agents but placing them in a lower rank.

Chargés d'affaires should continue to form a class apart, not because they are different from other diplomatic agents as regards the interests they represent but because their credentials are given them by the Minister for Foreign Affairs and are addressed to Ministers for Foreign Affairs.

We still have to choose a common designation to be given to the diplomatic representatives of the first of the two categories we propose.

The choice lies among the following terms: ambassador, public minister, envoy, and agent.

We can straightway discard the expression "agent" which evokes an image of duties much less important than those entrusted to diplomatic representatives. We are also in favour of rejecting the expression "envoy", which could be kept as the title for "chargé d'affaires". The latter term is extremely ill-chosen because all representatives are "chargés" with the public business of their country.

The adoption of the term "public minister" or "minister plenipotentiary" might appear to be somewhat derogatory to existing ambassadors, and our choice therefore inclines to the title "ambassador" to designate the representatives of the first three categories of the Regulation of Vienna as completed by the Aix-la-Chapelle Protocol.

Having shown the desirability of revising the classification of diplomatic representatives established by the Congresses of Vienna and Aix-la-Chapelle, we think that the best solution would be to invite all States, Members or non-Members of the League, to an international conference which would examine the question with a view to reaching a general agreement on some classification of diplomatic agents more suitable to the present general form of Governments and the spirit of the League of Nations.

(Signed) J. GUSTAVO GUERRERO,
Rapporteur.
A. MASTNY.

QUESTIONNAIRE No. 11.

COMPETENCE OF THE COURTS IN REGARD TO FOREIGN STATES.

The Committee has the following terms of reference :

(1) To prepare a provisional list of the subjects on international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment ;

(2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received ; and

(3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Committee has decided to include in its list the question of the Competence of the Courts in regard to Foreign States.

The Committee reached this decision on the basis of a report submitted to it by a Sub-Committee consisting of M. MATSUDA, Rapporteur, and M. DIENA and M. DE VISSCHER, and of observations by M. Diena, which remain annexed to the report.

After full discussion, the Committee was of opinion that, even though the conclusion of a uniform agreement between the Powers might meet with serious difficulties, these difficulties were not the same for all parts of the subject, and it felt that it was desirable to ascertain, exception always being made of the case of acts of State :

" Whether and in what cases, particularly in regard to action taken by a State in the exercise of a commercial or industrial activity, a State can be liable to be sued in the courts of another State. "

The Committee has the honour to request the various Governments to inform it whether they consider that this question could advantageously be examined at the present moment with a view to the conclusion of a general convention which, if necessary, could be completed by particular agreements between groups or pairs of States.

The nature of the general question and of the particular questions involved in it appears from the report and from the observations mentioned above.

It is understood that, in submitting this subject to the Governments, the Committee does not pronounce either for or against the general principles set out in the report and the observations or opinions expressed therein on the basis of those principles. At the present stage of its work, the sole, or at least the principal, task of the Committee is to direct attention to certain subjects of international law the regulation of which by international agreement may be considered to be desirable and realisable.

In order to be able to continue its work without delay, the Committee will be glad to be put in possession of the replies of Governments before December 31st, 1927.

The Sub-Committee's report, together with the observations above mentioned, is annexed to the present communication.

Geneva, April 2nd, 1927.

(Signed) HJ. L. HAMMARSKJÖLD,
Chairman of the Committee of Experts.

Annex to Questionnaire No. 11.

REPORT OF THE SUB-COMMITTEE.

Rapporteur : M. MATSUDA.

Members : M. DIENA,
M. DE VISSCHER¹.

" Is it possible to establish, by way of a convention, international rules concerning the competence of the courts in regard to foreign States, and, particularly, in regard to States engaging in commercial operations (excluding the questions already dealt with in the report sent to the Council of the League of Nations by the Committee of Experts at the Committee's second session) ? "

[Translation.]

I. The question whether a State may, in any respect, be subject to the jurisdiction of the courts of another State is connected with the right of States to independence. In other words, are the courts of one State competent to decide disputes to which another State is a party ?

That the courts of one State are not competent with regard to another State is unanimously recognised when the foreign State is called to justice on account of acts committed by it, in the exercise of its sovereignty, to ensure the general administration of the country and the working of its public services. To weigh and judge the consequences of such acts would be to interfere in the internal policy of the foreign State and deny its right of independence. As regards acts of its Government and public administration, a State ought to be — as, indeed, it is — entirely immune from the jurisdiction of another State. In almost all countries this is the decision which has been reached, and it is followed by most writers on the subject.

There is, however, some difference of opinion when we come to consider acts accomplished by a State, not in fulfilment of one of its sovereign functions or governmental duties, but in the same way as a private individual, and, so to speak, in a private capacity. A State may, for instance, have been engaged in commercial transactions; in many countries the State is responsible for transport by rail. If it fails to execute the contract of transport, may it not be sued abroad by the consignor or consignee who has suffered from the non-fulfilment of the contract ?

On this point there are two conflicting views.

II. An imposing body of case law, which has received the general approval of the French, German, British and American courts, renders exemption from jurisdiction an absolute immunity attaching to the very person of the foreign State, independent of the character of particular acts and removable only by express or tacit waiver by the State itself.

French practice has always been strongly opposed to the idea of such competence. Among the numerous decisions of the French courts the most important judicial ruling with regard to incompetence in civil proceedings directed against foreign sovereigns or States is that given by the Cour de Cassation on January 24th, 1849, in the action brought by Lambège and Pouget against the Spanish Government to secure payment for shoes supplied (*Journal du Palais*, 1849, I, 166; DALLOZ, 1849, I, 9). This decision, so to speak, crystallised French case law on the subject, and it is generally quoted by all who have subsequently studied the question. The decision is based on the following considerations : (1) The principle of the reciprocal independence of States precludes that any State shall, by reason of its acts, be subject to that jurisdiction which every Government possesses for the settlement of disputes connected with such acts. This exemption is a right inherent in its sovereign authority to which another State could not lay claim without compromising the relations of two States. (2) Article 14 of the Civil Code refers only to private obligations incurred by private individuals. (3) Any person whatsoever with whom a State enters into a contract agrees, by the very fact of entering into the contractual obligation, to abide by the laws of that State, its forms of accountancy and its judicial or administrative jurisdiction. (4) A foreign Government is not bound to recognise the decision of judicial or administrative authorities who have sanctioned the levying of an execution to its prejudice, but it can always claim repayment of the debt from its own debtor, so that the third party — the party who has actually been subjected to the execution — may have to pay twice over.

States are independent — *i.e.*, the sovereign power of a State cannot extend beyond its own sphere and intrude into the sphere of another State to be exercised over persons and things within the domain of the other State. Nevertheless, a State may to a certain extent

¹ M. De Visscher has not expressed his approval of this report; nor was he able to be present at the Third Session of the Committee.

forgo its sovereign rights in favour of another's sovereignty. This, however, can only take place by means of an agreement between the two States freely consented to by both. Failing such agreements, or customary law which has become established *de facto* apart from any such agreements, there can be no question of admitting the claim of one State to regulate, in accordance with its own views, the affairs or interests of another State. It should be observed that the independence and sovereignty of a State may be over-ridden and diminished not merely by some act in the territory of that State committed without its consent but also by the disregarding in foreign territory, without its consent, of any of its interests which are totally or partially situate in the foreign territory in question.

Far from leading us to the conclusion that the courts of a State may take cognisance of debts contracted by a foreign State or sovereign, the reciprocal independence of States tends rather to support the view that he who enters into a civil contract with a foreign State or sovereign implicitly agrees to abide by the civil competence and jurisdiction of the foreign courts. This argument was, in fact, put forward by the French Cour de Cassation in its ruling on January 24th, 1849. Is it probable that such State or sovereign, when creating such a legal nexus, can in any way intend to instal another State or sovereign in its place and abdicate its own sovereignty in so doing ?

Among the *German* decisions we may mention in particular that reached in the case von Hellfeld *v.* the Treasury of the Russian Empire (Prussian Tribunal for Disputes, June 25th, 1910).

At the end of 1904, the Russian Government purchased, at Tien-Tsin, from M. von Hellfeld, a retired German officer, certain guns and munitions which were to be transported to Port Arthur in a vessel that the Government was to provide for him. After fruitless negotiations, M. von Hellfeld finally sued the Russian Empire in the German courts for payment of its debt, and even attached at the Mendelssohn and Company Bank in Berlin funds which the Tsar's Government had deposited there. Russia protested against this action. An attachment order having been granted on December 15th, 1909, by the Berlin "Amtsgericht", the Ministry of Foreign Affairs opposed this decision on the ground of competence, and on June 25th, 1910, the Berlin Court for Conflicts of Competence annulled the order.

British practice has also followed this doctrine since the decision of the Court of Appeal in the "Parlement Belge" case (1880); and, since the famous decision reached by the Supreme Court in 1912 in the case of the ship *Exchange*, the *American* courts have adopted an identical standpoint, *i.e.*, absolute immunity from jurisdiction. These decisions are in keeping with the official attitude adopted by the majority of Governments, which have frequently pleaded the existence of an international usage sanctioning entire immunity from jurisdiction, even in the case of acts which are not, strictly speaking, acts accomplished by the public authorities as such.

Among writers who accept this theory we may mention : CHRÉTIEN, VALÉRY, NYS, DE LOUTER, KOEHLER, LABAND, LISZT and ANZILOTTI.

BLUNTSCHLI, in his *Das moderne Völkerrecht* (§ 139), observes that civil proceedings cannot be taken against a foreign sovereign, even when they do not affect the public person of the sovereign but arise from private considerations. It is, he says, because the means of execution necessary to enforce the judgment, such as arrest, sequestration, declaration of bankruptcy and sale by order of court would indirectly derogate from the inviolability, independence and majesty of the foreign sovereign, while the courts themselves would run the risk of seeing their authority disregarded abroad. To this doctrine Bluntschli only admits the following exceptions (§ 140) : (1) actions *in rem* with regard to immovable property ; (2) when the person enjoying ex-territoriality is a subject of the State — for instance, a merchant or employee ; (3) if the competence of the State authorities with regard to the foreign sovereign has been recognised and embodied in an international convention ; (4) if the foreign sovereign brings the action, or if, being the defendant, he recognises the competence of the judicial authorities of the State. In no case, however, does Bluntschli admit that a foreign sovereign can be subject to personal service.

CALVO, in his *Droit International Théorique et Pratique* (Paris, 1881, Vol. I, § 522), also shares the view that persons having claims on foreign sovereigns and Governments cannot serve process on the latter in their (the claimants') courts. He only admits exceptions if (1) the foreign sovereign is resident incognito in the State or (2) if the foreign sovereign expressly or tacitly accepts the jurisdiction of the State by a non-equivocal act. Apart from these cases, CALVO says : "The maxim *par in parem non habet imperium* is universally recognised, and, generally speaking, it may be said that all sovereigns are immune from the civil and criminal jurisdiction of foreign States".

According to VON HOLTZENDORFF, the judicial authority is not even competent to render executory an arbitral award over property belonging to a foreign State when the award has been given as between that State and a private individual (page 183). To this rule he only admits two exceptions : (1) in the case of immovable property possessed in the State by a foreign sovereign ; (2) in the case of counterclaims brought against a foreign sovereign or Government by a private individual who has been sued by them.

WESTLAKE, in his *Treatise on Private International Law* (London, 1880, § 181), states that "foreign States, and those persons in them who are called sovereigns, whether their title be Emperor, King, Grand Duke or any other, and whether their power in their States be

absolute or limited, cannot be sued in England on their obligations, whether *ex contractu*, *quasi ex contractu* or *ex delicto*", and (§ 182) he adds: "He the (plaintiff) can no more pursue that claim indirectly through the agent than he could do so directly". To this general rule Westlake only admits the following exceptions: (a) when the whole subject-matter of the action is land situate within the jurisdiction of the State; (b) in the case of actions brought by the foreign sovereigns themselves in the courts of the State; (c) cross actions and counter-claims brought against foreign sovereigns by private individuals sued by them.

In short, very eminent authors admit certain exceptions to the general theory of immunity from jurisdiction; some of these exceptions are already well known and defined, while others are still in a somewhat nebulous state. We should, however, observe that the case in which foreign States sue a private individual for a civil debt in the courts of his State is certainly not an exception. In point of fact, we have only heard the opposite case described, in which foreign States were defendants and not plaintiffs.

In this latter instance, the national courts are competent solely because the foreign State accepts their jurisdiction by laying the matter before them.

Readiness to submit to foreign jurisdiction may, of course, be tacitly implied or actually expressed. The latter case is the less frequent of the two. It may take the form of an international convention of a general nature concluded prior to the instance which recognises in principle the reciprocal competence of the courts of the two States; or it may be a special agreement, drawn up between a foreign State and a foreign individual, who is the other party to the contract, and inserted in the contract.

To hold or enjoy rights of possession or ownership over immovable property in a country constitutes, on the other hand, a tacit agreement to submit, as defendant, to the jurisdiction of the municipal courts.

All modern authors are, in fact, agreed that in all disputes *in rem* regarding immovable property, the judicial authorities of the State possess as full a jurisdiction over foreign States as they do over foreign individuals, whether as defendants or as plaintiffs.

A further instance is provided by contemporary practice. In a country where railways are State-owned, the State sends its trucks into the territory of a foreign State with which it has concluded a convention on railway transport. If the State establishes an agency in the foreign State for the transport of passengers or goods, any actions which may arise in the latter State with regard to transport operations must be brought before the local courts.

Exceptions similar to those which we have mentioned are numerous, and their number is likely to increase in view of the fact that the present tendency of States is to extend their activities beyond purely political and national spheres. In any case, the exceptions are always based on the tacit consent of States or sovereigns.

III. To the theory of absolute immunity from jurisdiction is opposed the Italo-Belgian system of immunity limited to acts that are true manifestations of sovereign authority and denied to acts in which the public power has no part and which should, therefore, be subject to the normal rules of jurisdiction. This theory of limited immunity has also been adopted by the Mixed Court of Appeal at Alexandria in the case of Captain Hale, commanding the *Sumatra*, versus Captain Bengoa, commanding the *Mercedes* (decision of November 24th, 1920). The following authors are in favour of this conception: PRADIER-FODÉRÉ, DESPAGNET and DE BOECK, WEISS, MÉRIGNHAC, DE LAPRADELLE, AUDINET, LAURENT, VON BAR, PÆPE, PASQUALE FIORE.

It should also be borne in mind that, as far back as 1891, on the proposal of von Bar, the Institute of International Law adopted a draft regulation on the competence of courts in actions brought against foreign States, sovereigns and heads of State. According to this draft set of principles, the only actions which cannot be admitted are those brought as a result of acts of sovereignty or acts resulting from a contract concluded by the plaintiff in his capacity as a State official, and actions concerning the debts of a foreign State contracted by way of public subscription. On the other hand, the following actions are declared to be admissible: (1) Actions *in rem*, including actions for obtaining possession of property whether movable or immovable, situated in the territory. (2) Actions based on the capacity of the foreign State as heir or legatee of a national of the territory or as having a claim to a succession opened in the territory. (3) Actions connected with a commercial or industrial establishment or railway exploited by the foreign State in the territory. (4) Actions in which the foreign State has expressly recognised the competence of the court. A foreign State taking proceedings before a Court is held to have recognised the competency of that court as regards both the adjudication of costs and any counterclaim arising out of the same matter. Similarly, a foreign State, if it defends an action brought against it without raising objection as to the jurisdiction of the court, is held to have recognised that court as competent. (5) Actions arising out of contracts concluded by a foreign State within the territory, if full execution in that territory can be demanded as a result of an express clause or by reason of the nature of the action itself. (6) Actions for damages for a *tort* or *quasi-tort* committed in the territory.

Thus, according to this theory, the State possesses two aspects and practically constitutes two persons. From one point of view it is a person politic: from the other, a private person. What the State does *jure imperii* is one thing, and what it does *jure gestionis* is another. As a public person, the foreign State is not subject to the jurisdiction of the judicial authorities; but it may become subject thereto as a private person like foreign private individuals — indeed by analogy thereto — and in accordance with the principles of private international law which apply to private individuals in the matter of jurisdiction.

The rule of the mutual respect of sovereignty cannot claim to go further than the recognition of sovereignty which is its basis. The position of a State alters when, under cover of its civil personality, it enters into relations at private law which, by their nature, normally come within the competence of foreign jurisdictions. Of course, the juridical personality of the State is not really twofold, its mission always being to safeguard the general interests for which it is responsible; but certainly the activities of a State do assume two separate forms, and it is therefore desirable to consider the intrinsic nature of the acts and not merely their political purpose. This seems to be all the more just and equitable in that the sovereignty of a State is only entitled to respect so long as it remains within its proper sphere.

We must also be careful not to import into our discussion of this problem — which is an international one — certain provisions peculiar to the municipal public law of particular countries. The question is not one of the apportionment of jurisdiction between the various organs of a given State but of the relations of that State, which, under the *jus gentium*, is a person, with other States. We cannot, therefore, use against the distinction between sovereign acts and non-sovereign acts, which is the foundation of the theory of the limited immunity of foreign States, certain objections of municipal law which have not the slightest bearing on international relations. This point of view is accepted implicitly by the partisans of absolute immunity when they admit the validity of voluntary waiver in disputes which do not involve the political power of the State, since this can only be explained by the principle of limiting non-interference to acts of the public power alone.

Indeed, if the exceptions to exemption from jurisdiction were based solely on the voluntary renunciation of a personal privilege, what would prevent a State from applying to a foreign court for sanction for the exercise of a sovereign right and from agreeing to a discussion of substance as to the consequences of an act of government? Case law, however, and most of the authorities on the subject, regard as inoperative any renunciation which tends to submit to the court any question as to assertion of a *sovereign* right or recognition of a *sovereign* act.

If, therefore, we adopt the theory of an immunity from jurisdiction limited to acts of sovereignty, the following are some of the solutions proposed :

Disputes may arise (a) between States or (b) between a foreign State and a private individual.

(a) The courts will be competent whenever the dispute involves no question of sovereign rights, e.g., in a claim to an inheritance or an action *in rem* concerning immovable property. On the other hand, the court is bound to declare itself without jurisdiction in any dispute in which one Government claims sovereign rights in opposition to another.

(b) In disputes between a foreign State and a private individual, whether the State be plaintiff or defendant, its submission to the municipal jurisdiction is only comprehensible in matters of pure private law — that is to say, when it does not appear as a sovereign power asserting its rights as a public authority. The refusal to consider the case is founded on the general principle of the mutual respect of sovereignty. Thus, any action brought by a foreign State to assert a sovereign right in the courts of another State must be disallowed, since the tendency of such an action would be to extend the exercise of the plaintiffs' sovereignty over the territory of the latter State. A State cannot come forward like a private individual in a matter which involves the confirmation of a sovereign right. Nor can courts give a ruling with regard to the public acts of a foreign State appearing as defendant, owing to the respect due to foreign sovereignty. It is not permissible for the State which has been sued to renounce its right, for one State cannot be permitted to confer on the courts of another State a jurisdiction which they should be prevented from exercising for reasons of international public policy. Only in so far as it is subject to private law in a dispute at private law can a State validly submit, by tacit or expressed waiver, to the jurisdiction of another State.

The inability of courts to exercise jurisdiction in regard to a sovereign act of a foreign Government may also apply in cases between private individuals, particularly when the right contested by the defendant is based on a public act of a foreign State and when the court cannot give an opinion regarding the object of the plea without discussing the merits of an act accomplished by a foreign Government. The same rule should apply where the defendant is sued personally for acts done by him in his capacity as a public official — though he no longer retains that capacity at the time of the proceedings — or under powers conferred on him by a foreign State.

In short, it is the intrinsic nature of the legal relations established by the foreign State which determines the extent of its immunity from jurisdiction. Outside the limit of its sovereign activity the State should be treated as an individual at private law and should consequently submit to the ordinary rules of jurisdiction.

An attempt has accordingly been made to solve the problem by recourse to the principles of civil jurisdiction which are applicable to foreign individuals. But this solution ignores the question whether such jurisdiction is compatible with the reciprocal independence of States. The latter problem is not directly treated; endeavours are made to solve it indirectly by drawing an analogy between the State and the foreign individual who is under a civil obligation towards a subject of the State. The adversaries of the theory point out that such an analogy (even were it proved, and they do not think it is) would not warrant a departure from the principle of the independence of States *inter se*.

In a judgment given on January 2nd, 1885, the Tribunal of the Seine decided that the first obstacle to jurisdiction over a foreign State is the impossibility of serving any writ on it by which proceedings can be commenced. This is perfectly true, for on whom can the writ be served? Not upon the foreign Government through the diplomatic channel, because the Government would, on the ground of its judicial sovereignty, refuse to accept service of writ by another State. Similarly, a judgment delivered against another State could not be carried out in that State. From a practical point of view, however, a judgment which cannot be rendered executory by the jurisdiction which delivered it or by any other authority is not likely to be of much use to anyone or to fortify the prestige of the law.

Secondly, States do not often possess property abroad, so that, as a rule, the judgments could not be executed. The agitation in favour of the jurisdiction in question is, therefore, on the whole, likely, in many cases, to lead to no practical results.

But even in cases where States do possess property in the State of jurisdiction, there will be other *de facto* obstacles in the way of the execution of judgments delivered against such States as defendants. Thus the jurisdiction claimed over foreign States is illusory in countries where the courts admit that State property is immune from execution; while it is likely to become illusory wherever there is a tendency to admit this principle. What is the good of obtaining judgment against a debtor if you lack all legal means of compelling him to pay?

IV. Again, when does a State act in a public capacity and when does it act in a private capacity? Is there any hard-and-fast rule by which we can distinguish the acts of a State *jure imperii* from its acts *jure gestionis*? Seeing that the writers themselves hold most varied views on this subject, might it not be said that no such distinction really exists? Some writers declare that the difference lies in the object which the State has in view when contracting civil obligations. In other words, the question is whether its object is political or not. In their opinion, the purchase of horses by a foreign Government might be a business transaction or an act of sovereignty according to whether the horses were intended for the army or for the personal use of the prince. But this argument has been refuted, and rightly so, by LAURENT. For it contains, among others, the serious flaw, from a practical point of view, of being extremely vague. It is often very difficult, and at times impossible, to determine the ultimate aim of civil obligations contracted by foreign States. In these circumstances, would it ever be possible to draw a clear distinction between the imperium of a foreign State and its purely business activities, as a basis for asserting civil jurisdiction over that State?

V. Naturally, immunity from jurisdiction can only be admitted in the case of a properly organised State which is a member of the community of nations. A new State which aspires to an international existence and consequently claims the prerogatives appertaining to a "State" as such must obtain recognition by other States. This question arose in 1920 with regard to Bolshevik Russia, which the civilised States had not recognised, on an application made in London by certain British creditors to attach the furniture of the Russian Bolshevik Mission to England; there was no objection in law to the creditors taking such action in the British courts against the Bolshevik community.

In short, absence of jurisdiction of the courts of one State over another State is universally admitted where the foreign State is sued for acts accomplished by it in the exercise of its sovereign rights. But should the exemption from jurisdiction be raised to an absolute immunity attaching to the very person of the foreign State, irrespective of the intrinsic nature of its acts, and incapable of being lost except by that State's express or tacit consent? Or should we, on the contrary, regard the immunity as limited and applying only to acts which are true manifestations of sovereign power? If we accept the first hypothesis, are we to consider as cases of tacit waiver: actions *in rem*, including actions for possession, concerning immovable or movable property held by the foreign State which is the defendant; cross actions brought against foreign Governments by individuals whom such Governments are suing; actions relating to a commercial or industrial establishment worked by a State or to a railway exploited in a foreign State with which the State in question has concluded a convention regarding railway transport; actions based on the foreign State's capacity of heir to an inheritance or beneficiary of a legacy within the territory; or, finally, actions for damages for a *tort* or *quasi-tort* committed in the territory?

But if we adopt the contrary standpoint, how can we draw a scientific and clear distinction between acts of sovereignty and ordinary business transactions? By what method can the foreign State be brought to court, or how can it be compelled to carry out judgments delivered against it if the courts do not allow execution to be levied upon its property?

VI. *Conclusion.* — A. It is unanimously admitted that the courts of one State have no jurisdiction over another State when the foreign State is sued for acts accomplished by it in the exercise of its sovereign rights.

B. Apart from this case, the opinion of writers and experts in the various countries is divided.

(a) Some hold that absolute immunity from jurisdiction attaches to the very person of the foreign State; it exists independently of the intrinsic nature of the acts done and can only be lost by express or tacit waiver by the State concerned.

But in this case, are we, or are we not, to consider as cases of tacit waiver the following kinds of action:

1. Actions *in rem*, including actions for possession, concerning immovable or movable property held by the foreign State which is the defendant;
2. Cross actions brought against foreign Governments by individuals whom such Governments are suing;
3. Actions relating to a commercial or industrial establishment worked by a State or to a railway exploited in a foreign State with which the State in question has concluded a convention regarding railway transport;
4. Actions based on the foreign State's capacity of heir to an inheritance or beneficiary of a legacy within the territory;
5. Actions for damages for a *tort* or *quasi-tort* committed in the territory?

(b) Those who are most opposed to absolute immunity from jurisdiction say that such immunity only applies to acts which are true manifestations of sovereign authority.

But, if so, how can we draw any scientific and clear distinction between acts of sovereignty and other acts?

C. There can be no doubt that since the last century the activities of the State in the economic, financial and industrial spheres have developed to such an extent as to render it an increasingly common occurrence for it to come into contact with private individuals, particularly in connection with large undertakings.

In these circumstances it might be just to recognise that there are cases in which acts done by a foreign State and leading to a dispute ought to be treated by the law as acts of a private individual.

Working on these lines, certain lawyers and judges have endeavoured to build up a new legal theory to provide what they hold to be a more rational solution for difficulties which are becoming greater every day.

At the present time, however, it would be hard to extract from the above tendency any definite or precise conclusion which could be used as the basis for a uniform arrangement to be concluded between the Powers.

Rome, October 11th, 1926.

(Signed) M. MATSUDA,
Rapporteur.

OBSERVATIONS BY PROFESSOR GIULIO DIENA.

At the end of August, His Excellency M. Matsuda was good enough to send me, as a member of the Sub-Committee on this subject, his report, accompanied by a courteous and friendly letter.

I felt it my duty to study this report immediately with the greatest care, and it has given me much pleasure to see that M. Matsuda has adopted the excellent course of examining the problem from all points of view.

M. Matsuda's report is characterised by the absolute impartiality with which he states and weighs the various shades of doctrine and the many solutions adopted in different countries. I therefore think that this report, being of so highly objective a character, should constitute an excellent basis for the discussions of our Committee.

I can only congratulate the Rapporteur and thank him — at any rate personally — for his valuable contribution to the question.

Only with regard to the final conclusion of M. Matsuda's report do I feel bound to offer certain comments.

"In these circumstances", the Rapporteur observes, "it might be just to recognise that there are cases in which acts done by a foreign State and leading to a dispute ought to be treated by the law as acts of a private individual.

"Working on these lines, certain lawyers and judges have endeavoured to build up a new legal theory to provide what they hold to be a more rational solution for difficulties which are becoming greater every day.

"At the present time, however, it would be hard to extract from the above tendency any definite or precise conclusion which could be used as the basis for a uniform arrangement to be concluded between the Powers."

Were this merely an academic discussion, I might perhaps, with certain reservations, agree with the Rapporteur's views, but I fear that, in our Committee, these conclusions may contain a hidden danger. We should remember that we are at present engaged solely in

drawing up a list of questions regarding which it would be *desirable and realisable* to reach an international agreement. M. Matsuda's report clearly shows that an agreement on the question now under consideration would be desirable; but his report may give the impression that such an agreement may not be realisable. In that case a further conclusion might be drawn from his own conclusion — that it would be better to eliminate the question itself from the list which it is the duty of our Committee to draw up. I fancy — at any rate, I hope — that this is not the intention of our eminent Rapporteur; but I think it is better to make the point clear and state my reasons.

In his conscientious study of the question in its present state, M. Matsuda has shown that even those who are agreed that *in principle* all States should be free from the jurisdiction of a foreign State admit that it is logical — apart from acts of sovereignty — to allow certain exceptions to this principle.

Now, in my opinion, these exceptions are the portal beyond which there opens out a vista of possible agreements between several States on the question now under review.

In very recent Italian practice, there are certain decisions which can be quoted in support of this opinion. A few months ago, the Italian Cour de Cassation had in two instances occasion to deliver judgment (all sections meeting together) on the point we are now considering, in decisions dated respectively June 12th, 1925 (*Rivista di Diritto Internazionale*, 1926, page 249), and March 13th, 1926 (*Rivista di Diritto Internazionale*, 1926, page 252).

The second decision is the more important from the point of view of doctrine, for it quite explicitly lays down that a foreign State, *in the matter of relations at private law*, is subject to the jurisdiction of the Italian Courts in the same way as individuals of foreign nationality. But it is not his decision which need occupy our attention for the present, because it does not seem likely to facilitate an agreement between Italy and the States which, on this point, adopt an opposite policy.

The other decision of the Italian Supreme Court on June 12th, 1925, is far less categorical and better calculated to serve as an indication of the path by which international agreement may be reached. In this decision, the court duly recognised that, according to a widely admitted doctrine, the courts of one State have not *in principle* any jurisdiction over a foreign State, though, the decision added, the same doctrine admits that this rule is not absolute, since it allows exceptions — for instance, when the foreign State itself waives the immunity from jurisdiction. The Court then pointed out that a foreign State renounces this immunity not only when it comes forward as a plaintiff in the municipal courts but also when it accomplishes acts by which it engages in trade or in industry on Italian territory. On this ground, the Court held that Italian judicial authorities possessed jurisdiction over the State of Russia, having come to the conclusion that the latter, through its agents, was engaging in trade in Italian territory.

I cannot, of course, mention all the cases in which we should endeavour to agree to allow — if only as an exception — the jurisdiction of municipal courts over foreign States. In this connection I can only refer to the excellent and very judicious proposals and suggestions contained in M. Matsuda's report. I would merely point out that the possibility of international agreements on this subject is proved by the fact that one is already in existence¹.

Quite recently — on April 10th, 1926, to be precise — the text of a collective convention for the unification of certain rules with regard to State-owned vessels was signed at Brussels. Whereas Article 1 of this convention makes States possessing or operating vessels for the transport of cargo and passengers subject to the same rules, as regards responsibility, and the same obligations as those incurred by privately owned vessels, Article 2 is worded as follows :

“ As regards these responsibilities and obligations, *the rules concerning the competence of the courts, actions at law and procedure*, shall be the same as for merchant vessels owned by private persons and for private cargoes and their owners. ”

This provision could not have been adopted had there been invariable and insuperable difficulties in the way of serving a writ on a foreign State.

A judgment properly delivered loses none of its legal and moral force, even if some difficulty is encountered in having it executed. It is quite conceivable, moreover, that it may be lawful to levy execution on the property which a State possesses abroad if the property in question is not used for the public service.

True, it is occasionally — in fact, often — difficult to draw a clear distinction between acts done by a State as a sovereign power and acts accomplished by it in a private capacity. But difficulties of this nature are often encountered in international law, and the fact does not of itself warrant the elimination of the distinction.

It is, for example, generally recognised that consular agents are not subject to the local jurisdiction as regards acts accomplished in the exercise of their duties, but that they do

¹ Cf. Article 53, paragraph 2, of the International Convention of Berne of October 14th, 1890, on the Transport of Goods by Rail.

not enjoy the same prerogative in respect of acts done by them in a private capacity. Does not this discrimination also cause difficulties in practice? It certainly does, but that does not prevent general agreement to admit the rule.

It has also been urged that the principle of immunity from municipal jurisdiction is founded, in the case of States, on international custom. Even if there were no doubt as to the existence of this alleged custom, that should not be an absolute obstacle to our making a suggestion which, if adopted, would constitute progress in positive international law. (We should not forget that our Committee has been set up to work for the *progressive* codification of international law.)

But is it absolutely certain that such a custom really exists? If it existed, Italian and Belgian legal practice would be an unfailing source of diplomatic incidents. In actual fact, however, unless I am misinformed, such incidents occur very rarely, if at all.

In proof of the existence of this custom, certain Italian jurists, desiring to combat the legal practice of their own country, have quoted Article 281 of the Treaty of Versailles and Article 233 of the Treaty of Saint Germain, which run as follows :

“ If the German (or Austrian) Government engages in international trade, it shall not in respect thereof have or be deemed to have any rights, privileges or immunities of sovereignty. ”

The jurists in question have asserted that this provision would have been unnecessary if any custom has existed to the contrary. I do not, however, think that this line of reasoning is sound. It seems to me that the true explanation is a simpler one. It is enough to point out that, since we are faced with an international rule (that of immunity) which is quite nebulous, the authors of the Treaty of Peace availed themselves of the opportunity offered of adopting, as regards the relations of one of the contracting States with the other parties, a thoroughly clear and definite rule, in favour of the latter parties for whom the question is not in any way prejudged by the Treaty.

But apart from the Treaties of Peace, in the making of which it happened that one of the contracting parties had no opportunity to discuss in full freedom all the clauses which were adopted, it will be found that quite similar rules were embodied in the Treaties concluded by Russia after the establishment of the Soviet Government, and it certainly cannot be alleged that these Treaties were *imposed* on Russia.

For instance, in Article 13 of the Treaty of May 6th, 1921, between Germany and Russia it is laid down that, “ As regards transactions and relations of private law concluded or established in Germany and the economic consequences thereof, the Russian Government submits to the jurisdiction of, and to measures of execution by, the German judicial authorities so far as regards relations resulting from contracts made with German nationals, firms or corporations ”. Article 12 of the Austro-Russian Agreement of December 7th, 1921, is couched in the same terms.

In Article 3 of the Italo-Russian Agreement of February 7th, 1924, the text is not so explicit as those mentioned above, but it can, nevertheless, be interpreted in the same manner. According to this article, the Government of the Union assumes responsibility for all business transacted by its commercial representatives in Italy and merely stipulates that the goods concerned in these transactions shall not be subject to judicial measures of a *preventive* character. Thus, the Russian Government has implicitly admitted that, apart from the above, the Italian courts may exercise jurisdiction over it with regard to business transactions carried out by it in Italy. This is also, as we have pointed out above, the result reached by the Italian judicial authorities.

I therefore think we can conclude (and I hope that our distinguished Rapporteur will agree) that the question of the competence of courts with regard to foreign States should be regarded by our Committee as a question concerning which an international agreement is not only desirable but also realisable.

Milan, October 1st, 1926.

(Signed) Giulio DIENA.

Annex II.

REPLIES FROM GOVERNMENTS TO QUESTIONNAIRES Nos. 8 to II.

LIST OF GOVERNMENTS HAVING REPLIED TO THE QUESTIONNAIRES.

QUESTIONNAIRE 8. — COMMUNICATION OF JUDICIAL ACTS.

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Australia	58	Germany	69	Roumania	79
Austria	58	Hungary	70	Salvador	80
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QUESTIONNAIRE 9. — LEGAL POSITION AND FUNCTIONS OF CONSULS.

Australia	58	Germany	69	Portugal	78
Austria	58	Hungary	70	Roumania	79
Brazil	61	India	73	Salvador	80
British Empire	63	Japan	74	South Africa	80
Denmark	64	Latvia	75	Spain	80
Egypt	65	Netherlands	76	Sweden	83
Estonia	65	New Zealand	76	Switzerland	86
Finland	67	Norway	77	United States of	
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QUESTIONNAIRE 10. — REVISION OF THE CLASSIFICATION OF DIPLOMATIC AGENTS.

Australia	58	Germany	69	Roumania	79
Austria	58	Hungary	70	Salvador	80
Belgium	60	India	73	South Africa	80
Brazil	61	Japan	74	Spain	80
British Empire	63	Latvia	75	Sweden	83
Denmark	64	Netherlands	76	Switzerland	86
Egypt	65	New Zealand	76	United States of	
Estonia	65	Norway	77	America	87
Finland	67	Poland	78		
France	68	Portugal	78		

QUESTIONNAIRE 11. — COMPETENCE OF THE COURTS IN REGARD TO FOREIGN STATES.

Australia	58	France	68	Roumania	79
Austria	58	Germany	69	Salvador	80
Belgium	60	Hungary	70	South Africa	80
Brazil	61	India	73	Sweden	83
British Empire	63	Japan	74	Switzerland	87
Denmark	64	Latvia	75	United States of	
Egypt	65	Netherlands	76	America	87
Estonia	65	New Zealand	76		
Finland	67	Poland	78		

C.P.D.I. 107 (a).

Australia.

QUESTIONNAIRES Nos. 8 TO 11.

Letter of January 11th, 1928.

In reply to your communication of June 7th last, relative to the codification of international law, and in confirmation of my telegram to you of to-day's date, I have to inform you that His Majesty's Government in the Commonwealth of Australia have given careful consideration to the subjects therein set out, namely:

- No. 8. Communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters.
- No. 9. Legal position and functions of consuls.
- No. 10. Revision of the classification of diplomatic agents.
- No. 11. Competence of courts in regard to foreign States.

In respect to the communication of judicial and extra-judicial acts (No. 8), the Commonwealth Government are of the opinion that this matter is one which may be more conveniently dealt with by special agreement with those States with which some such arrangement is felt to be necessary than by a general convention.

So far as the question of the legal position and functions of consuls is concerned (No. 9), the Commonwealth Government consider that this subject is one that hardly lends itself at the present time to regulation by a general international convention. In coming to this conclusion, the Commonwealth Government have been guided by the fact that in Australia, where at present there are no diplomatic missions, consuls-general and consuls often transact business with the Government which in countries where diplomatic missions exist is normally dealt with by the latter. This situation alone is sufficient to make it difficult, so far as the Commonwealth is concerned, to regulate the legal position and functions of consuls by a general convention.

With regard to the revision of the classification of diplomatic agents (No. 10), the Commonwealth Government have no observations to make on this matter.

The question of the competence of courts in regard to foreign States (No. 11) is one which, in the opinion of the Commonwealth Government, could with advantage be considered by an international conference.

(Signed) C. W. C. MARR.

Austria.

QUESTIONNAIRES Nos. 8, 9, 10 AND 11.

Letter of January 9th, 1928.

[*Translation.*]

With reference to your circular letter C.L.57.1927.V of June 7th, 1927, concerning the Progressive Codification of International Law, I have the honour to transmit to you herewith the observations of the Federal Government with regard to questionnaires:

- No. 8 (Communication of judicial and extra-judicial acts and letters rogatory in penal matters).
- No. 9 (Legal position of consuls).
- No. 10 (Revision of the classification of diplomatic agents).
- No. 11 (Competence of courts in regard to foreign States).

(Signed) PETER.

Questionnaire No. 8.

The Federal Government shares the Sub-Committee's view that it is quite possible to define, in a general convention, rules for the communication of judicial and extra-judicial acts and letters rogatory in penal matters.

The text of the draft Convention, as amended by the Committee of Experts, suggests, however, to the Federal Government, the following observations:

Ad Article 1. — In various countries, including Austria, judicial co-operation in penal matters is refused, in the case of nationals, when the accused is not at the immediate disposal of the applicant State. The Federal Government is therefore of opinion that it would be desirable to insert an express declaration of this principle in Article 1.

The term "political offences" which occurs in Articles 1, 2 and 3 should obviously include, in addition to purely political offences, other offences concomitant therewith. The Federal Government believes that this is implied in the draft as it stands; but, if the matter is open to any doubt, concomitant offences should be expressly mentioned in these Articles.

It should be definitely specified that the State applied to is alone entitled to decide whether the offence complained of is to be regarded as a political or concomitant offence. Article 1 of the amended draft establishes this competence clearly. In view, however, of certain comments on this point in document C.201.M.75.1927.V, the Federal Government desires to state its opinion that this is a question which does not lend itself to arbitration.

The Federal Government holds that judicial co-operation in penal matters should only be stipulated in the case of offences for which, under the laws of the State applied to, the Courts of that State can inflict punishment. Only in special circumstances do States, in ordinary international practice, afford each other assistance in the case of acts punishable under administrative law. This principle should be definitely laid down in the text of the Convention. The State applied to might, for instance, be expressly authorised to refuse assistance in the case of an offence not punishable under its penal laws. The result would be the same if the original text of Article 1 were maintained, wherein it is specified that co-operation may be refused if the penal proceedings for which it is to be rendered do not involve an obligation to grant extradition. These amendments proposed by the Federal Government would not, of course, preclude voluntary co-operation in certain cases and for special reasons.

Ad Article 2, paragraph 4. — The list of reasons for which the State applied to may refuse to serve a writ of summons should be modified in the light of the proposed amendments to Article 1.

The Federal Government takes the provision in paragraph 2 — "Each contracting State may declare that, subject to reciprocity, it will grant the temporary surrender of persons in custody who are required to appear" as witnesses or experts "before the court of the State making the requisition"—to mean that such a declaration once made by any contracting State which desires to avail itself of this opportunity shall be binding for the future also.

Ad Article 3. — The first paragraph of this Article does not make it clear whether the liability of an object to seizure, destruction or confiscation is to be determined by the law of the applicant country or by that of the country applied to.

Ad Article 4. — The Federal Government would welcome the re-introduction, if possible, of Article 4 in its original form.

Ad Article 5. — This Article provides that, in the first instance, judicial co-operation between States shall be sought through the diplomatic channel. For the repression of international crime, however, it would, in the opinion of the Federal Government, be desirable, as suggested on page 5 of document C.201.M.75.1927.V, expressly to authorise direct communication between the judicial authorities of the contracting States in the case of enquiries and prosecutions connected with extraditable offences.

Ad Articles 5 and 7. — The Federal Government is of opinion that it would be desirable to insert in both of these Articles a reservation to the effect that the provisions of these Articles shall apply only when the various countries have not, under special agreements, accorded each other wider facilities.

Instead of making the above reservations, a new Article might possibly be inserted containing a general reservation in favour of any provisions in special agreements which grant wider facilities for judicial co-operation in penal matters.

Finally, the Federal Government ventures to point out that, during the last few years, the Austrian Republic concluded international treaties on judicial co-operation in penal matters with Italy on April 6th, 1922 (published in the *B. G. Bl.*, No. 61, ex. 1924), and with Norway on December 17th, 1925 (published in the *B. G. Bl.* No. 135, ex. 1926). These treaties, like the Treaty on Judicial Co-operation concluded with Poland on March 19th, 1924 (published in the *B. G. Bl.* No. 226, ex. 1926), define in considerable detail the reasons for which judicial co-operation in penal matters may be refused.

Questionnaire No. 9.

The Federal Government is of opinion that the regulation of this question by means of an international agreement is desirable and realisable in the near future.

The Federal Government agrees in principle with the conclusions reached on this subject by the Committee of Experts for the Progressive Codification of International Law as set out in document C.202.M.76.1927.V.

The Federal Government therefore also agrees with the proposed rule that only when the exequatur has been granted may the consul communicate with the authorities and, generally speaking, perform his duties. It is, however, of opinion that this rule should not preclude Governments from provisionally authorising foreign consuls to perform their duties or from requesting another Government to allow their own consuls to perform their duties provisionally.

Questionnaire No. 10.

The Federal Government shares the view expressed by the Committee of Experts for the Progressive Codification of International Law that, owing to constitutional changes in the nineteenth and twentieth centuries, the conception of the representative character which was accorded to ambassadors, legates and nuncios under the Regulation of Vienna, March 19th, 1815, is no longer justified.

The Federal Government has no objection to the institution of a single class of diplomatic agents in place of ambassadors, legates, nuncios, envoys and ministers resident. It fears, however, that there will be some difficulty in obtaining general consent to this principle.

Questionnaire No. II.

The Federal Government believes that it will be difficult to discover any scientific criterion by which it would be possible to differentiate clearly between acts of rightful sovereignty and the acts which a State may perform in the conduct of a commercial or industrial enterprise. The Federal Government therefore agrees with the Committee of Experts that serious difficulties would have to be overcome before this question could be settled by international agreement.

Belgium.

QUESTIONNAIRE No. 10.

Letter of August 20th, 1927.

[*Translation.*]

The League of Nations Committee of Experts for the Progressive Codification of International Law, in its Questionnaire No. 10 sent out to the various Governments, put the following question: "Is it desirable to revise the classification of diplomatic agents made by the Congresses of Vienna and Aix-la-Chapelle? In the affirmative case, to what extent should the existing classes of diplomatic agents be amalgamated, and should each State be recognised to have the right, in so far as existing differences of class remain, to determine at its discretion in what class its agents should be ranked?"

The Belgian Government, having considered the question, is of opinion that the classification established by Article 1 of the Vienna Protocol should stand. In the principal capitals the rank of ambassador is a necessity; and another argument in its favour is that some countries may desire to confer a greater lustre on their diplomatic relations in order to mark such special bonds as there may be between them on account of historic relations, racial affinities, geographical position or a multiplicity of common interests.

That ambassadors should have privileges as regards precedence — the only privileges they now possess — is in no way contrary to the principle that all States are legally equal and that their representatives should therefore be placed on an equal footing; there is nothing to prevent minor Powers from appointing ambassadors; and indeed several of them have done so.

For the class of ministers resident, established by the Protocol of Aix-la-Chapelle, there seems less justification. In any case, however, this class is tending to disappear, a considerable number of countries having already abolished this rank in their diplomatic services. Such is the case in Belgium, where it was abolished at the beginning of 1914.

Rather than revise the Act of Aix-la-Chapelle on this point, it would, in our opinion, be preferable to allow it to fall into desuetude.

The Belgian Government accordingly considers that there is no decisive reason for making any change in the traditional classification of diplomatic agents.

(Communicated by the Ministry for Foreign Affairs.)

QUESTIONNAIRE No. 11.

Letter of July 23rd, 1927.

[*Translation.*]

You were so good as to send me Questionnaire No. 11, adopted by the Committee of Experts for the Progressive Codification of International Law and relating to the competence of the courts in regard to foreign States. In that document the Committee expresses a wish to know whether the various Governments consider that this question could be examined with a view to the conclusion of a general convention which, if necessary, could be completed by agreements between pairs of States.

I have the honour to inform you that the Belgian Government is of opinion that this question could with advantage form the subject of international agreements. I would add, however, that, generally speaking, the Belgian Government, in questions of this kind, prefers bilateral agreements to multilateral conventions.

(Signed) HYMANS.

Brazil.

QUESTIONNAIRES Nos. 8, 9, 10 AND 11.

Letter of December 12th, 1927.

[*Translation.*]

I have the honour to acknowledge receipt of your letter C.L.57.1927.V dated June 7th last, in which you were good enough to ask for the Brazilian Government's opinion as to whether the regulation of the subjects treated in Questionnaires Nos. 8, 9, 10 and 11 of the Committee of Experts for the Progressive Codification of International Law is desirable and realisable in the near future.

2. The Brazilian Government is not yet in a position to give you its views on all these questionnaires, which are now under consideration by the competent departments.

3. Nevertheless, I have the honour to forward for your information the personal opinion of Professor Clovis Bevilacqua, Legal Adviser to the Ministry of Foreign Affairs and member of the Permanent Court of Arbitration at The Hague, with regard to the said questionnaires. This opinion is attached.

(Signed) O. MANGABEIRA.

OPINION OF PROFESSOR CLOVIS BEVILACQUA.

[*Translation.*]

The subjects on which the Committee of Experts on the Progressive Codification of International Law, appointed by the League of Nations, desire the Brazilian Government's opinion are as follows:

- (a) Communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters.
- (b) Legal position and functions of consuls.
- (c) Revision of the classification of diplomatic agents.
- (d) Competence of the courts in regard to foreign States.

I should like to submit the following observations with regard to these subjects.

- (a) *Communication of Judicial and Extra-Judicial Acts in Penal Matters and Letters Rogatory in Penal Matters.*

M. SCHÜCKING's report on this subject is comprehensive and full of available information which amply justifies the conclusions reached by him and mostly accepted by the Committee. The draft convention which embodies the result of these investigations in the form of contractual rules merits, generally speaking, our full approval. We should like, however, to suggest a few slight modifications which relate more to the form than to the substance of the proposed provisions.

Articles 1, 2 and 3. — Under these articles the judicial assistance applied for will be refused, or may be refused, if the State to which application is made considers it incompatible with its sovereignty or dangerous to its security. In many cases, however, the assistance required will not have this character and yet will have to be refused by the State to which application is made. This will be the case whenever the assistance requested is incompatible with its constitution. It would therefore seem better, instead of the formula proposed in the draft convention—which, moreover, is somewhat vague and could be understood in various ways by the contracting parties in the absence of a definition—to make the refusal dependent not on infringements of sovereignty or attacks against the security of the State but on breaches of the constitutional law of the State or other laws having the same character.

The notion of constitutional law is wider and more definite than that of sovereignty and security if we consider the acts which are liable to transgress against the legal entity constituted by the State.

Another reason for refusing legal assistance is that the crime has a political character. It would be advisable also to exclude purely military crimes, although in the case of deserters from warships their capture by order of the local authorities on receipt of a written request from the captain or consul may be considered admissible.

- (b) *Legal Position and Functions of Consuls.*

The question of the determination of the functions of consuls was left on one side, although it would promote the harmony of international relations if it was regulated by convention. The Commission of Jurists which met this year at Rio de Janeiro drew up a number of general rules which might figure in agreements with countries in other continents than America, as they were not conceived with a view to the special situation of the countries which the jurists represented.

As regards the legal position, I consider the principles adopted by the Committee to be deserving of our support.

In the draft convention drawn up by the Commission of Jurists which met at Rio de Janeiro there are a number of clauses which might with advantage be added to the Committee's draft. Such are Articles 16 and 17 of Draft VIII:

" *Article 16.* — Consuls may only be arrested or detained for a serious crime.

" *Article 17.* — Consuls shall not be obliged to appear as witnesses before the courts of the State in which they exercise their functions. In conformity with the *lex loci* they must give their evidence in the consulate building or send it in writing to the authority appointed for this purpose. They must, however, give their evidence in person in the courts in criminal cases in which the accused are entitled to summon them as witnesses for the defence. If the personal appearance of the consul is indispensable, the Government, in case of refusal, may have recourse to the diplomatic channel."

It should also be stated that no judicial or administrative official may enter the consulate building or the premises in which the archives are kept without the consul's consent, and that the latter shall be obliged, on a simple request from the local authority, to give up accused or condemned persons taking refuge in the consulate.

Articles 20 and 22 of the draft prepared by the Commission of American Jurists contain provisions to this effect.

Consuls may not grant asylum; but all possible steps must be taken to ensure that the consulate buildings are treated with respect.

(c) *Revision of the Classification of Diplomatic Agents.*

The Rapporteur on this subject (M. Gustavo GUERRERO) considers that all diplomatic agents, whether ambassadors, legates, nuncios, or plenipotentiary or resident ministers, should be included in the same class and under the same designation. There should only be *ambassadors*, all other classes of diplomatic agents being abolished except *chargés d'affaires*.

It is quite true that the reasons for which a distinction has hitherto been made between the three classes of diplomatic agents no longer exist; but the great modern democracies, as M. CRUCHAGA points out (*Derecho internacional*, I, n. 593), do not regard the precedence granted to ambassadors over ministers plenipotentiary as incompatible with republican principles.

M. GUERRERO's proposal seems, however, to be more in keeping with the equality between States and with modern democratic tendencies.

(d) *Competence of the Courts in regard to Foreign States.*

M. MATSUDA's exhaustive study and M. DIENA's observations may be regarded as the last word on this subject.

The true doctrine — that which respects the sovereignty and independence of States — declares them exempt from the jurisdiction of foreign courts. This principle expresses the idea that jurisdiction is a manifestation of sovereignty, and that its authority extends only up to the point where the sovereignty of another State begins.

It is not contrary to the sovereignty of a State, however, for the latter explicitly or tacitly to accept the jurisdiction of the courts of another country in a case of a private nature; for what is incompatible with sovereignty is compulsory submission to an order emanating from another power and not the voluntary acceptance of a decision.

Hence, the ordinary courts are empowered to decide questions to which a foreign State is a party: (1) when the latter expressly renounces the right to object to the jurisdiction of these courts; (2) when this State commences a legal action before one of these courts, which implies that it accepts the court's jurisdiction; (3) when it owns immovable property in the country and the question relates to this property; (4) when, on being summoned to appear, it does not put forward the plea that the court has no jurisdiction (*declinatoria fori*), since, by accepting a legal summons without objecting to the court's jurisdiction, it signifies that it will accept the court's decision.

Do the conditions of modern life demand the addition of another case of tacit renunciation of a State's jurisdictional immunity in the domain we are considering, namely, when one State engages in commercial or industrial operations in the territory of another? I do not think so. There is no necessity for going any further than the limits traced above.

On the basis indicated, it is possible and desirable to draw up conventions to give concrete form to the aspirations of international justice and to dispel the uncertainties which exist in this domain.

I may add that the Brazilian constitution makes provision for the case of foreign States desiring to have recourse to the Federal courts.

Rio de Janeiro, November 26th, 1927.

(Signed) Clovis BEVILAQUA.

British Empire.

QUESTIONNAIRE No. 8.

Letter of January 14th, 1928.

With reference to your letter (C.L.57.1927.V) of June 7th last, I am directed by Secretary Sir Austen Chamberlain to inform you that His Majesty's Government in Great Britain consider that question No. 8 is not suitable for treatment by a general convention in so far as this country is concerned.

2. His Majesty's Government in Great Britain prefer, in view of the systems of law in force in England and Scotland, that, so far as they are concerned, questions concerning the communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters should be dealt with by direct arrangement, where necessary, between individual States.

(Signed) G. R. WARNER.

QUESTIONNAIRE No. 9.

Letter of December 31st, 1927.

With reference to your letter (C.L.57.1927.V) of June 7th last, I am directed by Secretary Sir Austen Chamberlain to inform you that His Majesty's Government in Great Britain consider that it is not desirable that questions affecting the legal position and functions of consuls should form the subject of a general convention.

(Signed) G. R. WARNER.

QUESTIONNAIRE No. 10.

Letter of July 22nd, 1927.

I am directed by Secretary Sir Austen Chamberlain to acknowledge the receipt of your C.L.57.1927.V of the 7th ultimo enclosing a copy of a letter from the Chairman of the Committee of Experts for the Progressive Codification of International Law, together with the questionnaires and the report referred to in the latter letter. In your letter you asked to be furnished with the opinion of His Majesty's Government whether the regulation by international agreement of the subjects treated in these questionnaires is desirable and realisable in the near future.

2. In reply, I am to inform you, as regards question No. 10, that His Majesty's Government in Great Britain do not consider it desirable that the present classification of diplomatic agents should be revised.

(Signed) F. E. F. ADAM.

QUESTIONNAIRE No. 11.

Letter of January 14th, 1928.

With reference to your letter (C.L.57.1927.V) of June 7th last, I am directed by Secretary Sir Austen Chamberlain to inform you that His Majesty's Government in Great Britain consider the question of the competence of the courts in regard to foreign States to be suitable for consideration by an international conference.

(Signed) G. R. WARNER.

Denmark.

QUESTIONNAIRE No. 8.

Letter of January 17th, 1928.

[Translation.]

In your C.L.57.1927.V of June 7th last to the Danish Ministry for Foreign Affairs at Copenhagen you were good enough to communicate Questionnaire No. 8 (document C.201.M.75.1927.V) prepared by the Committee of Experts for the Progressive Codification of International Law with regard to the following point:

“ Is it possible to establish, by means of a general convention, provisions concerning the communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters ? ”

and requested the various Governments to inform it whether they consider that this question could advantageously be examined with a view to the conclusion of a general convention which, if necessary, could be completed by particular agreements between groups or pairs of States.

In reply, the Danish Government would request you to acquaint the Committee of Experts with its opinion that a uniform regulation of this problem by international agreement would be desirable. The Danish Government is well aware of the difficulties which will have to be overcome; it would, however, welcome the continuation of the enquiry into this problem.

It may be added that up to the present practically no case of this kind has come before the Danish courts.

(Signed) Gustav RASMUSSEN.

Egypt.

QUESTIONNAIRES Nos. 8, 9, 10 AND 11.

Letter of December 21st, 1927.

[*Translation.*]

Further to my letter No. 87136/I of June 29th, 1927, and with reference to the four new questionnaires drawn up by the Committee of Experts for the Progressive Codification of International Law, I have the honour to inform you of the Egyptian Government's opinion on those questions:

Questionnaire No. 8.

The Egyptian Government considers that the settlement of this question by international agreement is both desirable and comparatively easy of accomplishment.

From the special point of view of Egypt, however, it is to be observed that such obligations as might derive from an international convention should be accompanied by certain reservations which would remain operative so long as, on account of the privileges conferred by the Capitulations, the Egyptian Government remains unable to exercise unrestricted penal jurisdiction over certain classes of aliens.

Questionnaire No. 9.

The Egyptian Government likewise agrees as to the expediency and the possibility of settling the legal position of consuls by international agreement; it is, indeed, of opinion that this question should be the first to be dealt with by the Experts.

Questionnaire No. 10.

The Egyptian Government must reserve its reply on this subject.

Questionnaire No. 11.

The Egyptian Government agrees with the Committee of Experts that it is desirable that this question should be investigated with a view to settlement by international agreement.

At the same time it would appear from the Sub-Committee's report, appended to the questionnaire, that the case of State-owned merchant vessels, having already been settled by a collective Convention signed at Brussels on August 10th, 1926, would be excluded. If such is actually the intention of the Committee of Experts, the investigations to be made would be limited to other cases in which the competence of foreign courts might be admitted.

I would take this opportunity of thanking you for the report of the Committee of Experts on the effect of the most-favoured-nation clause, which was forwarded with your letter above mentioned.

(Signed) MORCOS HANNA.

Estonia.

QUESTIONNAIRES Nos. 8, 9, 10 AND 11.

Letter of January 9th, 1928.

[*Translation.*]

With reference to your C.L.57.1927.V and to my letter No. 77. R. of June 17th, 1927, I have the honour to communicate herewith the observations of the Estonian Government on Questionnaires Nos. 8-11 of the Committee of Experts for the Codification of International Law.

and requested the various Governments to inform it whether they consider that this question could advantageously be examined with a view to the conclusion of a general convention which, if necessary, could be completed by particular agreements between groups or pairs of States.

In reply, the Danish Government would request you to acquaint the Committee of Experts with its opinion that a uniform regulation of this problem by international agreement would be desirable. The Danish Government is well aware of the difficulties which will have to be overcome; it would, however, welcome the continuation of the enquiry into this problem.

It may be added that up to the present practically no case of this kind has come before the Danish courts.

(Signed) Gustav RASMUSSEN.

Egypt.

QUESTIONNAIRES Nos. 8, 9, 10 AND 11.

Letter of December 21st, 1927.

[Translation.]

Further to my letter No. 87136/1 of June 29th, 1927, and with reference to the four new questionnaires drawn up by the Committee of Experts for the Progressive Codification of International Law, I have the honour to inform you of the Egyptian Government's opinion on those questions:

Questionnaire No. 8.

The Egyptian Government considers that the settlement of this question by international agreement is both desirable and comparatively easy of accomplishment.

From the special point of view of Egypt, however, it is to be observed that such obligations as might derive from an international convention should be accompanied by certain reservations which would remain operative so long as, on account of the privileges conferred by the Capitulations, the Egyptian Government remains unable to exercise unrestricted penal jurisdiction over certain classes of aliens.

Questionnaire No. 9.

The Egyptian Government likewise agrees as to the expediency and the possibility of settling the legal position of consuls by international agreement; it is, indeed, of opinion that this question should be the first to be dealt with by the Experts.

Questionnaire No. 10.

The Egyptian Government must reserve its reply on this subject.

Questionnaire No. 11.

The Egyptian Government agrees with the Committee of Experts that it is desirable that this question should be investigated with a view to settlement by international agreement.

At the same time it would appear from the Sub-Committee's report, appended to the questionnaire, that the case of State-owned merchant vessels, having already been settled by a collective Convention signed at Brussels on August 10th, 1926, would be excluded. If such is actually the intention of the Committee of Experts, the investigations to be made would be limited to other cases in which the competence of foreign courts might be admitted.

I would take this opportunity of thanking you for the report of the Committee of Experts on the effect of the most-favoured-nation clause, which was forwarded with your letter above mentioned.

(Signed) Morcos HANNA.

Estonia.

QUESTIONNAIRES Nos. 8, 9, 10 AND 11.

Letter of January 9th, 1928.

[Translation.]

With reference to your C.L.57.1927.V and to my letter No. 77. R. of June 17th, 1927, I have the honour to communicate herewith the observations of the Estonian Government on Questionnaires Nos. 8-11 of the Committee of Experts for the Codification of International Law.

I should be grateful if, notwithstanding the fact that they have been received so late, you would kindly submit these observations to the Committee of Experts.

With regard to Questionnaire No. 8, the Estonian Government considers that the codification of rules for the communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters is not only desirable but quite realisable, and it entirely agrees in principle with the draft convention prepared by the eminent Rapporteur, Professor W. SCHÜCKING; and subsequently modified by the Committee. The Estonian Government would, however, venture to suggest one or two amendments and draw attention to certain provisions the text of which would not seem to be quite clear.

The Estonian Government would welcome the following additions to paragraph 3 of Article 2 of the draft:

“ The special position of the witness or expert as regards the jurisdiction of the foreign State shall be forfeited if, *notwithstanding the fact that he is perfectly free to do so*, he fails to leave the territory of that State within a reasonable time after having been heard. This time limit shall be fixed for him *beforehand* by the tribunal making the requisition. ”

That is to say, the Estonian Government would propose the insertion in this paragraph of the following words: “ notwithstanding the fact that he is perfectly free to do so ” and “ beforehand ”. As to the first suggestion, the Estonian Government feels that it would be very desirable to state quite clearly that the reasonable time referred to in this paragraph should not be held to have lapsed if the witness is, for reasons beyond his control, prevented from leaving the territory of the applicant State within the prescribed period. With regard to the second amendment, it seems necessary to specify that the period in question should be defined by the tribunal of the applicant State beforehand; the Estonian Government believes that this is the meaning implied in the text, though it is not expressly stated.

With regard to the next paragraph of this Article, the Estonian Government would be glad, before giving an opinion, to learn precisely what is meant in the draft Convention by the expression “ competent witness ” employed in (e) of this paragraph; is it merely a question of the juridical capacity of the witness or does it mean that the State applied to has the right to determine whether the witness cited in any particular case is “ competent ”, in the strict sense of the term, to give evidence ?

With regard to Article 6, the Estonian Government is of opinion that the expression “ sur le territoire de laquelle ces frais prennent naissance ” is not absolutely clear and might give rise to misunderstandings.

If, for instance, following on a request, the State applied to surrendered a number of objects the despatch of which might in certain cases occasion considerable expense, this State should not in all fairness be called upon to bear any part of the expense occasioned by the application. If, however, this article only refers to the actual costs of the legal proceedings, the Estonian Government agrees with the principle, but suggests that the article should be so drafted as to obviate all misunderstanding on this point.

With regard to the language to be used (Article 7) — or rather the language in which the translation should be drawn up — the Estonian Government would suggest the recognition of French as well as the official language of the party applied to, and would propose to add in paragraph 2, after the words “ of the party applied to ”, the words “ or in one of the official languages of the League of Nations ”.

Passing to Questionnaire No. 9, the Estonian Government agrees with the text of the conclusions amended as a result of discussion by the Committee, and it would only wish to offer one observation:

According to paragraph 6 of this text, exemption from direct taxation is to be accorded only to consuls *de carrière*. The Estonian Government holds that the question of the exemption of all consuls—*de carrière* or honorary—merits consideration, provided these consuls are nationals of the State which has appointed them and are not engaged in any trade, industry or profession in the country in which they exercise their functions. Similarly, it seems that mention should be made of another privilege generally accorded to consuls, namely, the right of placing their country's shield over the entrance to the consulate.

With regard to Questionnaire No. 10, the Estonian Government recognises that it would be desirable to revise the classification of diplomatic agents as defined by the Congresses of Vienna and Aix-la-Chapelle, and is quite prepared to accept the proposals submitted to the Committee by the Rapporteurs, M. J. G. GUERRERO and M. A. MASTNY.

As for the competence of courts in regard to foreign States, the Estonian Government agrees with Professor Giulio DIENA's final conclusions to the effect that the competence of courts in regard to foreign States is a matter regarding which an international agreement is not only desirable but realisable. Consequently, its reply to the question of principle submitted by the Committee of Experts for the consideration of the various Governments is in the affirmative.

(Communicated by the Ministry of Foreign Affairs.)

Finland.

QUESTIONNAIRES Nos. 8 TO XI.

Letter of February 21st, 1928.

[*Translation.*]

In your letter C.L.57.1927.V of June 7th, 1927, you asked me to inform you, in accordance with the questionnaires referred to therein, whether the Finnish Government considered, both with regard to the questions in general and the specific points raised in the questionnaires, that the regulation of these matters by international agreement would be desirable and realisable in the near future.

In reply, I have the honour to communicate to you herewith the opinion of the Finnish Government on these questions.

(Signed) PROCOPE.

I. *Communication of Judicial and Extra-Judicial Acts in Penal Matters and Letters Rogatory in Penal Matters.*

The Committee of Experts first considered whether the question of judicial co-operation in penal matters was so intimately connected with the law of extradition that, because the Committee had decided against codification of the latter, the former also would have to be abandoned. The Committee was strongly of opinion that this need not be so, pointing out that most cases of judicial co-operation in penal matters have, fundamentally, no connection with extradition.

The Finnish Government agrees with this view. It is of opinion that the objections raised against the codification of rules for judicial co-operation in penal matters are not conclusive, and that the practical advantages which would result from a collective agreement establishing the main principles of such co-operation would be so considerable that a serious effort ought certainly to be made to attain codification.

At the present time, of course, only such general principles could be codified; details would, in many instances, have to be settled in special conventions, particularly as between neighbouring States.

The Finnish Government does not propose to enter into a detailed examination of the two drafts attached to the report; it would merely state that it is quite prepared to adopt them as a basis for future discussions. It would also prefer to refrain from any comparison of the two drafts, and will — at this juncture — only make a few general observations.

It would perhaps be easier to secure a general agreement if, as in the original draft (Article 2), States were allowed to refuse to serve a summons when the subject of the criminal proceedings instituted in the applicant State did not constitute an extraditable offence in the State applied to.

It must, moreover, be recognised that the exception admitted in the modified draft Convention (Articles 2 and 3) is distinctly vague, being worded as follows: "if the State applied to considers that the summons is prejudicial to its sovereignty or security" (Article 2), and "if the State applied to considers it prejudicial to its sovereignty or security" (Article 3). The Finnish Government thinks it would be desirable to consider whether the other reservations, with certain alterations and additions if necessary, might not be so drafted as fully to meet the eventualities foreshadowed in the above clauses.

II. *Legal Position of Consuls.*

The general rules governing the position and prerogatives of consuls are clearly defined in the Sub-Committee's report. The Finnish Government has practically no objections to raise to the conclusions reached by the Committee; in particular, it agrees with the view that "consuls do not possess immunity from criminal jurisdiction", although naturally it would be possible to grant them this immunity under special Conventions. In its report, however, the Sub-Committee expresses the opinion that, "in the interests of the prestige of the (consular) career, the latter (honorary) class of consuls should no longer exist". The report also says that most of the countries in Europe have none but professional consuls.

This last statement is surely not in accordance with the facts; nor can the Finnish Government subscribe to the Committee's views with regard to honorary consuls. In any case, there are doubtless many countries which will insist on the necessity, or at least the desirability, of maintaining this class of consul, because an honorary consul may render considerable services to a foreign country unable to afford a professional consul in a town where trade or shipping interests nevertheless make it necessary for that country to possess some sort of consular representation.

III. *Revision of the Classification of Diplomatic Agents.*

The Finnish Government is of opinion that the Sub-Committee has submitted sound arguments in favour of simplifying the classification of diplomatic agents, and that it would be desirable to conclude a general convention on this subject.

• If the present distinction between ambassadors and ministers plenipotentiary were to be abolished, as suggested by the Sub-Committee, it would perhaps be preferable to adopt a single designation, "ambassador", for all diplomatic agents accredited to Heads of States. A further point in favour of this title is that it originally possessed a wider meaning than "diplomatic representative of the first class". In support of the Sub-Committee's views, it may further be noted that several States have raised Legations to the status of Embassies without this being regarded as an act affecting the whole community of nations and requiring, as such, the assent of all.

It should be borne in mind, however, that certain Powers, in spite of these considerations, are anxious to maintain the present classification. In other words, a certain practical difficulty exists. If there were no longer any difference between the foreign diplomatic agents accredited to the same Government — apart from the distinction caused by the inferior position of *chargés d'affaires* ("envoys" as the Sub-Committee proposes to call them) — the functions of doyen of the diplomatic corps might, in the capital of some great Power, pass to the representative of a very small State, a situation which might in several ways prove a source of embarrassment to the official concerned. He might possibly feel that he was being excluded from certain consultations on questions of high policy, at which, as doyen, he ought to have been present.

The Finnish Government desired to direct attention to this point, without going further into the matter.

IV. *Competence of the Courts with regard to Foreign States.*

The Committee has invited the various Governments to inform it whether they consider that this question could advantageously be examined at the present moment with a view to the conclusion of a general convention.

The Finnish Government recognises the excellence of the Sub-Committee's report and the importance of unifying the rules on this subject; it cannot, however, conceal from itself the fact that an attempt at codification in this sphere would meet with many difficulties, even if, as the Committee desires, the initial task were limited to certain special aspects of the question.

The problem of determining in what cases a State ought to submit to the jurisdiction of foreign courts is intimately bound up with another problem, namely: What rules of law should apply? Disputes in this domain are often complicated by the fact that they possess two aspects, one domestic, the other international. In such cases the relations between municipal and international law have to be determined, and on this point legislators and courts may hold widely different views in different countries. There are certain countries in which, under the Constitution, the rules of international law generally recognised by civilised nations form an integral part of the municipal law. Even so, various opinions may be held as to the scope or interpretation of a rule of law. The possibility of conflict between national laws and international law would therefore be even greater in countries with a Constitution which does not unconditionally recognise the binding force of international law, even in their own courts.

When a point of international law is raised — as very frequently happens in a dispute one party to which is a foreign State — and this point is contested, purely national jurisdiction becomes inadequate and there should be a right of appeal, as far as international law is concerned, to some international organ. Only when the practice of States in this connection is clearly established will it be possible, with full confidence in the issue, to define and enlarge the jurisdiction of courts with regard to foreign States. This problem is therefore intimately bound up with that of the extent of the jurisdiction of arbitral tribunals such as the Permanent Court of International Justice.

It should perhaps be added that a certain connection also exists between the jurisdiction of courts with regard to a foreign State and the question of the extent to which a State is itself justiciable in its own courts, whether the petitioner be one of its own nationals or a foreigner.

The Finnish Government offers these few comments with a view merely to demonstrating the extreme complexity of the problem as a whole. Even though the simultaneous solution of all these concomitant questions can hardly be hoped for, it would be a great gain if an international agreement could be reached on certain points of practical importance, in defining the cases in which a State should be justiciable in the courts of another State.

France.

QUESTIONNAIRES Nos. 8 TO II.

Letter of February 17th, 1928.

[*Translation.*]

In a letter dated November 15th, 1926, I communicated to you the observations of the French Government with regard to the seven questions which the Committee of Experts for the Codification of International Law had decided at its earlier meetings might possibly be regulated by international agreement in the near future.

At its later meetings, the Codification Committee added to this list four new questions concerning which, in a circular letter dated June 7th last, you were good enough to seek the opinion of the French Government. The questions are:

No. 8. Communication of judicial and extra-judicial acts and letters rogatory in penal matters.

No. 9. Legal position and functions of consuls.

No. 10. Revision of the classification of diplomatic agents.

No. 11. Competence of the courts in regard to foreign States.

The French Government does not think that there would be any advantage at the present time in retaining No. 10 as a question which might be regulated by international agreements; indeed, it does not feel that there is any need to revise "the classification of diplomatic agents made by the Congresses of Vienna and Aix-la-Chapelle."

The same remark applies to Question 9, which concerns the legal position and functions of consuls. In the opinion of the French Government, this question has been satisfactorily settled in a practical manner, according to the requirements of individual countries, in special bilateral conventions.

The French Government feels that Questions 8 and 11 are certainly worthy of most careful consideration. Nevertheless it would prefer not to give a definite opinion as to whether general conventions on these questions are at present desirable and realisable until it has had occasion to acquaint itself with the further enquiries to be conducted by the Committee on these subjects.

(Signed) CORBIN.

Germany.

QUESTIONNAIRES Nos. 8, 9, 10 AND 11.

Letter of December 28th, 1927.

[Translation.]

On behalf of the German Government, I have the honour to inform you of the following:

The German Government has examined the questionnaires of the Committee of Experts for the Progressive Codification of International Law which you forwarded in your letter of June 7th, 1927 (C.L.57.1927.V), with a view to ascertaining whether the regulation of the subjects treated in these documents is desirable and realisable in the near future. The German Government feels able to reply in the affirmative as regards the three subjects: "Legal position and functions of consuls", "Communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters", and "Competence of the courts in regard to foreign States".

First of all, as regards the subject "Legal position and functions of consuls", the consular and commercial treaties of nearly all countries contain provisions in this connection which are in such close agreement that an international regulation of the subject could not be a matter of any great difficulty. Similarly, the German Government considers that the subject "Communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters" is sufficiently far advanced to be made the subject of codification. Nevertheless, it reserves full freedom of action regarding the details of the draft convention drawn up by the Committee of Experts, particularly in view of the fact that a German bill regulating the question of letters rogatory in penal matters within Germany is at present before the Reichstag. As regards the German Government's attitude concerning the "Competence of the courts in regard to foreign States", reference should be made to the attached memorandum.

On the other hand, as regards the "Revision of the classification of diplomatic agents", the German Government is of the opinion that this question does not constitute a problem whose study from the point of view of codification may be described as urgent or desirable.

(Signed) VON SCHUBERT.

ANNEX.

[Translation.]

The German Government is of the opinion that a foreign State is not amenable, in principle, to the jurisdiction of another State, irrespective of whether the acts in question are *jure imperii* or *jure gestionis*. An exception should, however, be made regarding the following points: the courts are in any case competent in regard to:

- (1) Actions *in rem*, including actions relating to the possession of land;
- (2) Actions based on rights arising out of the foreign State carrying on within a country a business or any other commercial enterprise, without prejudice, however, to the international regulations regarding the transport of goods by rail;
- (3) Cross actions, in so far as their object is to rebut the claims of a privileged plaintiff.

The German Government considers that an international regulation of the competence of the courts in regard to foreign States would be in keeping with practical necessities to the extent mentioned above. This applies in particular to the exception referred to in No. 2. Hence the German Government considers it desirable to endeavour to secure a settlement which in this

case would probably not encounter any special difficulties. In this connection it would be advisable to reserve for special examination the question whether the extension of national jurisdiction to foreign States also entails for the State concerned the obligation *ipso jure* of submitting to the enforcement of decisions which may be pronounced against it.

It should be added that, in the German Government's opinion, the questions to be considered in this connection are not confined to the problem of the submission of foreign States to a national jurisdiction, as dealt with in the questionnaire, but that it is also necessary to take into account the application of other national stipulations in regard to foreign States, particularly in the sphere of administrative law.

Hungary.

QUESTIONNAIRES Nos. 8, 9, 10 AND 11.

Letter of January 16th, 1928.

[Translation.]

The Royal Hungarian Government is of opinion that the possibility of regulating the question raised in Questionnaire No. 8 by means of a general convention is not *prima facie* to be rejected.

The following are its observations on the draft Convention submitted by the Committee:

Ad Article 1. — The words "according to the law of that authority" at the beginning of this Article should be omitted, since any reference to the internal laws which govern the competence of the authorities of a particular country is out of place in an international convention; the authorities applied to do not, and could not, consider the question of competence from this standpoint. International conventions do not usually contain indications of this kind.

The wording of this Article is also unsatisfactory, because it would seem to exclude the right of the authority to whom the requisition is addressed to examine, in the light of the laws it will have to apply, the competence of the applicant authority, although it may undoubtedly refuse co-operation when any one of its authorities has jurisdiction in the penal question in point.

To the term "political" should be added the words "or exclusively military" offence (and in Articles 2 and 3 also).

Article 1 should also include a second paragraph quoting the provisions in Article 12 of the International Hague Convention of July 17th, 1905, concerning Civil Procedure.

Article 1 (and also Articles 2 and 3) should contain provisions to the effect that the authority applied to may, before executing letters rogatory, ask for additional information on specified points; it should then, according to the reply received, be free to give effect to the request or not.

This provision is justified by the fact that certain judicial acts such as seizure, domiciliary search and searching of the person are dependent for their execution on special rules of penal procedure. In most cases the requesting authorities are unacquainted with these rules of procedure, which are nevertheless indispensable, because the authority applied to gives effect to the letters rogatory in accordance with its own laws.

Ad Article 2. — There is an omission in Article 2, no mention being made of witnesses' expenses (travelling and other costs, maintenance, etc.). It should at least be specified that these expenses will be repaid by the applicant authority. Failing such rule, it would follow from the general provisions of Article 6 that these costs would have to be borne — at least in part — by the State applied to.

It would even be desirable to stipulate that these costs should be advanced through the authorities who serve the writ of summons, on a basis of reciprocity, as in the second paragraph of this article.

Ad Article 3. — The provisions of this Article should, in the opinion of the Hungarian Government, also apply to the transmission of files and possibly — at the expense of the applicant party — to the delivery of copies.

Paragraph 2 might be omitted, for it is more in the nature of a clause in an extradition treaty; it is, moreover, hardly ever observed in practice, and, indeed, its observance is of no importance in bringing a criminal trial to a satisfactory conclusion.

Ad Article 4. — The Royal Hungarian Government would be in favour of Article 4 of Professor SCHÜCKING's draft (page 27) — which provides for the exchange of penal sentences and extracts from criminal records — if the end of the first paragraph were modified by the omission of the words "and which, according record". The communication of these penal sentences is not conditional on their entry in the Central Criminal Records of the State; it is therefore unnecessary to mention the point.

The Royal Hungarian Government would even view without disfavour a degree of judicial co-operation which would include the serving of notice of penal sentences on private persons. There could, of course, be no question of service with coercion, but in many cases it is entirely to the advantage of private persons that they should receive notice of sentences which have been pronounced.

Documents which are intended to be served on private persons should in every case be accompanied by a duly certified translation in the official language of the authority applied to (Article 7).

The cases enumerated in Article 1 might again be quoted as reasons for refusal to serve notice (this would also exclude the serving of notice on a national of the country applied to, because in this case the right to take proceedings would lie with the authorities of that country).

Ad Article 5. — The Royal Hungarian Government is of opinion that this Article might contain an additional rule to the effect that, in extremely urgent cases, penal authorities may communicate with one another, even when the general rule prescribes the diplomatic or some other channel.

The Royal Hungarian Government believes that it would be desirable to set out in this Article the various modes of communication possible, so that the Contracting States might, by a simple statement, notify the method they desired to employ — on a basis of reciprocity or otherwise. The Royal Hungarian Government has in mind a text similar to that of Article 3 of the Geneva International Convention of September 12th, 1923, concerning the Suppression of the Circulation of and Traffic in Obscene Publications.

With regard to Article 5, it should also be pointed out that, when Professor SCHÜCKING speaks in his report of the diplomatic channel, he refers to the method by which the requisition is sent by the Government of one country to the Government of another country (page 20).

The Royal Hungarian Government is of opinion that this is not the method to follow in penal judicial co-operation. The requisition should be addressed by the competent authority of the applicant State to the competent authority of the State applied to — and even if the applicant State is unaware of the proper title of the competent authority in the other State, the omission of such title should be no obstacle.

The requisition, together with the reply, would subsequently be transmitted from authority to authority through the diplomatic channel.

It would be desirable to state this definitely in the Article.

It would also be well to specify that — unless a special convention has been concluded on the subject — exhibits in penal cases must not be sent by post to nationals of the other State.

Ad Article 6. — The Royal Hungarian Government would submit that it might perhaps be fair to oblige the applicant State — in conformity with Article 16 of the Hague Convention on Civil Procedure — to repay expenditure incurred on behalf of witnesses.

If it is decided that experts' fees, and possibly witnesses' expenses, must be paid by the applicant authority, it would be desirable, in order to avoid all misunderstanding, to specify that judicial co-operation must not be made contingent on the prepayment of these sums.

Ad Article 7. — The question of the language in which letters rogatory and their annexes should be drawn up is a matter to be determined by the internal law of each State. The Royal Hungarian Government is therefore of opinion that the first paragraph could be omitted. It would be sufficient to say that — failing any other arrangement — a translation should be attached to the letters rogatory and their annexes if these documents are not drawn up either in the official language of the authority applied to or in some other language agreed to by the States concerned.

With regard to the certification of translations, the wording of paragraph 2 is not quite clear; is it the official interpreter (sworn translator) of the applicant State or the interpreter of the State applied to who is to certify the translation? The Royal Hungarian Government is in favour of the second alternative, which corresponds to Article 10 of the Hague Convention on Civil Procedure. At the same time, certification by the courts of the applicant State might well be accepted as sufficient.

The reply to the letters rogatory and their annexes should only be accompanied by a translation at the special request of the applicant authority and at that authority's expense.

The third paragraph of Article 7 should be omitted, since it is not of a nature to remove any difficulties which might occur.

It should be specified in a separate Article that, if the terms of any conventions which have been or may in the future be concluded between two or more States Members of the League on judicial co-operation in penal matters are more favourable than those of the general convention, the former shall apply as between these States.

Finally, the Royal Hungarian Government would draw attention to the fact that the draft contains no provision concerning the escorting of accused persons who are being kept in custody pending their examination or confrontation in the court of another State. It is, however, precisely in international criminal "affairs" on a large scale, when the courts of several States are simultaneously taking proceedings against a number of persons accused of the same acts, that confrontation may become a necessity for the successful issue of the case. Certain conventions therefore include provisions with regard to escorting — for instance, Article 15 of the Extradition Treaty between Austria-Hungary and Bulgaria, May 31st/18th, 1911.

This escort is essentially a different matter from the accompanying of witnesses already in custody referred to in paragraph 2 of the Convention, for in the latter case the consent of the witness is rightly a *sine quâ non*. No such consent is required for the escorting of accused, and judicial co-operation in this case is dependent on the general conditions laid down in Article 1 of the draft.

The Royal Hungarian Government feels bound to point out that, in the list of treaties on judicial co-operation given at the end of the questionnaire (page 29), the Hungaro-Roumanian Treaty of April 16th, 1924, on Extradition and Judicial Assistance in Penal Matters (League of Nations *Treaty Series*, Vol. XLII, page 145, No. 1038) has been omitted.

Nor is any mention made in this list of all the extradition treaties of the former Austro-Hungarian Monarchy concluded previous to 1886, nor — to mention one of the most recent treaties concluded by the former Monarchy — the Treaty with Paraguay dated October 16th, 1907. It is incorrect to show Austria alone as the other contracting party to the Convention on Extradition

with Roumania dated June 27th/14th, 1901, since Hungary was also a contracting party; finally the Treaty of Extradition between Austria-Hungary and Uruguay is shown twice in the list.

Questionnaire No. 9.

According to the Committee's report, the only question which has to be considered at the moment is that of the legal position of consuls. The Royal Hungarian Government is of opinion that, as a result of long-established international practice, this question could also usefully be examined with a view to preparing a general convention. If such a convention were eventually established, it should, of course, be made legitimately possible for two or more States, in their mutual relations, to add to or modify its provisions in many respects.

To the conclusions set out on page 4 of the report the Royal Hungarian Government would append the following observations:

It accepts the conclusions with regard to the exequatur, with the proviso that, if the exequatur is withdrawn, the consul should be accorded immunity for a period sufficient to enable him to leave the country.

The terms of that part of the report which concerns civil immunity are too general. In the opinion of the Royal Hungarian Government, the question should be dealt with in greater detail as follows:

(1) If a consul (whether *de carrière* or honorary) is a national of the country which has appointed him, and is not engaged in trade or industry, he cannot be compelled to appear in the courts of the country in which he is performing his duties. If, therefore, he does not choose to appear in court, his evidence should be taken in any place he may select;

(2) A consul cannot be sued or prosecuted for an act performed as part of his official duties. Any such proceedings would be derogatory to the sovereignty of the State which has appointed him, because, during the hearing of the case, the attitude and intentions of his country would have to be discussed.

The Committee's opinion that, in penal matters, a consul has no right to any immunity seems to be in opposition to international practice and contrary to the treaties concluded by Hungary. Apart from the consul's prerogative mentioned in point (1) — the giving of evidence in criminal cases — a consul, if he is a national of the country which has appointed him, can in general only be arrested if the offence committed by him involves, in the locality in which it was committed, punishment exceeding one year's imprisonment. Nevertheless, criminal proceedings may be instituted against him even in the case of a less serious offence if this can be done without having resort to bodily constraint.

The conclusion with regard to the right of asylum is correct.

The conclusions concerning the various privileges of exemption from taxation would also seem to be justified, subject to the reservation that these privileges only apply to consuls *de carrière*. Even the latter, however, are only exempted when they are nationals of the State which has appointed them and when they are not engaged, in the country to which they have been appointed, in any remunerative work outside their official duties. Such exemption does not extend to immovable property situated in the territory of the country to which they have been appointed.

The Royal Hungarian Government suggests that consular privileges should include the generally recognised right to affix the shield of the appointing country outside the consular building, and to fly that country's flag over the consulate.

It is of some importance that the question of precedence among consular officials should be regulated in areas where there are no legations, and where consequently consuls possess the representative character to a certain degree. The solution proposed in the amended conclusions as a result of the Committee's discussions is acceptable and satisfactory.

The Sub-Committee's report is very categorically opposed to the maintenance of honorary consuls; and yet the abolition of this system would, in the opinion of the Royal Hungarian Government, place the smaller States in a very difficult situation, as these States would not, for financial reasons, be able to provide regular consular officials in all places abroad. This observation applies with particular force to Hungary, which, as an agricultural country, has not sufficient interests in certain localities (which are important in the eyes of industrial and commercial States) to warrant her maintaining consuls *de carrière*, although she needs some consular representation. In this case, honorary consuls are a very appropriate representative institution. The Royal Hungarian Government therefore most strongly recommends the maintenance of this system.

Finally, the Royal Hungarian Government would state that it is not opposed to an arrangement for the definition of privileges due to consuls *de carrière* on a more liberal scale than at present, with a view to ensuring for consuls the unhampered exercise of their official duties.

Questionnaire No. 10.

The Royal Hungarian Government agrees with the Sub-Committee's view that there is no longer any practical reason to-day why the representative character should be confined to ambassadors; it approves the Sub-Committee's conclusion that at present the legal position and powers and duties of all diplomatic representatives are essentially — apart from questions of title — the same.

The Sub-Committee proposes to include in one class the three higher categories of diplomatic representatives (ambassadors, legates or nuncios, and ministers plenipotentiary) and to accord the title of "ambassador" to all representatives in this class. The Royal Hungarian Government feels, however, that it would be inadvisable, for practical reasons, to raise this point.

If the rank of ambassador were conferred on the representative of a small State, that representative might very well find himself obliged to assume wider representative obligations involving an expenditure which would not be justified in the case of smaller States.

Questionnaire No. 11.

The Royal Hungarian Government considers that the regulation of this question in a general convention would be desirable, since, in this matter, as the Committee's report shows, practice in the various countries differs so widely that disputes may well arise. For the same reason, however, there seems to be little chance of reaching an agreement.

Consequently, an effort should be made to discover the points regarding which an international convention could be established without great difficulty.

In Hungarian jurisprudence, it is quite clear that any action *in rem* the subject of which is immovable property must, even if it is brought against a foreign State, be heard in the courts of the country in which the immovable property is situated. There can also be no doubt that, if a State expressly submits to the jurisdiction of a foreign court, the latter may take action against it. On this point the Royal Hungarian Government feels that an agreement could be reached without difficulty.

A problem which, of course, it would be harder to solve is whether, apart from express submission, tacit submission may also be recognised.

The Royal Hungarian Government is of opinion that the utmost strictness should be exercised in determining whether there has been tacit submission. The latter should never be admitted unless there are facts to prove that the foreign State has actually agreed to submit to the jurisdiction of another State. According to the provisions of Article 12 (1) of the Convention between Austria and Hungary of May 10th, 1914, for the Regulation of Judicial Co-operation in the Enforcement of Civil Judgments, these cases are the following:

(1) Actions brought against the State as heir or legatee. In this case its acceptance of the heritage proves the intention of the State to submit to the jurisdiction of the courts in the matter of succession.

(2) The case of a sum due deriving from a commercial undertaking which one State maintains in the territory of another State, the official headquarters (*siège social*) of this undertaking being situated in the territory of the second State. In certain circumstances, submission might also be presumed when the undertaking possesses only a branch establishment in the other State. The standpoint adopted in the Convention is probably narrower than that which would be adopted in the question raised by the Committee, since the report of the latter seems to suggest that industrial or commercial activities carried on in a foreign country may serve as a basis for the determination of jurisdiction even when the undertaking has no *siège social* in the foreign country. This, in the opinion of the Royal Hungarian Government, would be taking matters too far.

In accordance with the above considerations, the Royal Hungarian Government would therefore agree to a convention fixing the jurisdiction of the courts in respect of a foreign State in the following cases:

- (1) Express voluntary submission.
- (2) Actions *in rem* of which the subject is immovable property.
- (3) Actions brought against the State as heir or legatee in the case of a succession opened in a foreign country.
- (4) Actions connected with sums owing derived from commercial enterprises established in a foreign country and having their *siège social* in that country.

India.

QUESTIONNAIRE No. 8.

Letter of May 24th, 1928.

With reference to your letter of June 7th, No. C.L.57.1927.V, I am directed by the Secretary of State for India to inform you that the Government of India desire to associate themselves with the view expressed by His Majesty's Government in the letter addressed to you from the Foreign Office, dated January 14th, 1928, No. T.13713/196/377, that question No. 8 is not suitable for treatment by a general convention and that questions concerning the communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters should be dealt with by direct arrangement, where necessary, between individual States.

(Signed) E. J. TURNER.

QUESTIONNAIRE No. 9.

Letter of January 9th, 1928.

In reply to your letter of June 7th, C.L.57.1927.V, in regard to the work of the Committee of Experts for the Progressive Codification of International Law, I am directed to inform you that the Secretary of State for India, having consulted the Government of India, is of opinion that questions affecting the legal position and functions of consuls would not be a suitable subject for a general international convention.

(Signed) E. J. TURNER.

QUESTIONNAIRE No. 10.

Letter of November 21st, 1927.

With reference to your letter of June 7th, C.L.57.1927.V, enquiring whether the Government of India consider the codification of international law on certain subjects desirable and realisable in the near future, I am directed by the Secretary of State for India to inform you that the Government of India are not in favour of a revision of the classification of diplomatic agents being attempted.

(Signed) J. WALTON.

QUESTIONNAIRE No. 11.

Letter of February 2nd, 1928.

With reference to your letter of June 7th, No. C.L.57.1927.V, I am directed by the Secretary of State for India to inform you that the Government of India see no objection to the examination of the question of the competence of the courts in regard to foreign States with a view to the conclusion of a general convention, but that, so far as they can see at present, the Government of India would only be able to sign such a convention if it were made subject to and dependent for its operation on particular agreements between groups or pairs of States.

(Signed) E. J. TURNER.

Japan.

QUESTIONNAIRES NOS. 8, 9, 10 AND 11.

Letter of January 16th, 1928.

[Translation.]

In your C.L.57.1927.V of June 7th, 1927, you were good enough to communicate to the Japanese Minister for Foreign Affairs a letter from the Chairman of the Committee of Experts for the Progressive Codification of International Law, together with the questionnaires and the report prepared by this Committee, with an invitation to the Japanese Government to give its opinion as to whether the regulation, by international agreement, of the subjects dealt with in these questionnaires would be desirable and realisable in the near future.

I have now received the reply from the Japanese Government. I am instructed to inform you of its opinion, with the request that you will transmit these observations to the Chairman of the Committee of Experts for the Progressive Codification of International Law.

1. With regard to Questionnaire No. 8 (Communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters), the Japanese Government is of opinion that the conclusion of an international convention on the lines indicated in the Committee's draft would be desirable and realisable. The Imperial Government could not, however, agree to certain provisions of this draft in their present form, particularly those which deal with the temporary surrender of persons in custody (Article 2, paragraph 2) and the surrender of articles regarded as exhibits, etc. (Article 3).

2. With regard to Questionnaire No. 9 (Legal position and functions of consuls), the Imperial Government believes that it will be desirable and possible to conclude an international convention on this subject; it is not, however, able to accept, as it stands, the Committee's conclusion with regard to the prerogatives of consuls, particularly that part which concerns a consul's relations with the judicial authorities of the country to which he has been appointed.

3. In the opinion of the Imperial Government, the revision of the classification of diplomatic agents — which is dealt with in Questionnaire No. 10 — would be fraught with difficulty in view of the present international situation.

4. Although the conclusion of a general convention on the question of the competence of the courts in regard to foreign States (Questionnaire No. 11) would be desirable, it would obviously be difficult at the present time, in view of widely divergent doctrine and practice in this connection, to reach a satisfactory agreement.

The Japanese Government is, however, of opinion that it would be well to consider the possibility of concluding a convention under which foreign States would be subject to the jurisdiction of the courts in respect of acts accomplished by their organs in the conduct of business. The Government also thinks that it would be advisable to convene a conference of experts to consider this question in all its aspects, as set out in Questionnaire No. 11.

(Signed) N. SATO.

Latvia.

QUESTIONNAIRES Nos. 8 TO 11.

Letter of February 6th, 1928.

[Translation.]

In Circular Letter C.L. 57, dated June 7th, 1927, you transmitted to the Latvian Government Questionnaires 8, 9, 10 and 11, prepared by the Committee of Experts for the Progressive Codification of International Law, and requested the Latvian Government to send its opinion as to whether the regulation by international agreement of the subjects treated in the above-mentioned questionnaires was desirable and realisable in the near future.

The Latvian Government is fully convinced that the fixing of legal rules to govern international relations by means of collective conventions embodying full and precise stipulations in regard to reciprocal rights and obligations would, by eliminating force as a decisive factor and making right and justice the guiding principles in international relations, largely contribute to closer co-operation between nations and help to consolidate the peace of the world.

The Latvian Government ventures to make the following observations on the questionnaires adopted by the Committee of Experts at its third session:

It has no objection to make to the report or to the draft Convention contained in Questionnaire No. 8, as it is of opinion that the regulation of judicial co-operation in penal matters by means of an international agreement is desirable and realisable. The draft Convention, however, should provide that assistance may be refused in the case of offences justiciable by special courts set up under exceptional circumstances.

The Latvian Government approves the conclusions of the report on the legal position of consuls (Questionnaire No. 9), the regulation of this question by international agreement being highly desirable. It cannot, however, concur in the view that the category of honorary consuls should be abolished. It recognises, in principle, the force of the arguments for such a step, but thinks that it would be premature and impracticable, especially from the point of view of small States which would be compelled to reduce the number of their consulates if forced to dispense with honorary consuls. Such States could not for financial reasons, at least under present conditions of economic instability, think of replacing honorary consuls — of whom incidentally Latvia has a very large number — by consuls *de carrière*, as the cost would prove too heavy.

The Latvian Government approves the other conclusions of the Committee of Experts in their entirety. It ventures to make the single suggestion that, if an international convention is concluded, it should state explicitly that the same person may exercise the functions of consul and diplomatic agent. The report refers to "consuls who are *chargés d'affaires*", and thus appears to assume that the two functions may be exercised by the same person. This principle, however, is not yet universally admitted, and certain Governments insist absolutely on the distinction which should be made between the status of a diplomatic representative and that of a consul.

We have no objection to the conclusions of Questionnaire No. 10 (Revision of the classification of diplomatic agents).

Questionnaire No. 11 (Competence of the courts in regard to foreign States) raises complicated and delicate questions. The Latvian Government, however, considers that the difficulties in the way of the regulation of this matter by international agreement are not insurmountable. While the Latvian Government accepts the universally recognised principle of the immunity of States for acts which are the manifestation of sovereign power, it pronounces in favour of the principle that in certain cases, especially as regards acts performed by a State in the exercise of commercial or industrial activity, such State may be amenable to the jurisdiction of another State.

The principles contained in the draft regulations adopted by the Institut de droit international in 1891 might usefully serve as a basis for future discussion.

(Signed) G. ALBATS.

Netherlands.

QUESTIONNAIRES Nos. 8, 9, 10 AND 11.

Letter of January 9th, 1928.

[*Translation.*]

In a circular letter No. 57, dated June 7th, 1927, the Secretary-General of the League of Nations asked the Netherlands Government to give its opinion as to whether the regulation by international agreement of the subjects treated in Questionnaires Nos. 8 to 11 of the Committee of Experts for the Progressive Codification of International Law was desirable and realisable in the near future.

Her Majesty's Government has noted with great interest the latest results of the able work of this Committee of Experts and ventures to make the following observations:

Questionnaire No. 8.

The questions of the communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters seems to have become sufficiently ripe to be placed on the agenda of an international conference; it must be realised, however, that the definition of political offences, which will probably be necessary in this connection, is bound to involve certain difficulties.

Questionnaire No. 9.

In the opinion of the Netherlands Government, the question of the legal position and functions of consuls is not urgent, but if it were decided to deal with diplomatic privileges and immunities at an international conference, the legal position and functions of consuls should be considered at the same time. So far as this matter is concerned, the Netherlands Government desires to state at once that it dissents from the view of the honourable Rapporteurs (M. GUERRERO and M. MASTNY) that the class of honorary consuls should be abolished.

Questionnaire No. 10.

With regard to the revision of the classification of diplomatic agents, the Netherlands Government takes the same view as with regard to Questionnaire No. 9, namely, that this question should be placed on the agenda of an international conference dealing with diplomatic privileges and immunities. The Netherlands Government would add that it favours the Rapporteurs' proposal to abolish the existing distinction between ambassadors and envoys of other countries.

Questionnaire No. 11.

The Netherlands Government, holding it to be desirable that the much-discussed question of the competence of the courts in regard to foreign States should be discussed at an international conference, shares the opinion expressed by Professor DIENA that an international agreement would be possible in regard to certain aspects of this question. A number of difficulties will, however, be encountered in attempting to regulate this matter. It will be necessary, in particular, to touch on the question of the execution of judgments against the property of a foreign State in the country in which the judgment has been given. Even assuming that the majority of States accepting the jurisdiction of the courts are prepared to abide by the judgment of the court, it would nevertheless be desirable for this question to be settled at the same time as the subject-matter of Questionnaire No. 11.

New Zealand.

QUESTIONNAIRES Nos. 8, 9, 10 AND 11.

Letter of September 22nd, 1927.

I have the honour to acknowledge the receipt of your C.L. 57. 1927.V, of June 7th last with reference to the Progressive Codification of International Law and in reply to state that His Majesty's Government in New Zealand wish to associate themselves with the attitude adopted in the matter by His Majesty's Government in Great Britain.

(Signed) COATES.

Norway.

QUESTIONNAIRE No. 8.

Letter of November 3rd, 1927.

[*Translation.*]

With reference to your letter of June 7th last (C.L.57. 1927.V) with regard to the question of the Progressive Codification of International Law, I have the honour to give you the following information:

In so far as the communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters are concerned (document C.201.M.75.1927.V), the Royal Government is of opinion that it would be desirable to conclude an international convention on the questions mentioned in the draft of the sub-committee appointed by the League (document C.201.M.75.1927.V).

The provisions of this draft are in no respect contrary to the actual Norwegian law, and the Government would therefore be ready to accede to such a convention.

With regard to the different points of the draft, I would, however, point out that, in the opinion of the Royal Government, Article 2, paragraph 2, should not be drawn up in a manner to render obligatory the surrender of a person in custody (with his consent) when he is heard as witness by the court of a foreign State. According to the opinion of the competent Norwegian authorities, a draft would be preferable by which the surrender should take place if the special circumstances of the particular case were not against such action.

(Signed) IVOR LYKKE.

QUESTIONNAIRE No. 9.

Letter dated October 17th, 1927.

[*Translation.*]

In reply to your letter of June 7th last concerning the Progressive Codification of International Law (Questionnaire No. 9, Legal position and functions of consuls — document C.202.M.76. 1927. V), I have the honour to inform you that the Royal Government is of the opinion that it is desirable to arrive at a regulation of these subjects by international agreement and that it is possible to frame such a regulation in the case of certain questions.

The Norwegian Government is also of the opinion that the questions examined by the Sub-Committee of Experts are among those which could and should be regulated by means of a general convention.

It desires, however, to make the following observations:

Any convention on these subjects should contain not only a clause stipulating the inviolability of consular archives and of the official correspondence of consuls but also detailed rules on the conditions under which these prerogatives can be obtained. The inviolability of consular archives ought, *inter alia*, to be subject to the condition that these archives are kept separate from the private archives of the consul in question.

Moreover, consuls belonging to the regular consular service should enjoy not only immunity from civil jurisdiction but immunity from criminal jurisdiction in connection with the exercise of their functions.

In addition to the exemption from direct taxes accorded to consuls in the regular consular service it should be stipulated that office furniture and effects intended for the use of consulates should enter the country free of Customs duty.

The Norwegian Government does not feel called upon to comment on all the conclusions submitted in the Sub-Committee's report; it desires to state, however, that it is unable to endorse the criticisms levelled by the said Committee against the practice of States employing honorary consuls. It considers this a very useful practice and could not accept any proposal aimed at abolishing or restricting it.

(Signed) IVOR LYKKE.

QUESTIONNAIRE No. 10.

Letter dated March 24th, 1928.

[*Translation.*]

With reference to your letter of June 7th last, relating to the progressive codification of international law, Questionnaire No. 10, Revision of the Classification of Diplomatic Agents (document C.203.M.77.1927.V), I have the honour to inform you that the Royal Norwegian Government cannot recommend that the classification of these agents should be modified in the manner proposed by the Sub-Committee of Experts.

The Norwegian Government considers, however, that the right to send ambassadors should be reserved exclusively for the great Powers, except when the Head of a State desires to be represented by an extraordinary ambassador (*ad hoc*) on any special occasion, such as the coronation or funeral of another Head of a State.

(Signed) MOWINCKEL.

Poland.

QUESTIONNAIRES Nos. 8, 9, 10 AND 11.

Letter of December 31st, 1927.

[*Translation.*]

In reply to your circular letter C.L.57.1927.V of June 7th last concerning the Progressive Codification of International Law, I have the honour to inform you of the Polish Government's views.

1. The Polish Government considers that the questions relating to the communication of acts and letters rogatory in penal matters lend themselves to international codification, with the exception, however, of extradition procedure, which should only be regulated by means of special conventions (Questionnaire No. 8). Nevertheless, the Polish Government reserves the right to state its views on certain modifications which might be made in the provisions of the preliminary draft annexed to the report of the Sub-Committee of Experts.

2. The regulation of the functions of consuls and their legal position might, in the Polish Government's opinion, be usefully discussed by a diplomatic conference convened for this purpose (Questionnaire No. 9).

3. As regards the classification of diplomatic agents, the Polish Government considers that certain drawbacks in the present system might be capable of removal by international action.

Certain States which invoke the principle of reciprocity refuse to allow others to be represented by ambassadors, or only grant this right as a special concession. The result is a tendency to divide States into two categories: those which enjoy the right of embassy and those obliged to acquire it.

One of the three following solutions might remedy this state of affairs:

(1) Appointment simply of ambassadors and chargés d'affaires p.i. without intermediate classes;

(2) Appointment of ministers (envoys) and of chargés d'affaires p.i. without intermediate classes;

(3) Appointment within the scope of the four existing classes of diplomatic representatives, but their rank to be determined solely by the appointing State and without compulsory reciprocity.

This last solution seems to be the most practical one.

4. The Polish Government considers the international regulation of the competence of courts in regard to States carrying on commercial or industrial activities (Questionnaire No. 11) to be desirable. Such an arrangement could not, however, be introduced without at the same time establishing a procedure which would govern the seizure of the property of a foreign State and take account of the sovereign rights of States. In particular the absence of provisions concerning the admissibility and limits of seizure is liable to have consequences harmful to good relations between States.

(Signed) Th. GWIAZDOWSKI.

Portugal.

QUESTIONNAIRES Nos. 9 AND 10.

Letter of December 31st, 1927.

[*Translation.*]

Referring to your C.L.57.1927.V of June 7th last, under cover of which you were good enough to send me four questionnaires drawn up by the Committee of Experts for the Progressive Codification of International Law, I have the honour to communicate herewith the views of the Portuguese Government on Questionnaires 9 and 10, dealing respectively with the legal position and functions of consuls and the revision of the classification of diplomatic agents.

As regards the legal position and functions of consuls, the Portuguese Government, believing these matters to be capable of regulation by international agreement, has no objection to make to the conclusions formulated by the Sub-Committee which dealt with the matter. These conclusions are in keeping with treaty law and practice of most countries.

As regards the exequatur, the report is couched in somewhat inelastic terms which would only allow consuls to perform their duties and communicate with the authorities when the exequatur has been granted.

This formality usually takes some time, since the local authorities have to be consulted, and it would be inconvenient in certain cases to leave consular posts vacant for any length of time.

Usually this difficulty is overcome by provisional recognition, to which some reference would seem desirable in the text which is finally adopted.

The difficulty in question was avoided in the drafting of the Treaty of Commerce between Great Britain and Portugal. The relevant passage reads as follows:

“ . . . they [consuls] shall not enter upon their functions until after they shall have been approved and admitted in the usual form by the Government to which they are sent ”
(Article 18).

The inviolability of consular archives is an essential principle, which must always be recognised in time of war and in time of peace, whether embodied in treaties or not. Some conventions provide that consular papers must always be kept apart from the books and papers relating to the trade or industry in which the consul is engaged. The two principles are embodied in Portugal's consular conventions with other countries.

As for immunities and exemption from taxation, the Sub-Committee's conclusions are judicious. The consular conventions signed by Portugal contain, however, a few exceptions to the rules laid down. Thus, the Convention concluded with France on July 11th, 1866, provides that consular officials shall be exempted in both countries from the obligation to provide billeting accommodation for troops and from all kinds of direct taxation (except land tax) when they are not nationals of the country in which they exercise their functions. They enjoy, moreover, personal immunity, except for acts defined as crimes in the penal laws.

Moreover, they are not bound to appear in court as witnesses.

The Convention of September 30th, 1868, with Italy, the Convention of February 21st, 1870, with Spain, and the Convention of December 1st, 1880, with the Netherlands, contain the same provisions. The agreements concluded at more recent dates merely provide that consular officials shall, subject to reciprocity, enjoy all the privileges, exemptions and immunities granted to the representatives of the most-favoured nation.

In the event of a general convention being concluded between States, Members or non-Members of the League of Nations, on the lines of the Sub-Committee's proposals, these obsolete provisions would no longer hold.

With regard to the questionnaire on the revision of the classification of diplomatic agents adopted by the Committee of Experts at its session in March and April of this year, I have the honour to inform you that the Portuguese Government is in agreement with the conclusions of the Sub-Committee's report, which differ in no way from the opinion of the Portuguese diplomatist and jurisconsult PINHEIRO-FERREIRA, who, as early as 1830, laid down the principles now under discussion as follows:

“ When once this class (ambassadors) has been abolished as unconstitutional, as well as the ceremonial attaching to it, which is no longer in keeping with the customs and ideas of our times, the appellation ‘ ambassador ’ will naturally devolve on the ministers, who are at the present time held to belong to the second class but who will henceforth occupy the highest diplomatic rank. ”

I will communicate as soon as possible the views of the Portuguese Governments on Questionnaires Nos. 8 and 11, which deal respectively with the communication of judicial and extra-judicial acts in penal matters and the competence of the courts in regard to foreign States. The delay in answering these questionnaires is due to the fact that the Government Departments concerned have not yet sent in a statement of their views, but I hope to receive them at an early date.

I would request you to be so good as to communicate this letter to the Chairman of the Committee of Experts for the Progressive Codification of International Law.

(Signed) DE BETTENCOURT RODRIGUEZ.

Roumania.

QUESTIONNAIRES Nos. 8, 9, 10 AND 11.

Letter of December 23rd, 1927.

[Translation.]

In reply to your C.L.57 of June 7th last concerning the questions put by the Committee of Experts for the Progressive Codification of International Law, I have the honour to inform you that:

1. The Roumanian Government is of the opinion that the unification of the mode of communication of judicial and extra-judicial acts and letters rogatory in penal matters by means of an international agreement is an imperative necessity so as to ensure effective repression in penal matters.

As the Committee of Experts only asked the Governments concerned for a succinct opinion on the possibility of achieving the international codification of this question, the Roumanian

Government will confine itself for the moment to stating that it is disposed to accept the principles contained in Professor SCHÜCKING's report and in the draft convention which was annexed thereto, while reserving the right to discuss each text separately when the draft is put into final shape and is submitted to a conference on the codification of international law.

Accordingly, the Roumanian Government considers that it would be well to continue the work in progress with a view to the elaboration of a general extradition convention and of a general convention for the unification of the mode of transmission of letters rogatory, both these conventions being essential to ensure the effective application of legal penalties.

The Roumanian Government unreservedly approves the proposal to prepare a draft convention concerning the communication of judicial and extra-judicial acts and of letters rogatory in penal matters, and considers that this will constitute an important first step towards the elaboration of an international penal code.

2. As regards the question of the legal position and functions of consuls, and that of the revision of the classification of diplomatic agents, the Roumanian Government considers that their discussion depends on the expediency and practicability of concluding an international agreement on these subjects.

3. The Roumanian Government is of the opinion that, the questions relating to the competence of courts in regard to foreign States and the effect of the most-favoured-nation clause not yet being "sufficiently ripe" for the conclusion of an international agreement at the present time, their discussion should be postponed until a later date.

(Signed) D. GHICA.

Salvador.

QUESTIONNAIRES NOS. 8 TO II.

Letter of June 6th, 1928.

[Translation.]

In reply to your C.L.57.1927, of June 7th, 1927, addressed to the Minister for Foreign Affairs of Salvador, I am instructed to bring to your notice my Government's opinion with regard to Questionnaires Nos. 8 to II.

I have the honour to inform you that my Government considers both desirable and realisable the regulation by international agreement of the four questions investigated by the Sub-Committees formed by the Committee of Experts for the Progressive Codification of International Law.

(Signed) Gustavo GUERRERO.

South Africa.

QUESTIONNAIRES NOS. 8, 9, 10 AND II.

Letter of December 21st, 1927.

With reference to your C.L.57.1927.V, of June 7th last, I have the honour to inform you that His Majesty's Government in the Union of South Africa do not consider the subjects mentioned in Questionnaires 8, 9, 10 and II, issued by the Committee of Experts for the Progressive Codification of International Law, desirable and realisable in the near future.

(Signed) Stanley EALES.

Spain.

QUESTIONNAIRES NOS. 9 AND 10.

Letter of January 31st, 1928.

[Translation.]

With reference to your communication C.L.57, of June 7th last, I have the honour to communicate the following observations made by the competent Department of His Majesty's Government with reference to certain of the questionnaires annexed thereto.

Questionnaire 9. — Legal Position and Functions of Consuls.

After a careful examination of the question referred to in this document, the competent Department begs to state, with regard to the exequatur, which is the first point dealt with in the

conclusions as amended after the discussions in the Committee, that, as there has been and still is a difference of opinion as to whether the consul is or is not a "public minister", it is desirable (as recommended by the Committee of Experts) that the legal status of consuls should be regulated or amended by international agreement, in order to avoid difficulties which arise or may arise owing to the conflicting views held by each nation in the matter of prerogatives and privileges.

While agreeing with the Committee that, notwithstanding the extreme importance of the office, a consul's functions do not permit of his being regarded as a public minister, the Department would add that the public minister is accredited by the head of his State, that is, by his Government to the head of another State, that is, to another Government, and has recognised public and official status, corresponding to his full and absolute representation of the State as a juridical entity. He thus possesses the representative character, *which is the essential quality* recognised by jurists as distinguishing the diplomatic agent, who is the immediate representative of his Government in all matters affecting his nation. The consul also is accredited, but only after the diplomatic agent has presented the corresponding letters patent to the Government and the exequatur has been granted by the latter. Moreover, he is accredited to the various local authorities (in order to transact business with them) in a certain district only, which constitutes the consular area specified in the letters patent, and in which alone he may perform his duties.

The competent Department agrees that the consul should enter upon his duties as soon as the exequatur has been granted him. In places where a consulate already exists, however, it is a common practice for the successor to take up his duties before the letters patent have reached the Government. Although this practice in no way affects the above-mentioned principle, some reference might be made to it in order to avoid any undue rigidity in its application.

The Department also agrees that the exequatur may be withdrawn without the right to demand explanations.

As regards the second point, concerning the inviolability of the consular archives and correspondence, this is highly desirable. The Committee's conclusion should, however, be amplified to some extent, as it might be said that this inviolability should extend to the consular office as a whole and not be limited to the archives. Even if it is possible to separate these from the rest of the office equipment, it is only natural that in many cases documents should exist elsewhere than in the archives proper. Moreover, the principle of establishing a prerogative applicable to part of the office only, whereas the whole constitutes consular equipment, would appear to be too narrow.

With reference to the third point, concerning civil immunity, the Department agrees with the Committee's conclusions provided they are liberally interpreted; that is to say, provided this immunity is established or recognised in respect of all acts connected with the performance of consular duties.

The competent Department likewise approves points 4 and 5 of the text of the amended conclusions, denying criminal immunity and the right of asylum.

As regards taxation, which is the last point dealt with, the Department agrees that consuls, *i.e.*, consuls *de carrière*, should be exempted from direct taxation. In the case of other taxes, the principle of reciprocity should be established in all cases, as is done in Spain, and they should also be exempted from certain taxes such as inhabited-house duty, and some other municipal rates. Moreover, it is desirable that the practice followed in this country with regard to Customs duties should be made compulsory and general, subject to reciprocity. Articles forming the actual equipment of the consular office should be allowed into the country duty-free, and this should also apply to furniture, with the exception of what might be termed luxuries, carriages, etc., brought into the country by the consul when he takes up his residence there.

On the question of precedence, the Department also agrees both as regards its establishment according to the date of the exequatur and the precedence of consuls *de carrière* over honorary consuls. In this connection, in view of the present stage of development of the functions of consuls and the many and varied forms in which they are exhibited and exercised, we consider it advisable that the title of "honorary consul" and "honorary vice-consul" should be abolished and substituted by the term "first- and second-class consular agents". In many cases, in order to meet a country's requirements, a regular consulate is established in a place which already possesses an honorary consul. The latter accordingly feels himself slighted when his duties are taken over by an official of higher rank and he is thus deprived of his status. Moreover, recognition of the consul *de carrière* would mean the withdrawal of the exequatur from the honorary consul or the existence in the same place of two consuls equally accredited, neither of them being subordinate to the other in administrative rank, in which case the senior official, although he may be called consul-general, is obliged to renounce his functions in favour of the new arrival. On the other hand, if honorary consuls were known as consular agents, the presence in the same place of a consul *de carrière* would not affect them in the same way, and they would be called and recognised by a name more in keeping with their true status.

Questionnaire 10. — Revision of the Classification of Diplomatic Agents.

After due examination of the matter dealt with in this questionnaire, and the proposal of the Committee of Experts that representatives of the first three categories mentioned in the Regulation of Vienna as completed by the Aix-la-Chapelle Protocol should be designated "ambassadors", the competent Department does not feel able to support the views expressed by the said Committee.

The representative quality, which is essential in diplomatic representation, and in accordance with which the public minister acts as the immediate representative of his Government in all

matters affecting his nation, is the same for all diplomatic representatives, from the ambassador down to the *chargé d'affaires*. In this connection, the views expounded by the Committee of Experts represent the true legal doctrine admitted in diplomatic law. Nevertheless, as regards the presumption that the terms of Article 2 of the Protocol of Vienna, namely, that "only ambassadors, legates or nuncios shall possess the representative character", are obsolete and should not be revived, the competent authorities are of opinion that, in making this statement, the Committee may not have fully analysed its real meaning.

The representative character referred to in the article in no way detracts from the representative quality, nor does it establish any essential distinction in the matter. It consists, as stated by PRADIER-FODÉRÉ, in the fact that the ambassador, in addition to representing the interests of the country like other public ministers, represents especially the person of the sovereign or Head of the State; and this is the reason why the great Powers (as formerly the nations which possessed an absolute monarchy), in all their manifestations, especially those connected with international relations, desire their strength and power and the position they wish to occupy in the international community to be represented by public ministers holding the high and specially distinguished rank of ambassador.

It is true that all nations are equal in natural law, and, in stating this, the League's Committee of Experts merely reaffirms a principle laid down in all legal works and by all jurists dealing with the subject. This equality in the eyes of the law, however, in no way excludes the real inequality to be found both in nations and in individuals. In the former case, it is a consequence of the liberty and independence which each country develops to the best of its ability, in accordance with the means at its disposal and in harmony with its special aptitudes and conditions. Consequently, this inequality may be said to be placed by law on the same footing as equality itself. Neither is the question affected by the form of government; a report by the French Ministry of Foreign Affairs, dated April 19th, 1880, states, with reference to the title to be given to ambassadors, that "to call them ambassadors of France instead of ambassadors of the French Republic would be an infringement of the principle followed since 1870". This statement is based on the representative character given to ministers of that high rank at the Congress of Vienna in view of the fact that, in the case of monarchies, "the ambassador represents the person of the sovereign", as stated in the report.

Moreover, the rank of ambassador is founded on the acts involved by international relations between States. Diplomatic representatives are appointed to attend to foreign interests, and may be said to act as mandatories of the Chief of State and the Governments; and as Governments are necessarily obliged to get into touch with the agents of other nations in order to discuss and defend their rights and interests and all matters concerning them, they are bound, in their negotiations, to conform to certain rules of etiquette and ceremonial, in order to avoid friction and umbrage, in view of the actual inequality mentioned above. Consequently, the need arises for a classification of agents, and as any classification implies division into grades — higher and lower — there must be different grades of diplomatic agents. Diplomatic etiquette requires that officials of the first class, namely, ambassadors, should be accorded a more elaborate ceremonial and a greater degree of representation.

It is therefore the opinion of the competent Department that the rank of ambassador, when established by one nation and recognised by another, implies a recognition by the latter of the position which the former nation desires to occupy, or its esteem for the latter, either on account of its importance or owing to certain affinities of race, dominion, political or commercial interests, etc., and should thus be distinct from other ranks, without, of course, affecting the representative quality which is essential to every class of diplomatic agent.

As regards ministers resident, a term rarely used for representatives, this is a category which might be abolished in international relations, although it still exists as an administrative grade in certain countries.

Before concluding our remarks in reply to the questions asked by the Committee of Experts, we should like to mention the desirability of abolishing the term "extraordinary" which is given to ambassadors, and that of "envoy extraordinary" given to ministers plenipotentiary, as neither official is appointed in that capacity, both being accredited permanently to a post. The word "extraordinary" could then be reserved for ministers on temporary or special missions, with a definite object.

We have no objection to make to the use of the term "envoy" in general, which the Committee of Experts desires to substitute for *chargé d'affaires*, as this appears to be a sound proposal.

In short, in accordance with the foregoing observations, diplomatic agents might be divided into the following categories:

1. Ambassadors, Legates and Nuncios.
2. Ministers Plenipotentiary.
3. Envoys.

(Signed) ALMEIDA.

Sweden.

QUESTIONNAIRES Nos. 8, 9, 10 AND 11.

Letter of December 29th, 1927.

[Translation.]

In a letter dated June 7th, 1927, you were good enough to forward me a letter from the Chairman of the Committee of Experts for the Progressive Codification of International Law (document C.200.M.74.1927.V) together with the questionnaires and reports mentioned in this letter and concerning the following, among other, subjects:

- (1) Communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters (document C.201.M.75.1927.V);
- (2) Legal position and functions of consuls (document C.202.M.76.1927.V);
- (3) Revision of the classification of diplomatic agents (document C.203.M.77.1927.V);
- (4) Competence of the courts in regard to foreign States (document C.204.M.78.1927.V).

In pursuance of the wish expressed in your letter, I have the honour to state hereunder the Swedish Government's views regarding the subjects dealt with in the above-mentioned questionnaires.

(1) It seems both desirable and realisable to draw up, by means of a general convention, provisions concerning the communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters. It is believed that the modified draft convention on the subject would be very suitable as a basis of discussion, especially as this draft takes into account the main results already achieved in this sphere by means of separate agreements and extends their scope still further. The main question to be answered is what is to be the chief rule limiting the obligation of States to co-operate in this respect. A clause confining such co-operation to cases in which extradition might be involved would restrict it more than is done in a number of separate agreements, including the majority of those concluded by Sweden. Apart from the general rule that the offence under consideration should not be a political one, the most natural solution would seem to be to confine the obligation to co-operate to offences punishable under the law of the State to which application is made. Generally speaking, it hardly appears desirable to seek to compel a State to give its assistance in punishing acts which it does not itself regard as calling for prosecution.

Further, this obligation should, of course, not be imposed on a State in cases which affect its sovereignty or its security.

(2) As regards, secondly, the question of the regulation of the legal position of consuls by international convention, the considerations put forward in the Rapporteur's conclusions and modified as a result of the discussions of the Committee of Experts meet with general approval in Sweden. As regards exemption from direct taxes, we venture, however, to refer you to the annexed *aide-memoire* on the stipulations of the Swedish law in this connection. As regards the question of precedence, it would be necessary to examine whether the importance of consuls *de carrière* would not justify the adoption of a clause providing that consuls *de carrière* in charge of a consular area should have precedence over honorary consuls-general.

(3) The next question which arises is whether it is desirable or not to revise the classification of diplomatic agents as established by the Congresses of Vienna and Aix-la-Chapelle. As the Rapporteur points out, the precedence accorded to ambassadors over ministers plenipotentiary was based on the idea that the former represented, in addition to their Government, the person of the monarch. Hence it seems evident that, since the recognition of absolute equality of rank between monarchies and republics, no less than between large and small States, this differentiation between diplomatic agents with identical functions has lost its *raison d'être*. If the inequality still existing in this respect between ambassadors and ministers plenipotentiary, which is therefore now an anomaly, were abolished, the arbitrary element in the present system would disappear; it does not seem fair that two States, whether large or small, should be able, by means of a bilateral agreement reciprocally conferring on their representatives the rank of ambassadors, to place the representatives of other Governments in a position of inferiority which, however formal it may be, nevertheless constitutes a real disadvantage. The Swedish Government would therefore view with satisfaction the adoption of measures aiming at establishing a single class for all diplomatic agents accredited by one head of State to another.

(4) Concerning the question of the competence of the courts in regard to foreign States, the Swedish Government is of the opinion that the conclusion of an international convention on this subject would be most desirable.

The rules of law hitherto adopted in most countries under which the courts have given States the benefit of an extensive immunity from jurisdiction are becoming more and more unsatisfactory as States extend their activities in the industrial and commercial sphere and in that of transportation.

Yet another consideration demands attention in this connection. In the last few years, States have, to an increasing degree, concluded arbitral conventions based on the principle that all disputes of a legal nature should be referred either to the Permanent Court of International Justice or to special arbitral tribunals.

The countries which have accepted arbitral conventions of this kind have thereby recognised the principle that any dispute arising out of the commercial activity of States may be referred to a court, even though the latter is of an international character.

As a general rule, however, it is better that these questions should be referred to the ordinary courts which deal with disputes of the same nature between private persons.

As regards Swedish case-law, there is no precedent in the judgments of the Supreme Court concerning the extent of the immunity enjoyed by foreign States. Other Swedish courts, however, have displayed a tendency not to recognise such immunity in cases in which the lawsuit arises out of the commercial activity of a foreign State. This is a natural attitude for the Swedish courts to adopt, since the Swedish State is in this respect on a footing of complete equality with private individuals and therefore cannot evade the obligation to plead before a Swedish court in connection with acts which concern the administration of business and are not acts of sovereignty.

(Signed) ELIEL LÖFGREN.

ANNEX.

Fiscal Immunity.

[Translation.]

(A) *Income tax.*

As regards fiscal immunity, all the members of the staff of the foreign consulates in Sweden, together with their servants, are exempt from income tax as follows:

(1) *If they are not Swedish subjects.* — On income other than that which they derive from real estate situated in Sweden, from undertakings carried on in the Kingdom, or from emoluments, salaries and pensions of Swedish origin; if they belong to the unpaid staff of the consulate they are nevertheless subject to tax, together with their servants, in respect of dividends on shares of every description in Swedish incorporated companies, joint-stock banks or business companies.

(2) *If they are Swedish subjects.* — On the income which they derive from their employment in the service of the foreign Power.

(B) *Tax on capital.*

Foreign consuls, as well as their domestic staff, are exempted from taxation on all capital other than that invested in Sweden, provided they are of foreign nationality.

By capital invested in Sweden, the law means real estate situated in the Kingdom, capital invested in the establishment or working funds of undertakings operating in Sweden, and shares of every kind in such undertakings.

(C) *Tax on motor-cars.*

Under Article 2 of the Royal Decree of June 2nd, 1922, concerning the tax on motor-cars, the King may, subject to reciprocity, exempt from this tax the members of foreign consulates who are not Swedish subjects.

(D) *Dog tax.*

A Royal Decree dated May 17th, 1923, imposes a compulsory tax on dogs. It contains no provision exempting foreign consuls from this tax; in practice, however, they are exempted as a matter of courtesy.

Switzerland.

QUESTIONNAIRE No. 8.

Letter of January 23rd, 1928.

[Translation.]

With reference to our letters of December 13th and 19th, 1927, concerning Questionnaires Nos. 9 and 10 of the Committee of Experts for the Progressive Codification of International Law, we have the honour to transmit to you herewith a statement of our views with regard to the conclusion of a general convention on the subject of Questionnaire No. 8, namely, the communication of judicial and extra-judicial acts in penal matters.

(Signed) MOTTA.

I. The Swiss Federal Council is not prepared to say outright that it would be impossible to conclude an international convention on the communication of judicial acts and letters rogatory in penal matters. As the Sub-Committee's report shows, most Governments already follow certain common principles in this connection. It would therefore appear to be possible definitely to embody these principles in a general convention. It should, however, be noted that widely

different conceptions still exist, the divergency being such that complete agreement on every point would be difficult to attain. At the present time there would be little chance of concluding an international convention unless the scope of that convention were limited to securing general agreement on certain points which most countries now regard as accepted facts and on the principles which govern present-day practice.

2. It may also be asked whether the proposed general convention is really necessary. In Questionnaire No. 8, frequent reference is made to the Hague Convention of November 14th, 1896, revised on July 17th, 1905, a convention, which deals, *inter alia*, with the service of documents and compliance with letters rogatory in civil matters.

In framing its draft agreement for the regulation, in penal law and procedure, of questions which are — at any rate in part — analogous to those dealt with in the Hague Convention, the Committee of Experts seems to a certain extent to have taken this document as its model. Switzerland is a party to the Hague Convention on civil procedure and to the other Hague Conventions on civil law. Generally speaking, it may be said that the Confederation had not concluded any special treaties on this subject, nor had the other States subscribed to any appreciable number of bilateral agreements on civil law and procedure. The Hague Conventions therefore supplied a very perceptible omission. The same, however, hardly applies in the case of judicial co-operation. The twenty or so extradition treaties which Switzerland has already concluded with various countries almost all contain provisions regarding the service of documents and regarding letters rogatory in penal matters, as well as rules on the following concomitant points: the confrontation of accused persons, the appearance of witnesses in foreign courts, the issue of deeds, the communication of judgments, the settlement of costs connected therewith and the question of the languages to be employed. The following treaties may be mentioned: with Germany (Articles 12 to 15), with the Argentine (Articles 15-17 and 21), with Austria (Articles 18-23), with Belgium (Articles 13-15), with Spain (Articles 13-16), with France (Articles 12-15), with Greece (Articles 17-20), with Hungary (Articles 18-23), with Italy (Articles 13-16 and the annexed Declaration), with Luxemburg (Articles 14-17), with Monaco (Articles 14-17), with Paraguay (Articles 16, 17 and 21), with the Netherlands (Articles 12-17), with Portugal (Articles 15-16), with the Kingdom of the Serbs, Croats and Slovenes (Articles 14-18), with Salvador (Articles 14-17), with Uruguay (Articles 18-21). The extradition treaties which Switzerland has concluded with the United States of America and Great Britain alone contain no express provisions on "complementary" judicial co-operation. Switzerland may be said to have obtained by means of these numerous bilateral treaties a degree of judicial co-operation in penal matters sufficient to meet her requirements. Experience proves that the greatest need for judicial co-operation arises in the relations between neighbouring States; it is of less importance in relations with other States. Switzerland herself has been able to appreciate this fact, since only in her relations with the four neighbouring countries does judicial co-operation in the matter of extradition and penal questions connected with "complementary" judicial co-operation occur with any frequency. She rarely has to co-operate with other European States, and hardly ever with States in other continents. Of the States with whom Switzerland has concluded extradition treaties — agreements, that is to say, which contain provisions regarding the service of documents and regarding letters rogatory — there are some which for years on end have not had occasion to submit any request for judicial co-operation; nor have they received any request from Switzerland.

The other States have also settled in special treaties — most of them in their extradition treaties — the question of "complementary" judicial co-operation in penal matters. In certain respects, but not in all, the principles followed coincide with those which Switzerland herself has adopted: that is to say, that their juristic conceptions are the same as our own. There already exists therefore in the matter of judicial assistance a fairly comprehensive set of international rules which, though they are not uniform, would seem to be adequate to the present situation. Bilateral treaties also possess this advantage over general conventions — they make it easier to take into account, if necessary, certain special conditions in the relations between two countries, due to their geographical situation and their similar legal and intellectual outlook. In view of the above considerations, it becomes impossible to say outright whether a general convention would really supply an existing need.

3. The Rapporteur of the Sub-Committee says that there exists no intimate connection between extradition and complementary judicial co-operation, and that the present attempt to arrive at codification should not be abandoned owing to the fact — recently brought out by the Committee of Experts — that extradition is a question which is not yet sufficiently ripe for solution by international agreement. Though we would not go as far as to say that extradition and complementary co-operation could not be regulated separately on an international basis, we nevertheless feel that their close relationship should be borne in mind. Extradition, together with other matters dealt with in most extradition treaties, does, in fact, constitute the whole of what is meant by "international judicial co-operation in penal matters", though extradition is only a part, albeit a most important part, of judicial co-operation. Extradition, therefore, should not be separated from the other forms of judicial co-operation, nor should the latter be codified separately unless the need for such separation is really felt. As this does not appear to be the case, it would be preferable to wait until the law of extradition, in the strict sense of the term, is also ready for general international settlement.

4. With regard to the draft convention proposed by the Committee, the first article of this convention which concerns measures of enquiry would give rise to serious objections. Under this provision the contracting States would undertake to assist each other, in almost every variety of penal question, by conducting judicial enquiries. Such co-operation could only be refused in the case of political crimes, or if the State applied to considered that such co-operation would be prejudicial to its sovereignty or security. The degree to which Switzerland co-operates judicially

varies considerably, according to the country concerned. The Confederation invariably refuses to co-operate, not only when the offence is of a political character but when it is of a military or fiscal nature, or when the act which has led to the request is not justiciable at Swiss law. Assistance is granted to some countries in all offences at ordinary law, sometimes even in police-court offences (contraventions); to other countries, however, assistance is only granted in the case of offences which, under the provisions of the various treaties, give rise to extradition. The considerations which determine the extent of co-operation are the special needs, and even the details of judicial procedure, in the other contracting State. The fact that the proposed convention would be open to all States might complicate matters, in that all the contracting Parties might not perhaps interpret in the same manner the obligations assumed by them under the reciprocity clause.

We need not dwell on the other provisions of the draft convention, though these might call for comment; our observations with regard to Article 1 concern the most important part of complementary judicial assistance.

In these circumstances it would perhaps be wise for the League of Nations to forgo, for the present, the preparation of a general convention, leaving the various States to reach agreement by means of bilateral treaties.

QUESTIONNAIRE No. 9.

Letter of December 13th, 1927.

[*Translation.*]

In a letter dated June 7th last you were good enough to transmit to us four new questionnaires drawn up by the Committee of Experts for the Progressive Codification of International Law on the following subjects:

1. Communication of judicial and extra-judicial acts in penal matters and letters rogatory in penal matters;
2. Legal position and functions of consuls;
3. Revision of the classification of diplomatic agents;
4. Competence of the courts in regard to foreign States.

Questions 1, 3 and 4 are still under consideration, the results of which we hope to be able to communicate shortly.

As regards the legal position of consuls, we have the honour to inform you that the Swiss Government would contemplate with satisfaction the possibility of an international settlement of this matter. In its opinion it is unquestionably desirable that the various countries should arrive, by a general convention, at a certain minimum settlement in the form of agreed rules. Nor does it seem probable that difficulties would be encountered in carrying out this idea.

The need of codification is, however, undoubtedly less pressing in this domain than in that of diplomatic privileges and immunities. Difficulties arise less frequently in connection with the legal status of consuls and consular agents, and when they do occur they are easier to settle. Moreover, the proper treatment of officers in charge of consular posts, and their subordinates, is already defined in numerous consular conventions and conventions of establishment. Recent agreements even contain detailed rules concerning consular prerogatives. The position in regard to the treatment of diplomatic agents appears to be quite different. In this matter, international practice has not attained the same degree of uniformity. As, however, in accordance with the conclusions of its First Committee, the Assembly of the League of Nations, at its last ordinary session, decided that the question of diplomatic privileges and immunities was not "important enough" to be included in the proposed codification, it is scarcely reasonable to expect that the question of consular prerogatives, which is obviously even less important, should be one of those to be settled forthwith by an international agreement. Accordingly, the Swiss Government considers it preferable to refrain from making any essential observations on the various aspects of the problem until fuller information has come to hand.

It desires, however, to point out in this connection that it cannot subscribe to the views expressed by M. GUERRERO in his interesting statement with regard to the desirability of abolishing honorary consuls. The system of placing consular offices under honorary consuls is very well suited to the special circumstances of certain countries. Thus it has enabled Switzerland, whose expatriated nationals form large and prosperous colonies in many countries, to maintain and enlarge her consular representation abroad without thereby incurring expenditure disproportionate to her resources. The results have been in every way satisfactory.

We would request you to be good enough to communicate the foregoing statement to the Committee of Experts, and we have the honour to be, etc.

(Signed) MOTTA.

QUESTIONNAIRE No. 10.

Letter of December 19th, 1927.

[*Translation.*]

Following on our letter of December 13th in reply to Questionnaire No. 9 of the Committee of Experts for the Progressive Codification of International Law concerning the legal position

of consuls, we have the honour to inform you that we have noted with interest Questionnaire No. 10 relating to the revision of the classification of diplomatic agents.

The views expressed in the matter by the Sub-Committee would appear to be incontrovertible. Accordingly, it might be expedient to convene an international conference to prepare a classification of diplomatic agents more in keeping with the actual character of their duties and more consistent with the principles of modern international law.

(Signed) MOTTA.

QUESTIONNAIRE NO. 11.

Letter of April 23rd, 1928.

[*Translation.*]

In continuation of our letters of December 13th and 19th last, in reply to Questionnaires Nos. 9 and 10 sent out by the Committee of Experts for the Progressive Codification of International Law, we have the honour to inform you that we have also carefully considered Questionnaire No. 11 concerning the competence of the Courts in regard to foreign States. As a result of this examination the Federal Council is of opinion that it would certainly be desirable to regulate this question of jurisdiction by international agreement. Moreover, there would not appear to be any insurmountable difficulties in the way of this proposed codification.

Should the future Convention be based on the principle that the jurisdictional immunity of States can only be withdrawn if it is expressly or tacitly waived, we are of opinion that there should be presumption of waiver in the five kinds of action set out on page 7 of M. Matsuda's Report. The cases which may come under "action for damages for a tort or quasi-tort committed in the territory" (No. 5 in the Matsuda Report) should, however, be defined more exactly. It would perhaps also be desirable to supplement the list of cases of tacit waiver by adding a new category of "actions founded on contracts concluded by a foreign State in the territory if their complete execution in this territory can be demanded under a definite clause in the contract or from the actual nature of the action" (compare Article II, No. 5, of the Draft Regulations adopted in 1891 by the "Institut de droit international" regarding the competence of the Courts in cases against foreign States, Sovereigns or Heads of States).

As regards the criterion to be employed in distinguishing between acts of sovereignty and acts of simple business administration in the event of jurisdictional immunity being recognised only for acts which are genuine manifestations of sovereignty, the solution most in harmony with the principles of juridical practice would be to conform entirely not to the definite purpose of the act but to its intrinsic nature. Before an act can have the character which confers full jurisdictional immunity upon it, it must be of such a nature that it cannot be performed by a private individual.

The Sub-Committee's report makes no formal pronouncement on the important question whether property belonging to foreign States may be subjected to measures of sequestration or compulsory execution. Cases of this kind not infrequently arise in practice, and lead to diplomatic incidents. An international agreement on this matter also is therefore desirable, and would certainly be attainable.

Sequestration and compulsory execution, in view of their character as measures of constraint, should, out of consideration for the sovereignty of States and in the interest of good international relations, be prohibited, or at least resorted to only in exceptional cases and subject to reciprocity. As a general rule, such measures would only be defensible when a State deliberately refused to execute a judgment given by a foreign Court whose jurisdiction it had explicitly or tacitly recognised. It would, moreover, be desirable to verify this refusal by diplomatic representations designed to induce the debtor State to fulfil its obligations of its own free will. Only in the event of the failure of these negotiations ought the question to arise whether the case is actually one to justify sequestration or compulsory execution.

A restriction of the employment of measures of sequestration or compulsory execution could be regarded, moreover, as a sort of corrective to the limitation of the right of States to object to the competence of foreign Courts. It would probably enable certain States more readily to overcome any reluctance they might feel as regards submitting to the competence of another State disputes to which they were parties.

(Signed) MOTTA.

United States of America.

QUESTIONNAIRES Nos. 8, 9, 10 AND 11.

Letter of December 16th, 1927.

The Secretary-General of the League of Nations, with a communication dated June 7th, 1927, was good enough to transmit to the Secretary of State of the United States certain questionnaires and reports prepared by the Committee of Experts for the Progressive Codification of International Law and to request the opinion of the Government of the United States as to whether

the regulation by international agreement of the subjects treated in the questionnaires having regard to both the question of general aspects and the specific points mentioned in the questionnaires is desirable and realisable in the near future.

Questionnaire No. 8.

With respect to the amended draft convention on this subject submitted with the report of the Sub-Committee of the Committee of Experts, it may be stated that the taking of testimony relating to criminal cases in foreign countries by the use of letters rogatory, with which Article 1 of the amended draft deals, is a process for which no provision has been made by the legislation of the Federal Government, and one which, under the system prevailing in the United States, can be employed, if at all, only pursuant to the laws of the several States. It is not deemed advisable to make commitments by international convention to change the existing practice in this regard prevailing in the United States. Moreover, evidence obtained in foreign countries through letters rogatory could not be used in criminal cases in the United States, since, under the Constitution, the accused must be confronted by witnesses against him.

With respect to the second article of the revised draft, it may be stated that the Government of the United States is not prepared to commit itself to serve summonses emanating from foreign courts on witnesses or experts resident in the United States, or to surrender persons in custody except through the process of extradition.

It is the view of the Government of the United States that the matter of the surrender of exhibits dealt with in the third article of the amended draft convention can be adequately provided for in extradition treaties. Indeed, provisions for the surrender of property in possession of fugitives are contained in some of the extradition treaties of the United States. The list of treaties appended to the report as examples of judicial co-operation indicates that the subject as heretofore treated is closely related to extradition.

While conventions on the subject of judicial co-operation doubtless serve a useful purpose among countries in close geographic proximity to each other, it is not apparent that uniform application of such agreements is necessary.

Questionnaire No. 9.

The experience of the Government of the United States has not revealed any cause for uncertainty regarding the legal position and functions of consuls. Further, this matter has been the subject of numerous provisions in bilateral treaties. It is the view of the Government of the United States that no compelling necessity exists for the treatment of this subject by a general international convention.

Questionnaire No. 10.

The Government of the United States does not consider it desirable to revise the classifications of diplomatic agents as proposed. No circumstances or conditions demonstrating the desirability of changing the classification have been revealed, nor is there reason to expect that their proposed change, if made, would affect any material improvement.

The Government of the United States does not consider that a multilateral international agreement on Questionnaires Nos. 8 and 9 or the change of classification proposed in Questionnaire No. 10 is desirable or attainable in the near future.

Questionnaire No. 11.

The Government of the United States is inclined to the view that an international agreement on the subject of competence of the courts in certain classes of cases against foreign States would serve a useful purpose and would therefore be desirable, and that there should be no insuperable obstacle to the concluding of an agreement on that subject.

The Government of the United States thanks the Secretary-General for the Report on the Effect of the Most-Favoured-Nation Clause forwarded with the communication of June 7th.

Annex III

ANALYSES OF REPLIES RECEIVED FROM GOVERNMENTS TO
THE QUESTIONNAIRES.

Questionnaire No. 8

ANALYSIS OF GOVERNMENT REPLIES TO THE QUESTIONNAIRE CONCERNING
THE COMMUNICATION OF JUDICIAL AND EXTRA-JUDICIAL ACTS IN
PENAL MATTERS AND LETTERS ROGATORY IN PENAL MATTERS.

I.

Eighteen Governments have replied accepting the principle that codification is desirable and realisable :

Austria	France	Norway
Brazil	Germany	Poland
Denmark	Hungary	Roumania
Egypt	Japan	Salvador
Estonia	Latvia	Sweden
Finland	Netherlands	Switzerland

It should be noted, however, that all these Governments, though they are in agreement with the principles laid down, have made reservations, and in some cases important ones. We summarise below a few of these reservations, several of which affect the very basis of the modified draft Convention.

Austria explains her view with regard to the various articles of the modified draft Convention, criticising some of its provisions. The Austrian Government would welcome the inclusion in the draft Convention of the principle that judicial co-operation in penal matters should only be stipulated in the case of offences for which, under the laws of the State applied to, the courts of that State can inflict punishment (*c/.* replies from Finland and Sweden).

Brazil has not replied officially but has communicated a memorandum from Professor Clovis Bevilacqua which is favourable to Professor Schücking's report.

Denmark would wish to see Article 1 so amended as to make it possible for contracting parties to refuse a request for co-operation in penal cases which do not involve an obligation to grant extradition.

Egypt makes reservations necessitated by the system of Capitulations.

Estonia proposes certain amendments on points of detail.

Finland makes the same reservation as Austria, quoted above.

France considers that this question is worthy of careful consideration, but prefers not to give a definite opinion until later.

Germany expressly reserves complete freedom as regards the details of the modified draft Convention.

Hungary criticises in great detail the modified draft Convention, but nevertheless arrives at the conclusion that "the regulation of this question by means of a general Convention is not *prima facie* to be rejected".

Japan, while accepting the principle, rejects paragraph 2 of Article 2 and Article 3 of the modified draft Convention.

Latvia makes an express reservation with regard to the case of offences justiciable by special courts set up under exceptional circumstances.

The Netherlands consider that the definition of "political offences, which will probably be necessary in this connection, is bound to involve certain difficulties".

Norway criticises the provisions of paragraph 2 of Article 2.

Poland is of opinion that the procedure of extradition can only be regulated by special conventions.

Roumania agrees to the principles laid down in Professor Schücking's report, but reserves the right to discuss each text separately when the draft is put into final shape.

Salvador has replied in the affirmative.

Sweden makes the same reservation as Austria and Finland (see above).

Switzerland agrees with the principle laid down, but draws attention to the wide divergencies of opinion which would not be easy to reconcile completely; she explains that this question has also been regulated in separate treaties, which make it easier to take into account various special conditions in the relations between countries.

II.

Six Governments have replied in the negative ;

Australia
British Empire

India
New Zealand

South Africa
United States of America

These six countries have given a definitely negative reply to the question raised by the Experts.

Australia considers that the matter is one which may be more conveniently dealt with in bilateral agreements.

The British Empire also prefers bilateral agreements to a general convention.

India and New Zealand agree with the British Empire.

South Africa does not consider the subject mentioned in Questionnaire No. 8 desirable and realisable in the near future.

The United States of America are of opinion that " conventions on the subject of judicial co-operation doubtless serve a useful purpose among countries in close geographic proximity to each other, but do not believe that general conventions are necessary. "

Questionnaire No. 9

ANALYSIS OF GOVERNMENT REPLIES TO THE QUESTIONNAIRE CONCERNING
THE LEGAL POSITION AND FUNCTIONS OF CONSULS.

I.

Eighteen Governments have replied accepting the principle that codification is desirable and realisable :

Austria
Belgium
Denmark
Egypt
Estonia
Finland

Germany
Hungary
Japan
Latvia
Netherlands
Norway

Poland
Portugal
Spain
Salvador
Sweden
Switzerland

These eighteen States have been grouped in the same category, but it should be observed that, while accepting the principle, almost all these Governments have made reservations, some of which refer to important points (*cf.*, for instance, the observations by the Netherlands and by Switzerland quoted below).

Austria suggests that Consuls should be allowed to perform their duties provisionally before the *exequatur* has been granted (*cf.* Portugal).

Brazil has not replied officially, but in Professor Clovis Bevilacqua's memorandum, which she has communicated to the Secretariat, the author states his opinion that it would be desirable to determine the functions of Consuls (*cf.* the general rules laid down by the Commission of Jurists at Rio de Janeiro in 1927).

Denmark offers certain observations with regard to exemption from direct taxation.

Egypt agrees unreservedly.

Estonia is of opinion that the question of exempting Consuls — *de carrière* or honorary — merits consideration, provided these Consuls are nationals of the State which has appointed them and are not engaged in any trade, industry or profession in the country in which they exercise their functions.

Finland is opposed to the abolition of honorary Consuls : she considers these to be absolutely necessary.

Germany does not foresee any great difficulties.

Hungary criticises various points of detail in the modified draft Convention, and holds that, if a general convention were established, it should be made possible for two or more States in their mutual relations to add to or modify its clauses. She is opposed to the Experts' suggestion that honorary Consuls should be abolished.

Japan is unable to accept the conclusions of the modified draft Convention with regard to the prerogatives of Consuls, particularly that part which concerns a Consul's relations with the judicial authorities of the country to which he has been appointed.

Latvia is unable to agree that the rank of honorary Consul should be abolished.

The Netherlands consider that this matter is not urgent (cf. Switzerland).

Norway formulates several objections. She is opposed to the abolition of the practice of employing honorary Consuls; she regards it indeed as a very useful practice. Norway proposes that Consuls belonging to the regular consular service should enjoy, not only immunity from civil jurisdiction, but also from penal jurisdiction in connection with acts performed in the exercise of their official duties.

Poland does not offer any observations regarding the details of the draft.

Portugal makes the same comment as Austria with regard to the exequatur. She suggests that Consuls should be recognised provisionally. She points out, moreover, that certain consular conventions concluded by her contain exceptions to the principles laid down.

Spain considers that provisions with regard to the exequatur are too rigid, and submits other criticisms in respect of details.

Salvador has replied in the affirmative.

Sweden is on the whole in agreement with the modified draft.

Switzerland accepts the draft Convention in principle, but considers that, as the 1927 Assembly held that the question of diplomatic privileges and immunities was "not of sufficient interest" to justify codification, it cannot logically be maintained that the question of consular prerogatives, which is obviously of less importance than the former question, should be accepted as one of the points to be settled forthwith by international agreement. (The Netherlands have expressed the same opinion.)

II.

Eight Governments have replied in the negative :

Australia	India	South Africa
British Empire	New Zealand	United States of America
France	Roumania	

These eight countries have given a definitely negative reply.

Australia says that the matter can be more conveniently dealt with in bilateral conventions, particularly in view of the fact that in Australia many Consuls-General and Consuls transact business which in other countries is normally dealt with by diplomatic missions. This situation makes it difficult for the Commonwealth to accede to a general convention.

The British Empire considers that a general convention on this question is not desirable.

France holds that, as this matter has been satisfactorily settled in a practical manner, according to the requirements of individual countries, in special bilateral conventions, there might be certain disadvantages in altering the present system.

India returns a definitely negative answer.

New Zealand agrees with the British Empire.

Roumania has not replied in the negative, but from the general tenor of her reply she cannot be placed in the group of States which have replied affirmatively.

South Africa considers that it would be neither desirable nor practical in the near future to act on the recommendation of Questionnaire No. 9.

The United States of America would appear to prefer bilateral treaties.

Questionnaire No. 10

ANALYSIS OF GOVERNMENT REPLIES TO THE QUESTIONNAIRE ON THE REVISION OF THE CLASSIFICATION OF DIPLOMATIC AGENTS.

L.

Twelve Governments have replied accepting the principle that codification is desirable and realisable :

Austria	Hungary	Portugal
Denmark	Latvia	Salvador
Estonia	Netherlands	Sweden
Finland	Poland	Switzerland

These twelve countries have replied affirmatively to the questions formulated by the Committee of Experts. They believe, therefore, that it would be desirable to modify the present classification of diplomatic agents.

Most of these States have replied briefly. It should be noted that the Austrian Government fears that there will be some difficulty in obtaining general consent to the proposed modification.

II.

Four Governments have replied neither affirmatively nor negatively and must therefore be placed in a separate category :

Australia
Brazil

Egypt
Roumania

These four countries have adopted what may be termed an intermediate attitude.

Australia has no observations to make on this matter.

Brazil (Professor Clovis Bevilacqua's memorandum) considers that M. Guerrero's proposals are in keeping with the equality between States and with modern democratic tendencies, but does not definitely support these proposals.

Egypt states that she is obliged to reserve her reply.

Roumania's reply precludes her inclusion in the group of States which have replied affirmatively.

III.

Eleven Governments have replied negatively :

Belgium
British Empire
France
Germany

India
Japan
New Zealand
Norway.

South Africa
Spain
United States of America

Belgium does not consider that it would be opportune to revise the classification of diplomatic agents established under the Protocol of Aix-la-Chapelle. She adds that there is nothing to prevent minor Powers from appointing ambassadors and observes that several of them have done so. For the class of Ministers resident, she remarks, there seems to be less justification. In any case, however, this class is tending to disappear, a considerable number of countries having abolished this rank in their diplomatic services. Such is the case in Belgium, where it was abolished at the beginning of 1914. Rather than revise the Protocol of Aix-la-Chapelle on this point, it would, in Belgium's opinion, be preferable to allow it to fall into disuse.

The British Empire is of opinion that a revision is not desirable.

France does not think that there would be any advantage in retaining Questionnaire No. 10; she holds that there is no need to revise the classification of diplomatic agents made by the Congresses of Vienna and Aix-la-Chapelle.

Germany returns a definitely negative answer.

India is not in favour of the proposal.

Japan is of opinion that it would be difficult to secure revision in view of the present international situation.

New Zealand agrees with the British Empire.

Norway does not accept the Sub-Committee's proposals.

South Africa does not consider that it would be desirable or practicable in the near future to act on the suggestions contained in Questionnaire No. 10.

Spain is definitely opposed to the Sub-Committee's proposals and supports the traditional classification.

The United States of America also returns a negative answer.

Questionnaire No. 11

ANALYSIS OF GOVERNMENT REPLIES TO THE QUESTIONNAIRE CONCERNING
THE COMPETENCE OF THE COURTS IN REGARD TO FOREIGN STATES.

I.

Twenty-one Governments have replied accepting the principle that codification is desirable and realisable :

Australia
Belgium
Brazil
British Empire
Denmark
Egypt
Estonia

Finland
France
Germany
Hungary
India
Japan
Latvia

Netherlands
New Zealand
Poland
Salvador
Sweden
Switzerland
United States of America

Some of these Governments, though agreeing with the draft Convention as a whole, have formulated a number of important reservations (see below).

Australia believes that the question could, with advantage, be considered by an international conference.

Belgium agrees, but would prefer bilateral agreements to multilateral conventions.

Brazil (Professor Clovis Bevilacqua's memorandum) thinks that a general convention would be desirable.

The British Empire is of opinion that the question is a suitable one for consideration by an international conference.

Denmark agrees, but states that she is well aware of the difficulties which will have to be overcome.

Egypt agrees in principle with the Committee of Experts.

Estonia approves the conclusions of the report.

Finland is on the whole disposed to welcome an attempt to secure international codification, but realises that the task will be a difficult one.

France feels that the question is worthy of the most careful consideration, but reserves her final attitude.

Germany does not foresee any particular difficulties; she proposes that the conference, if convened, should take into account the application of other national stipulations in regard to various States, particularly in the sphere of administrative law.

Hungary would accede to a convention for the conciliation of divergent points of view.

India agrees, subject to certain reservations.

Japan declares that it would obviously be difficult at the present time, in view of widely divergent doctrine and practice in this connection, to reach a satisfactory agreement.

Latvia believes that the difficulties can be overcome.

The Netherlands are of opinion that a settlement is desirable, but foresees a number of difficulties. She thinks in particular that it will be necessary to touch on the question of the execution of judgments against the property of a foreign State in the country in which the judgment has been given.

New Zealand agrees with the opinion expressed by the British Empire.

Poland considers the international regulation of the competence of courts in regard to States carrying on commercial or industrial activities to be desirable. Such an arrangement should not, however, be introduced without at the same time establishing a procedure which would govern the seizure of the property of a foreign State and take account of the sovereign rights of States.

Salvador has replied in the affirmative.

Sweden would seem to agree and holds that, generally speaking, it would be desirable to submit these questions to the ordinary courts of the various countries.

Switzerland does not foresee any insuperable difficulties.

The United States of America would agree to the regulation of certain classes of cases.

II.

Three Governments have replied negatively :

Austria

Roumania

South Africa

Austria considers that serious difficulties would have to be overcome before this question could be settled and refers in particular to the difficulty of discovering any scientific criterion by which it would be possible to differentiate clearly between acts of rightful sovereignty and the acts which a State may perform in the conduct of a commercial or industrial enterprise.

Roumania is of opinion that the question is not yet " sufficiently ripe " for the conclusion of an international agreement and that its discussion should be postponed until a later date.

South Africa does not consider that it would be desirable or practical in the near future to act on the recommendations made in Questionnaire No. 11.

Annex IV

**CONVENTION ON CONSULAR AGENTS ADOPTED ON FEBRUARY 20TH,
1928, AT THE SIXTH PAN-AMERICAN CONFERENCE AT HAVANA.**

(This document is reproduced for information. As the official English text was not available at the moment of publication, the text here given is the English text of the draft Convention which was submitted to the Conference, amended by the Secretariat to correspond to the Spanish text adopted by the Conference.)

SECTION I. -- APPOINTMENT AND FUNCTIONS.

Article 1.

States may appoint in the territory of others, with the express or tacit consent of the latter, Consuls who shall there represent and defend their commercial and industrial interests and lend to their nationals such assistance and protection as they may need.

Article 2.

The form and requirements for appointment, the kinds and rank of Consuls, shall be regulated by the domestic laws of the respective State.

Article 3.

Unless consented to by the State where he is to serve, one of its nationals may not act as Consul. The granting of an exequatur gives authority to act.

Article 4.

The Consul having been appointed, the State shall forward through diplomatic channels to the other the respective commission which shall contain the name, rank, and authority of the appointee.

As to a Vice-Consul or commercial agent appointed by the respective Consul, where there is authorisation by law, the commission shall be issued and communicated by the latter.

Article 5.

States may reject Consuls appointed in their territory or reduce the exercise of consular functions to certain special duties.

Article 6.

The Consul can be recognised as such only after having presented his commission and obtained the exequatur of the State in whose territory he is going to serve.

Provisional recognition of the Consul can be granted, upon the request of the Legation, pending the delivery in due form of the exequatur.

Officials appointed under the terms of Article 4 are likewise subject to this formality and in such case it rests with the respective Consul to request the exequatur.

Article 7.

The exequatur having been obtained, it shall be presented to the authorities of the consular district, who shall protect the Consul in the exercise of his functions and grant to him the immunities to which he is entitled.

Article 8.

The territorial Government may, at any moment, withdraw the Consul's exequatur, but, except in urgent cases, it shall not have recourse to this measure without previously attempting to obtain from the Consul's Government his recall.

Article 9.

In case of the Consul's death, inability to act or absence, one of his assistants, whose official capacity has previously been brought to the knowledge of the Ministry of Foreign Affairs or Secretary of State, may provisionally discharge the consular functions and while so acting shall enjoy all the rights and prerogatives belonging to the Consul himself.

Article 10.

Consuls shall exercise the functions that the law of their State confers upon them, without prejudice to the legislation of the country in which they are serving.

Article 11.

In the exercise of his functions, the Consul shall be in official communication with the authorities of his district. If his complaints are not taken care of, he may bring them to the attention of the Government of the State through the intermediary of his diplomatic representative, it not being lawful in any case to communicate directly with the Government except in the absence or non-existence of a diplomatic representative.

Article 12.

In case of non-existence of a diplomatic representative of the Consul's State, the Consul may undertake such diplomatic acts as the Government of the State in which he functions permits in such cases.

Article 13.

One person duly accredited for the purpose can combine diplomatic representation and the consular function, provided that the State to which he is accredited gives its consent.

SECTION II. — RIGHTS OF CONSULS.

Article 14.

In the absence of a special convention between the two nations, consular agents who are nationals of the State by which they are appointed may not be imprisoned or prosecuted unless accused of an act which is regarded as a misdemeanour (*délit*) by the local law.

Article 15.

In criminal proceedings, the prosecution and defence may call upon consular agents to appear as witnesses before the court. The summons shall be effected with all possible consideration for the dignity of the Consul and the duties of his mission and effect to it shall be given by the consular agent.

In civil proceedings, consular agents are subject to the jurisdiction of the courts, provided always that, if the Consul is a national of the country appointing him and is not engaged on his own account in a profit-making occupation, his evidence shall be taken orally or in writing at his residence or office with all the consideration which is due to him. The Consul may, however, volunteer to give evidence if his so doing does not materially interfere with the exercise of his official functions.

Article 16.

For acts done in their official character and within the limits of their authority, Consuls shall not be subject to the local courts. In such instances, the individual considering himself injured shall address his complaint to the territorial Government, which, if it considers the complaint to be in accordance with law, will urge it through diplomatic channels.

Article 17.

With respect to non-official acts, Consuls shall be subject, in civil as well as in criminal matters, to the courts of the State in which they exercise their functions.

Article 18.

The official residence of a Consul and the premises occupied by the consular offices and archives are inviolable; the local authorities may not in any event enter thereon without the permission of the consular agent or examine or seize, on any pretext whatever, the documents or objects contained in the consular offices. No consular agent may be required to produce his official archives before the courts or give evidence as to their contents.

Where a consular agent engages in business in the territory of the State in which he exercises his consular functions, the consular archives and documents relating thereto shall be kept on premises entirely distinct from the premises in which the Consul keeps his private and business papers.

Article 19.

The Consul is obliged to deliver, upon the simple request of the local authority, persons accused or condemned for offences who may have taken refuge in the Consulate.

Article 20.

All consular agents and all consular employees who are nationals of the State appointing them and do not engage in a profit-making occupation in the State in which they perform their functions shall be exempt from all national, State, provincial or municipal taxation upon their persons or property, with the exception of taxation upon occupation or ownership of immovable property situated in the State in which they exercise their functions and the revenue from such property. Consular agents and consular employees who are nationals of the State which they represent are exempt from taxation upon the salaries, honoraria or wages received by them in payment for their official services.

Article 21.

The employee who substitutes for the Consul in his absence or for any other reason shall enjoy during his period in charge the same immunities and privileges.

Article 22.

Consuls engaging in business or exercising functions which do not fall within their duties as Consuls are subject to the local jurisdiction in respect of all acts not connected with their service as Consuls.

SECTION III. — SUSPENSION AND TERMINATION OF CONSULAR FUNCTIONS.

Article 23.

Consular functions are suspended by the Consul's illness or leave of absence. They are terminated :

- (a) By his death ;
- (b) By his retirement, removal or resignation ;
- (c) By the cancellation of the exequatur.

Article 24.

The present Convention shall not affect obligations previously undertaken under international agreements by the Contracting Parties.

Article 25.

The present Convention shall, after signature, be submitted to the signatory States for ratification. The Government of Cuba shall send the Governments certified true copies for the purpose of ratification. The instruments of ratification shall be deposited in the archives of the Pan-American Union at Washington, which shall notify the deposit to the signatory Governments ; such notification shall have the effect of an exchange of ratifications. The Convention shall remain open for accession by non-signatory States.

IN FAITH WHEREOF the above-mentioned plenipotentiaries have signed the present Convention in Spanish, English, French and Portuguese at the city of Havana on February 20th, 1928.

Genève, le 3 septembre 1928.

SOCIÉTÉ DES NATIONS

**Décès de M. André Weiss, Vice-Président
de la Cour permanente de Justice internationale**

Note du Secrétaire général :

Le Secrétaire général a l'honneur de communiquer au Conseil et à l'Assemblée la lettre ci-annexée reçue du Greffier de la Cour concernant le décès de M. André Weiss, Juge et vice-président de la Cour permanente de Justice internationale, et demandant que la vacance qui s'est produite au sein de la Cour soit portée à la connaissance des autorités et instances compétentes.

LETTRE DU GREFFIER AU SECRÉTAIRE GÉNÉRAL EN DATE DU 31 AOÛT 1928.

J'ai l'honneur de vous confirmer mon télégramme de ce jour, par lequel j'ai eu le profond regret de vous informer du décès, survenu à La Haye, dans la nuit du 30 au 31 août, de M. André WEISS, vice-président de la Cour permanente de Justice internationale.

J'ai, en conséquence, le devoir de vous prier de bien vouloir prendre les dispositions nécessaires pour que les autorités et instances indiquées par le Statut de la Cour permanente de Justice internationale soient informées de la vacance qui s'est produite au sein de la Cour.

Le Greffier de la Cour :

(Signé) A. HAMMARSKJÖLD.

[Distributed to the Council,
the Members of the League and
the Delegates at the Assembly.]

A. 39. 1928. V.

Geneva, September 3rd, 1928.

LEAGUE OF NATIONS.

**Death of M. André Weiss, Vice-President
of the Permanent Court of International Justice.**

Note by the Secretary-General :

The Secretary-General has the honour to communicate to the Council and the Assembly the annexed letter from the Registrar of the Permanent Court of International Justice relating to the death of M. André Weiss, Judge and Vice-President of the Permanent Court of International Justice, and requesting that the vacancy thus arising on the Court may be brought to the knowledge of the competent authorities.

LETTER FROM THE REGISTRAR TO THE SECRETARY-GENERAL, DATED AUGUST 31ST, 1928.

I have to confirm my telegram of to-day, in which I had the profound regret of informing you of the death at The Hague, during the night of August 30th/31st, of M. André WEISS, Vice-President of the Permanent Court of International Justice.

I have in consequence the duty of requesting you to be so good as to take the necessary steps and to cause the authorities and bodies indicated by the Statute of the Permanent Court of International Justice to be informed of the vacancy which has occurred on the Court.

(Signed) A. HAMMARSKJÖLD,

Registrar of the Court.

Genève, le 4 septembre 1928.

SOCIÉTÉ DES NATIONS

**Démission de M. John Bassett Moore,
Juge à la Cour permanente de Justice internationale :
Election de son successeur**

COMMUNICATION DE LA DÉLÉGATION DU CANADA

Le Secrétaire général a l'honneur de communiquer au Conseil et à l'Assemblée la lettre ci-après, en date du 3 septembre 1928, qu'il a reçue de M. MACKENZIE KING, premier délégué du Canada.

Le 3 septembre 1928.

J'apprends que, dans le cas de la majorité des Membres de la Société des Nations, les groupes nationaux ont décidé de désigner l'Honorable Charles Evans Hughes comme membre de la Cour permanente de Justice internationale jusqu'à l'expiration du mandat de M. John Bassett Moore.

Je suis certain que, dans ces circonstances, les candidats présentés par le groupe national canadien, M. le Juge Duff et M. Eugène Lafleur, désireraient que leur candidature soit retirée. Si cette décision pouvait contribuer à assurer la nomination de M. Hughes à l'unanimité, je vous serais reconnaissant de bien vouloir prendre les dispositions nécessaires pour faire retirer les noms des candidats canadiens.

(Signé) W. L. MACKENZIE KING.

[Distributed to the Council,
the Members of the League and
the Delegates at the Assembly.]

A. 42. 1928. V.

Geneva, September 4th, 1928.

LEAGUE OF NATIONS.

**Resignation of Mr. John Bassett Moore,
Judge of the Permanent Court of International Justice:
Election of His Successor.**

COMMUNICATION FROM THE DELEGATION OF CANADA.

The Secretary-General has the honour to communicate to the Council and the Assembly the following letter, dated September 3rd, 1928, which he has received from Mr. MACKENZIE KING, First Delegate of Canada.

September 3rd, 1928.

I am informed that, in the case of a majority of the Members of the League, the national groups have agreed in nominating the Honourable Charles Evans Hughes a member of the Permanent Court of International Justice, to complete the term of Mr. John Bassett Moore.

I am certain that, under these circumstances, the nominees of the Canadian national group, Mr. Justice Duff and Mr. Eugene Lafleur, would desire that their names be withdrawn. If it would help to ensure unanimity in the nomination of Mr. Hughes, I should be pleased if you would arrange to have the names of the Canadian nominees withdrawn.

(Signed) W. L. MACKENZIE KING.

Geneva, September 14th, 1928.

NINTH ORDINARY SESSION OF THE ASSEMBLY
OF THE LEAGUE OF NATIONS.

PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW.

RESOLUTIONS SUBMITTED BY THE FIRST COMMITTEE

Rapporteur: M. Henri ROLIN (Belgium).

I. THE FIRST CODIFICATION CONFERENCE.

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

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

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

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

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

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

7. The Assembly, considering that the question of nationality which is on the agenda of the Conference is of special interest to women, and that Article 7 of the Covenant embodies the principle that all positions under or in connection with the League shall be open equally to men and women, expresses the hope that the Members of the League, when invited to the forthcoming Conference, will consider the desirability of taking these considerations into account in composing their delegations.

II. PREPARATORY WORK FOR FURTHER CONFERENCES.

1. The Assembly,

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

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

- (1) Legal position and functions of Consuls ;
- (2) Competence of the courts in regard to foreign States.

It decides to reserve these questions with a view to subsequent conferences.

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

as far as possible

It adjourns to its session of 1929 the question whether it is necessary to convene the Committee of Experts again for the purpose of examining the replies from the Governments received in the interval by the Secretary-General of the League of Nations, and, eventually, of studying other questions which may arise in connection with codification of international law.

The Assembly recommends that the Committee of Experts should, when it next meets, examine whether it would be possible and desirable to endeavour, by the procedure of codification, to formulate a declaration of the fundamental rights and duties of States.

III. ESTABLISHMENT OF A GENERAL PLAN OF CODIFICATION.

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.

.....



[Distributed to the Council, the
Members of the League and the
Delegates at the Assembly.]

A. 59. 1928. V.

Geneva, September 15th, 1928.

NINTH ORDINARY SESSION OF THE ASSEMBLY
OF THE LEAGUE OF NATIONS

**Question of the Revision of the Statute of the Permanent
Court of International Justice**

DRAFT RESOLUTION SUBMITTED BY THE FIRST COMMITTEE.

Rapporteur: M. René CASSIN (France).

The First Committee has examined the draft resolution concerning the revision of the Statute of the Permanent Court of International Justice which was submitted by the French delegation on behalf of a number of delegations (document A.48.1928.V). The Committee proposes that the Assembly should adopt the resolution in the following form :

Draft Resolution.

“ The Assembly :

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

“ Deeming it advisable that, before the renewal of the terms of office of the members of the Court in 1930, the present provisions of the Statute of the Court should be examined with a view to the introduction of any amendments which experience may show to be necessary ;

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

Genève, le 15 septembre 1928.

**NEUVIÈME SESSION ORDINAIRE DE L'ASSEMBLÉE
DE LA SOCIÉTÉ DES NATIONS**

**Question de la Revision du Statut de la Cour permanente
de Justice internationale**

**PROJET DE RÉSOLUTION SOUMIS A L'ASSEMBLÉE
PAR LA PREMIÈRE COMMISSION**

Rapporteur : M. René CASSIN (France).

La première Commission a examiné le projet de résolution concernant la revision du Statut de la Cour permanente de Justice internationale qui a été déposé par la délégation française au nom de nombreuses délégations (document A.48.1928.V). Elle en propose l'adoption par l'Assemblée dans la rédaction suivante :

Projet de résolution :

« L'Assemblée :

« Considérant le nombre toujours croissant des affaires portées devant la Cour permanente de Justice internationale ;

« Estimant utile que, avant le renouvellement du mandat des membres de la Cour en 1930, les dispositions actuelles du Statut de la Cour soient l'objet d'un examen aux fins, s'il y a lieu, d'y apporter tels amendements que l'expérience ferait juger nécessaires ;

« Attire l'attention du Conseil sur l'opportunité de procéder, avant le renouvellement du mandat des membres de la Cour permanente de Justice internationale, à l'examen du Statut de cette Cour en vue d'y apporter, s'il y a lieu, tels amendements jugés désirables et de présenter à la prochaine session ordinaire de l'Assemblée les propositions nécessaires. »

Geneva, September 22nd, 1928.

LEAGUE OF NATIONS.

**Plan for the Establishment of Armenian Refugees
in the Republic of Erivan.**

REPORT OF THE SIXTH COMMITTEE TO THE ASSEMBLY.

Rapporteur : Dr. W. A. RIDDELL (Canada).

At the Council meeting held on September 22nd, 1927, the High Commissioner for Refugees, Dr. Nansen, asked the Council whether there was any hope that contributions towards the realisation of the scheme for the settlement of Armenian refugees in the Republic of Erivan would be forthcoming. On the proposal of the representative of Roumania, the Council decided to make a further appeal to all the Members of the League with a view to obtaining their financial support in favour of the scheme in question.

This decision was communicated to the various Governments by a letter from the Secretary-General of October 31st, 1927. Seventeen Governments have so far replied to this appeal. Of these the Governments of Germany, Greece, Norway and Roumania have declared themselves disposed to contribute to the realisation of the plan. The German Government is prepared to give a deficiency guarantee to provide the organisation, set up for carrying out the work, with a long-term credit for the purchase in Germany of tools and machinery for the use of Armenian refugees settling in Erivan, up to an amount of one million Reichsmarks, or £50,000. This offer is made provided four other Governments at least take part in the work, that the Armenian organisations contribute £100,000, and that the work of settlement of the refugees is carried through under the auspices of the League. The Greek Government is prepared to contribute part of the cost of transporting the refugees from Greece to the Caucasus. The Norwegian Government is prepared to contribute a credit of £2,000 for the purchase in Norway of merchandise and materials, which can be utilised for the proposed settlement.

The Roumanian Government is prepared to offer £1,000.

Further, the Governments of Luxemburg and the Netherlands have indicated that it may be possible for them to make some contribution.

The question was again considered by the Council on September 17th, 1928, when Dr. Nansen stated that he had received from the Armenians in Europe the sum of £100,000 towards the realisation of the scheme. In view of the help promised by the Governments of Germany, Greece, Norway and Roumania, and in view of the amount of money made available by the Armenians themselves, he would be willing to continue the work under the auspices of the League on two conditions :

(1) That the Council was able to meet the conditions made by Germany, and induce those Governments which have held out hopes of assistance to turn those hopes into definite assistance ; and

(2) That the Council should obtain from the Assembly the necessary money for the administrative part of the work.

The Council decided to refer the whole question to the Assembly.

The Sixth Committee, to which the question was referred by the Assembly for consideration, adopted the following resolutions :

" I. The Sixth Committee is of opinion that the work of establishment of Armenian refugees in the Republic of Erivan should be carried on under the auspices of the League of Nations.

" II. The Council should be requested to continue negotiations with those Governments which have offered to help, in order that the conditions attached to the German Government's offer may be fulfilled.

" III. The Sixth Committee requests the Fourth Committee to allot 65,000 Swiss francs to meet the administrative expenses of the settlement."

The Fourth Committee examined the question on September 21st and decided to recommend to the Assembly to approve the insertion in the 1929 budget of 50,000 Swiss francs for this purpose.

The Sixth Committee therefore has the honour to propose to the Assembly the adoption of the following resolution :

“ The Assembly :

“ Decides that the work of establishment of Armenian refugees in the Republic of Erivan shall be carried on under the auspices of the League of Nations ;

“ Requests the Council to continue negotiations with those Governments which have offered assistance in this work, in order that the conditions under which other offers have been made may be fulfilled ;

“ Approves the inclusion in the budget of the sum of 50,000 Swiss francs to meet the administrative expenses of this work. ”

Geneva, December 26th, 1928.

LEAGUE OF NATIONS
DOCUMENTATION
CONCERNING THE
DISPUTE BETWEEN BOLIVIA
AND PARAGUAY

Note by the Secretary-General:

The Secretary-General has the honour to communicate to the Council and Members of the League for their information the following documentation relating to the dispute between Bolivia and Paraguay.

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Annex I.

REPLIES FROM THE MEMBERS OF THE LEAGUE TO THE TELEGRAM SENT BY THE PRESIDENT OF THE COUNCIL FROM LUGANO ON DECEMBER 15TH, 1928 (see No. 9 above)

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Annex II.

REPLIES FROM THE MEMBERS OF THE COUNCIL TO THE TELEGRAM SENT FROM PARIS ON DECEMBER 19TH, 1928, BY M. BRIAND, ACTING PRESIDENT OF THE COUNCIL, AND REPRODUCED ABOVE UNDER NO. 22.

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I. PRESS REPORTS, RECEIVED FROM THE AGENCE TÉLÉGRAPHIQUE SUISSE, COMMUNICATED BY THE SECRETARY-GENERAL TO THE COUNCIL, IN THE COURSE OF ITS FIFTY-THIRD SESSION, AT LUGANO, ON DECEMBER 11TH, 1928.

New York, 9th. — From La Paz: It is officially stated that 300 Paraguayans have entered Bolivian territory and that a large number of Bolivian soldiers have been killed. The Minister for Foreign Affairs has handed the Paraguayan Chargé d'Affaires his passports, and he has been escorted to the frontier.

Buenos Aires, 9th. — Reports from Bolivia state that, after a sanguinary encounter, Bolivian forces have reoccupied the forts from which they had been driven by Paraguayan troops.

La Paz, 9th. — The Government has handed the Paraguayan Minister his passports and has recalled the Bolivian Minister.

La Paz, 9th. — It is announced that the Paraguayan troops who attacked Fort Vanguardia, and were at first repulsed by the Bolivian garrison, have returned to the attack with large reinforcements. The municipal elections have already been postponed. A secret meeting of Congress has been held.

2. FURTHER PRESS REPORTS COMMUNICATED BY THE SECRETARY-GENERAL TO THE COUNCIL, IN THE COURSE OF ITS FIFTY-THIRD SESSION, AT LUGANO, ON DECEMBER 11TH, 1928.

London, 10th. — The following report has been received by Reuter from La Paz: The rupture between Paraguay and Bolivia is complete. The Paraguayan Government has handed the Bolivian Minister a note in which it declines all responsibility for the incidents that have occurred in Paraguayan territory. A spirit of warlike enthusiasm prevails at La Paz.

At Asunción, complete calm reigns.

La Paz, 10th. — The Paraguayan Chargé d'Affaires here was not recalled by his Government, as was suggested by a previous report, but left on being handed his passports by the Bolivian Government. An official *communiqué* regarding the frontier incidents and sanguinary encounters between the troops of the two parties states that the attack was made by Paraguay, and was unannounced and unjustified, as in previous cases. The Bolivian Government regards this attack as a serious breach of American peace and fraternity, and as an insult to the sovereignty and dignity of Bolivia. Bolivia has no intention of accepting any procedure of conciliation that will not secure her the full reparation due for the infringement of her sovereignty. The *communiqué* further states that a secret sitting of Parliament has been held to consider means of "meeting the crisis".

In political circles it is understood that a Commission of enquiry has been formed at Montevideo to investigate the incidents which have taken place between Bolivia and Paraguay. The Mexican and Chilean Ministers at Montevideo are members of this Commission. The Mexican Minister is its chairman. The Commission's first act was to request the Bolivian diplomatic representative to appoint a delegate, but this invitation was declined, as, through the good offices of the Argentine, diplomatic proceedings have already been begun and negotiations are in progress with a view to the settlement of the incident.

Asunción, 10th. — It is officially announced that Dr. Guggiari, the President of the Republic, has sent the following letter to the Presidents of the American Republics: "In fulfilment of the obligations of international solidarity, we beg to inform Your Excellency that, following the frontier incidents which have taken place between Paraguayan and Bolivian troops, the Bolivian Government has handed the Paraguayan Chargé d'Affaires his passports, notwithstanding the fact that the Paraguayan Government has stated in a note that it is prepared to carry out the provisions for the prevention of conflicts between American States which were approved at the Fifth Pan-American Conference at Santiago de Chile and accepted both by Paraguay and by Bolivia."

M. Mercada, the Bolivian Minister, accompanied by his family and by the Military Attaché, has left the capital for the Argentine.

The Cabinet Council held yesterday discussed the international situation.

It is officially announced that no further incident has occurred. The officer commanding the garrison at Bahia Negra states that the situation is unchanged.

3. EXTRACT FROM THE MINUTES OF THE SECOND MEETING (PRIVATE) OF THE FIFTY-THIRD SESSION OF THE COUNCIL, HELD AT LUGANO, ON TUESDAY MORNING, DECEMBER 11TH, 1928, AND TELEGRAM, DATED DECEMBER 11TH, FROM THE PRESIDENT OF THE COUNCIL TO THE GOVERNMENTS OF BOLIVIA AND PARAGUAY.

The Council considered the situation as it appeared from reports in the Press of December 9th to 11th and decided to request its President to send the following telegram to the two Governments:

"The Council of the League of Nations, meeting at Lugano for its fifty-third session, expresses its full conviction that the incidents which have occurred between two Members

of the League of Nations will not become more serious. It does not doubt that the two States, which by signing the Covenant have solemnly pledged themselves to seek by pacific means the solution of disputes arising between them, will have recourse to such methods as would be in conformity with their international obligations and would appear, in the actual circumstances, to be the most likely to ensure, together with the maintenance of peace, the settlement of their dispute. — BRIAND, *Acting President of the Council of the League of Nations.*"

4. EXTRACT FROM THE MINUTES OF THE FOURTH MEETING (PRIVATE) OF THE FIFTY-THIRD SESSION OF THE COUNCIL, HELD AT LUGANO, ON THURSDAY MORNING, DECEMBER 13TH, 1928.

The PRESIDENT read the following telegrams from M. Alberto Palacios, Bolivian Minister for Foreign Affairs, and M. Geronimo Zubizarreta, Paraguayan Minister for Foreign Affairs:

(a) *Telegram from the Bolivian Government.*

[*Translation.*]

"La Paz, December 12th, 1928.

"I have the honour to acknowledge receipt of your communication of yesterday's date forwarding the unanimous resolution adopted by the Council of the League of Nations with regard to the dispute that has arisen between two Members of the League.

"I have submitted the contents of this communication to the President of the Republic and I shall have the honour to reply to you very shortly. — Alberto PALACIOS, *Bolivian Minister for Foreign Affairs.*"

(b) *Telegram from the Paraguayan Government.*

[*Translation.*]

"Asunción, December 12th, 1928.

"I have the honour to reply to your telegram of yesterday which furnishes proof of the lofty spirit of peace governing the deliberations of the Council for whom you are authorised to speak. My Government has pleasure in informing you that it is animated with the same spirit and that Paraguay, strong in the justice of her case, will accept and faithfully fulfil her international obligations. For this reason she asked for the summoning of the Commission provided for in the Treaty of May 3rd, 1923, and the purpose of which is to avoid conflicts between American States. Bolivia refused to participate in this procedure, which would have established the truth and determined the question of responsibility, basing her refusal on the mere statement of her alleged grievances. Paraguay does not refuse any conciliation procedure for the settlement of her disputes, still less the procedure laid down in Conventions to which she has given her solemn acceptance. — Geronimo ZUBIZARRETA, *Paraguayan Minister for Foreign Affairs.*"

He added that the Council would perhaps have an opportunity of discussing the question of sending a reply when it had received the communication from the Bolivian Government indicated in the above telegram.

5. TELEGRAM FROM THE BOLIVIAN MINISTER AT PARIS TO THE SECRETARY-GENERAL.

[*Translation.*]

Paris, December 12th, 1928.

In the name of the Bolivian Government, I have the honour to send a detailed account of the antecedents of the conflict between Bolivia and Paraguay with a view to explaining current events. The Bolivian Minister for Foreign Affairs feels it a duty to inform friendly nations of the grave events which the Republic of Paraguay has brought about in the Bolivian Chaco, and of the position thus created between the advanced lines of the two countries — despite the wishes of the Bolivian people and the Bolivian Government. In accordance with the terms which delimited the jurisdiction of the *Audiencia* of Charcas, Bolivia maintains and has always maintained that her territorial rights extend to the banks of the Paraguay river and its junction with the Pilcomayo. In a spirit of conciliation, three treaties were concluded between the two countries, the Quijarro-Decoud Treaty of October 15th, 1879, the Tamayo-Aceval Treaty of February 16th, 1887, and the Ichazo-Bonitez Treaty of August 3rd, 1894. These agreements, which were never completed, were used by Paraguay as an excuse for the continual assertion of further territorial claims, since each of these agreements increased the territory given to Paraguay, at the same time reducing Bolivia's rights. This shows the spirit of compromise and pacification animating the Bolivian Government. On January 12th, 1907, the Pinilla-Soler Protocol was concluded, which provided for arbitration and submitted the question to the decision of the President of the Argentine Republic. It traced the lines of an arbitral zone. At the same time both countries undertook not to extend their territory as it stood at that time, that is to say in 1907. Several factors, and particularly the resignation of the arbitrator, caused the Protocol to be a dead-letter, and it was formally annulled by the Ayale-Mujio Agreement of April 5th, 1915, which only left in force the clause forbidding any extension of the territory held before 1907. In spite of her undertaking, Paraguay continued to advance steadily in the Chaco, thus constantly arousing Bolivian feeling. The only clause of the Pinilla-Soler Agreement in force referring to the territorial *status quo* was thus increasingly

violated by Paraguay. In a friendly spirit, which was unfortunately misconstrued by her neighbour, Bolivia confined herself to protests and friendly overtures until at last the whole of the Chaco was in the hands of Paraguay. A number of Agreements or Protocols maintained the *status quo* pending negotiations and until final arbitration proposals should be exchanged. These negotiations failed and the *status quo* clause lapsed. Thereupon, in order to check this undue Paraguayan advance, Bolivia constructed a few forts, since she had no other way of protecting her settlements and territorial rights or defending herself against savage tribes. In face of this attitude, Paraguay began to spread false reports about Bolivia and accused her of violating the *status quo* which Paraguay herself had violated in an inexcusable manner. She invented the strange argument that the zones which had been fixed for the purpose of arbitration and which subsequently lost their *raison d'être* were the territorial possessions alluded to in the only clause of the Pinilla-Soler Protocol that remained in force. This means that Paraguay invoked and claimed possessions which were never hers, but which she was led by growing ambition to assert as her own. It is beyond all doubt that, in its legal meaning, the term "possessions" refers to those which actually existed in 1907 and not to the delimited zones, which include the whole of the Chaco, a district which Paraguay did not even know and had never explored until 1907. The same spirit of pacification animated Bolivia during the long discussion which preceded the Gutierrez-Diaz-Leon Protocol of April 22nd, 1927, which laid down that the two countries should appoint plenipotentiaries to meet at Buenos Aires under the auspices of the Argentine Government in order to solve this prolonged and difficult dispute. It was intended, and the preliminaries of this Protocol meant, that a solution of the substance of the question was to be loyally sought for and that direct arrangements were to be made by a treaty or delimitation of arbitration, the zone being defined by the plenipotentiaries. The Protocol did not even mention the clause concerning the territorial *status quo*. Unfortunately, the Bolivian Foreign Office and its plenipotentiaries were astonished to find that Paraguay refused to consider the fundamental aspects of the case, but raised the question of the *status quo* as a previous question. The whole of the early stages of the Buenos Aires Conference was occupied by a sterile discussion in which the Bolivian plenipotentiaries demonstrated the truth and justice of their case, until the Argentine Foreign Office, realising that the Conference was doomed to failure, put forward a friendly suggestion to the effect that Paraguay should accept arbitration, that a demilitarised zone should be proclaimed, that the forts should be withdrawn 50 kilometres, and that possessions or advanced positions should not give the High Contracting Parties any right to preferential treatment by the arbitrator. In view of what had happened, it was perfectly clear that this suggestion could lead to no agreement and that it would be better to pass on to the stage of arbitration and to conclude a *modus vivendi* pending arbitration. This *modus vivendi* was the demilitarisation of the forts prior to asking for fresh instructions from the Governments on the Argentinian suggestion. The latter was accepted by Bolivia at the outset, with the sole reservation that she could not consent to withdraw her forts but could only agree to demilitarisation. The two delegations decided to adjourn the Conference for ninety days. On meeting again in May 1926, Paraguay repeated her tactics of avoiding arbitration and demanded the withdrawal of the Bolivian frontiers, to which Paraguay gave the name of "demilitarisation". Whenever an attempt was made to discuss arbitration, the Paraguayan plenipotentiaries evaded the issue and sought to assert their own point of view, namely, the dismantling of the Bolivian forts. It was impossible to reach any result on the lines of the Argentine proposal and, in order that the two Foreign Offices might settle the difficulties that had arisen, particularly regarding the arbitration zone, the meetings were again adjourned. The good offices of the Argentine Government, however, were not rejected and the Bolivian plenipotentiaries declared that the three points in the Argentine proposal were and would remain the keystone of Bolivia's policy. In spite of these negotiations, which suggested that a peaceful and mutually satisfactory solution was at hand, deplorable events occurred on the 6th of this month, owing to unjustified action by Paraguayan troops — in the area north of the Paraguay river, where Bolivia exercises full sovereignty. According to the information received by the Bolivian Government, there is no doubt at all that the Paraguayan army headquarters have left their official seat at Asunción and have recently been established at Concepción, in order, no doubt, to be near to the Paraguayan forces distributed in the zone under dispute. This circumstance, which was naturally calculated to alarm us, did not, however, call forth any military action on our part, since we were convinced that our dispute with Paraguay, which was the subject of special procedure laid down in the Gutierrez-Diaz-León Protocol and in the Conferences of Buenos Aires, would find a peaceful solution as the result of arbitration, based on certain concrete suggestions. Our surprise was therefore painful when we learnt that this mobilisation of the Paraguayan general staff had had an immediate sequel in a sudden and unjustified attack by regular Paraguayan forces against the Bolivian fort of Vanguardia. The small garrison was taken by surprise and easily overcome by superior forces. The latter killed and wounded many, took the remainder prisoners and conducted them to the Paraguayan fort of Galpon, after destroying and setting fire to the Bolivian fort. Our surprise was, however, greater still on learning that the Paraguayan Government, after this attack in time of peace, and when there was every hope of a peaceful solution, had appealed to the Permanent Commission of Montevideo set up by the Convention of May 3rd, 1923, and had asked that a commission of enquiry should be established to prevent and avert disputes between American nations. This procedure is quite incapable of leading to any result. It is impossible to accept anything so preposterous as that an aggressor State should not only commit the act of aggression but claim the intervention of a conciliation tribunal which is intended to prevent disputes and not to repair the effects afterwards. The Bolivian Government could not lend itself to a procedure unsuited to settle an existing dispute and after she had already been gratuitously and violently attacked in a manner to wound her national sovereignty by an attack on the life and liberty of her

citizens. An investigation tribunal is intelligible enough when its purpose is to avoid disputes which have not yet come into being, when relations are strained or when it is impossible for the respective Foreign Offices to reach an agreement. It is impossible to consider such a procedure when forts are in ruins, when lives are being sacrificed and soldiers conducted as prisoners of war into the defences of the aggressor. What preventive or investigating tribunal can deal with an attack of this kind which compromises the sovereignty, honour and dignity of a country? No nation could subject, even to the highest tribunal in the world, its most sacred attributes, which require that reparation should be made for outrages received before returning to a state of moral equilibrium, which the laws of human dignity impose. The Government of Bolivia recently acceded to the Convention of May 3rd, 1923. On November 20th last, it asked the legislature to give its constitutional ratification in accordance with Article 9 of the Convention. As Bolivia's accession is not yet complete, the provisions of the Convention could not constitutionally be carried out by our Government. Moreover, they are merely preventive and aim at settling a matter which was prior to the present events. As has already been stated when explaining the diplomatic history of the Chaco question, the latter is at the moment subject to certain special procedures laid down in the Gutierrez-Diaz-León Protocol, and the procedure governed by the Argentine Republic's offer of its good services. Bolivia is therefore faced with a juridical and diplomatic situation already existing and she could not disregard or run counter to it by submitting herself to any fresh jurisdiction that had not been ratified by the legislature. In view of these considerations, the Bolivian Government has declined the honour of helping to establish the Commission which it considers in the circumstances unsuited to safeguard the sovereignty of Bolivia and her rights which have been brutally violated. Bolivia finds herself under the regrettable necessity of suspending diplomatic relations with the Government of Paraguay until she can obtain reparation for this assault and the satisfaction to which she is entitled. Under the pressure of these deplorable circumstances, which are none of her making, Bolivia has been compelled to break with a long tradition of tolerance towards Paraguay. She can no longer continue a policy of conciliation and constant sacrifices by continually agreeing to accept mediation, and on some occasions in enduring on behalf of peace, illegitimate advances by her neighbour. Unhappily this policy has only encouraged Paraguay to commit bellicose acts which the Bolivian Government now denounces to friendly nations. — PATIÑO, *Bolivian Minister in France*.

6. EXTRACT FROM THE MINUTES OF THE FIFTH MEETING (PRIVATE) OF THE FIFTY-THIRD SESSION OF THE COUNCIL, HELD AT LUGANO, ON FRIDAY MORNING, DECEMBER 14TH, 1928.

The PRESIDENT reminded the Council of the action which it had taken in regard to the dispute between Bolivia and Paraguay.

Since the despatch of the Council's telegram, replies had been received from the Governments of Paraguay and Bolivia. That from the Bolivian Minister for Foreign Affairs indicated that he had transmitted the Council's telegram to the President of Bolivia, and that a reply would be sent to the Council at a later date. That reply had not yet been received. The Council had, however, received from the Bolivian Government a communication containing a statement upon the situation. The President assumed that that communication and the Council's telegram had crossed.

The question now before the Council was whether it should not forward to the Bolivian Government the telegram which it had received from Paraguay and which expressed an opinion on certain points, and whether it should not also transmit to the Paraguayan Government the communication received from the Bolivian Government. The President thought that the latter course was advisable in order to clear up the situation. It was a question of simple good faith. It would be unfortunate if the Council laid itself open to a charge by either the Bolivian or Paraguayan Government of having received a telegram from the other party referring to and explaining the situation without giving notice thereof to the other Government. He suggested, therefore, that the Council should authorise the Secretary-General to forward the two documents in question.

The proposal of the President was adopted.

The PRESIDENT thought that, before dispersing, the Council should consider the procedure to be followed in this matter after the close of the session. Certain communications might be received which would require an urgent reply. If, therefore, the Council had no objection it might examine the matter at the end of its last meeting on the following morning. In the meantime, it might perhaps receive the further communication which the Bolivian Government had announced its intention of sending.

The proposal of the President was adopted.

7. LETTER FROM THE PARAGUAYAN CHARGÉ D'AFFAIRES AT PARIS TO THE SECRETARY-GENERAL

[Translation.]

Paris, December 11th, 1928.

I have the honour to notify you, for purposes of information, that on December 5th, 1928 the Bolivian troops having made incursions into the western territory of the Republic of Paraguay

were requested to withdraw. Instead of acceding to this friendly request, they attacked the Paraguayan troops. A fight ensued, as the result of which the Bolivian troops were repulsed.

Immediately on learning of this sanguinary incident, the Paraguayan Government, in virtue of the provisions of the Treaty for the Pacific Settlement of Conflicts between the American States, to which Bolivia and Paraguay are signatories, took steps with a view to the convening of the International Commission of Enquiry provided for in Article 2 of the said Treaty, and with this object duly notified the Permanent Commission of Diplomats at Montevideo.

• Bolivia's only reply was to hand to the Paraguayan representative at La Paz his passport and to refuse to agree to the proposed procedure.

The Treaty in question (the Gondra Pact) was registered with the League of Nations on March 3rd, 1925.

(Signed) R. CABALLERO,
Paraguayan Chargé d'Affaires,
Delegate to the League of Nations.

8. EXTRACT FROM THE MINUTES OF THE SEVENTH MEETING (PRIVATE) OF THE FIFTY-THIRD SESSION OF THE COUNCIL, HELD AT LUGANO, ON SATURDAY AFTERNOON, DECEMBER 15TH, 1928.

The PRESIDENT read the two following telegrams, dated December 14th and December 12th respectively, received from the Governments of Bolivia and Paraguay:

(a) *Telegram from the Bolivian Government.*

[Translation.]

La Paz, December 14th, 1928.

" Have the honour to refer to the resolution forwarded to me by Your Excellency in which the Council of the League of Nations recommends and hopes that the incidents which have occurred between this country and Paraguay will not become serious and in which Your Excellency also suggests in a lofty spirit of idealism that the parties will continue to act in a peaceful manner in conformity with the obligations entered into by the States signatories of the Covenant. The Council of the League and Your Excellency may rest assured that Bolivia will not depart from the principles and obligations contained in the Covenant of the League. From the report submitted by Bolivia to the League, the Council will be able to ascertain the antecedents of the question at issue with Paraguay and how a violent aggression was committed by that country against the territory and sovereignty of Bolivia, a small garrison being destroyed by greatly superior forces, twenty soldiers and two officers being killed, their dwellings being set on fire and the remainder of the garrison being taken prisoner. Paraguay has entered into obligations with Bolivia to submit her differences to judicial arbitration, to determine the zone of arbitration and to settle their various disputes by peaceful means. Nevertheless, by an inexcusable surprise blow and in contradiction with the stipulations of Articles 10 and 13 of the Covenant of the League, Paraguay has committed an aggression which we solemnly denounce to the Council, confirming our previous denunciation, and we declare that Bolivia has no alternative but to demand the satisfaction which is due in such cases and to take military measures of a defensive character to safeguard her security, because, Paraguay having concentrated her forces and advanced her general staff to points very close to the lines of contact of the military posts of the two countries, it is reasonable to suppose that further encounters will take place with which my Government must be prepared to deal. Until the satisfaction due by Paraguay has been given, it does not seem possible to my Government to allay the excitement of public opinion sufficiently to permit the resumption of peaceful negotiations. I have no doubt that the Council in its impartiality will recognise the justice and sincerity of these explanations and will take note of my Government's declaration of its intention to act on the Council's recommendations and to observe the stipulations of the Covenant. But Bolivia cannot agree that, under cover of conciliation proceedings, the agreements providing for judicial arbitration on a concrete and definite basis should be invoked in order to settle the substance of the dispute, or that an attempt should be made to evade the obligation to provide the just satisfaction prescribed by international law and practice in such cases. — Hernando SILES, *President of Bolivia*; Tomas Manuel ELIO, *Minister for Foreign Affairs of Bolivia*. "

(b) *Telegram from the Paraguayan Government.*¹

[Translation.]

Asunción, December 12th, 1928.

" I have the honour to reply to your telegram of yesterday, which furnishes proof of the lofty spirit of peace governing the deliberations of the Council for whom you are authorised to speak. My Government has pleasure in informing you that it is animated with the same spirit, and that Paraguay, strong in the justice of her case, will accept and faithfully fulfil her international obligations. For this reason she asked for the summoning of the Commission provided for in the Treaty of May 3rd, 1923, and the purpose of which is to avoid conflicts between American States. Bolivia refused to participate in this procedure, which would have established the truth and determined the question of responsibility, basing her refusal on the mere statement of her alleged grievances. Paraguay does not refuse any conciliation procedure for the settlement of her disputes, still less the procedure laid down in Conventions to which she has

¹ Reproduced under 4 (b).

given her solemn acceptance. — GERONIMO ZUBIZARRETA, *Paraguayan Minister for Foreign Affairs.*”

After some discussion, *the Council unanimously adopted* in the following form the text of two telegrams to be despatched to the Governments of Bolivia and Paraguay respectively:

(c) *Telegram to the Bolivian Government.*

“ The Council has taken cognisance of the telegram of December 12th from the Bolivian Minister at Paris, forwarding on behalf of his Government a detailed statement of the antecedents of the dispute between Bolivia and Paraguay. The Council has also taken note of the telegram of December 14th, signed by the President of Bolivia and the Minister for Foreign Affairs, which contains the following statement: ‘ Your Excellency may rest assured that Bolivia will not depart from the principles and obligations contained in the Covenant of the League ’. The Council has examined with the greatest care the statement of your Government’s point of view. It was happy to derive therefrom a conviction of Bolivia’s attachment to the principles and obligations of the Covenant. It accordingly hopes that the parties will carefully abstain from any act which might aggravate the situation and render a peaceful settlement more difficult. In concluding to-day, at Lugano, its fifty-third ordinary session, the Council expresses its firm conviction that the obligations of the Covenant will be respected. It recalls that, when a dispute likely to lead to a rupture arises between two States Members of the League of Nations, they cannot, without failing in their obligations, and notably those contracted under Article 12, omit to resort by some method or other to one of the procedures of pacific settlement provided for in the Covenant. The Council also thinks it well to draw attention to the fact that the Covenant mentions, among others, ‘ disputes as to the existence of any fact which, if established, would constitute a breach of any international obligations, or as to the extent and nature of the reparation to be made for any such breach ’. The Council wishes to emphasise the fact that in its experience it is most important to confine all military measures of a defensive character to those which cannot be regarded as aggressive against the other country, and which cannot involve the danger of the armed forces coming into contact, as this would lead to an aggravation of the situation, rendering more difficult the efforts at present being made for the maintenance of peace. The Council has charged me, as its President, to follow events with a view to any action that may be necessary, consulting, if need be, my colleagues through the intermediary of the Secretary-General of the League of Nations. I also have the honour to communicate to you for information the following telegram which I have received from the Paraguayan Government.”

(Here follows the text of the telegram dated December 12th, 1928, from the Paraguayan Government quoted above.)

(d) *Telegram to the Paraguayan Government.*

“ The Council has taken cognisance of the letter addressed to it on December 11th for its information by the Paraguayan Chargé d’Affaires at Paris, with regard to the dispute which has arisen between the Republic of Paraguay and the Republic of Bolivia. The Council has also taken note of your telegram of December 12th, which ends with the following declaration: ‘ Paraguay does not refuse any conciliation procedure for the settlement of her disputes, still less the procedure laid down in Conventions to which she has given her solemn acceptance ’. The Council has examined with the greatest care the statement of your Government’s point of view. It was happy to derive therefrom a conviction of Paraguay’s attachment to the principles and obligations of the Covenant. It accordingly hopes that the parties will carefully abstain from any act which might aggravate the situation and render a peaceful settlement more difficult. In concluding to-day, at Lugano, its fifty-third ordinary session, the Council expresses its firm conviction that the obligations of the Covenant will be respected. It recalls that, when a dispute likely to lead to a rupture arises between two States Members of the League of Nations, they cannot, without failing in their obligations, and notably those contracted under Article 12, omit to resort by some method or other to one of the procedures of pacific settlement provided for in the Covenant. The Council also thinks it well to draw attention to the fact that the Covenant mentions, among others, ‘ disputes as to the existence of any fact which, if established, would constitute a breach of any international obligations, or as to the extent and nature of the reparation to be made for any such breach ’. The Council wishes to emphasise the fact that in its experience it is most important to confine all military measures of a defensive character to those which cannot be regarded as aggressive against the other country, and which cannot involve the danger of the armed forces coming into contact, as this would lead to an aggravation of the situation rendering more difficult the efforts at present being made for the maintenance of peace. The Council has charged me, as its President, to follow events with a view to any action that may be necessary, consulting, if need be, my colleagues through the intermediary of the Secretary-General of the League

of Nations. I also have the honour to communicate to you for information the following telegram which I have received from the Bolivian Government. "

(Here follows the text of the telegram dated December 14th, 1928, from the Bolivian Government quoted above.)

The Council decided to communicate, by telegram, the text of the various telegrams relating to this dispute to the Governments of all States Members of the League of Nations. The Secretary-General was authorised to send copies to the Ministers of the United States of America and of Brazil at Berne and to the Ministers of Costa Rica, Ecuador and Mexico at Paris.

The Council instructed its Acting President to follow the course of the dispute between Bolivia and Paraguay, and to keep in touch with the Secretary-General, it being understood that the Acting President would convene the Council to meet urgently in extraordinary session if events showed such a course to be desirable.

9. TELEGRAM DATED DECEMBER 15TH, 1928, FROM THE ACTING PRESIDENT
OF THE COUNCIL TO THE MEMBERS OF THE LEAGUE.

This telegram transmits, for the information of the Members of the League, the communications reproduced in the present document under Nos. 3, 4 (b), 8 (a) and 8 (c) and (d).

10. LETTER FROM THE BOLIVIAN MINISTER AT PARIS TO THE SECRETARY-GENERAL.

Paris, December 14th, 1928.

[Translation.]

With reference to the information which the Chargé d'Affaires of Paraguay at Paris has sent you, it is my duty to bring to your knowledge the following facts:

1. Bolivia has for many years past been in peaceful occupation of the Vanguardia fort, situated in latitude 19° 35' South and longitude 58° 11' West of Greenwich, where she maintained a weak garrison of twenty-five men.

2. Paraguayan troops in superior numbers attacked this fort by surprise, set fire to it, killed the majority of its occupants and took the survivors prisoner.

3. The geographical situation of this fort is palpable proof, not only that Paraguay's aggression took place on entirely undisputed territory, but on a territory at a distance of approximately eight kilometers from the frontier between Bolivia and Brazil.

4. The Gondra Pact, to which allusion is made, and of which Bolivia and Paraguay are signatories, has not been ratified by Bolivia and is therefore not binding upon her.

5. Bolivia, in adopting the line of conduct forced on her by circumstances, is in no way rejecting peaceful and conciliatory solutions, but only asks for reparation of the outrages committed, and she cannot consent to her aggressor's evading its obligation by taking shelter behind the provisions of a Pact more suitable for preventing conflicts than for solving them.

(Signed) Simón I. PATIÑO.

11. TELEGRAM FROM THE BOLIVIAN MINISTER FOR FOREIGN AFFAIRS TO THE PRESIDENT
OF THE COUNCIL.

La Paz, December 15th, 1928.

[Translation.]

In the communication which I had the honour to make to you on December 14th, I informed you that, as a result of the aggression committed against her by Paraguay, Bolivia had been obliged to take military measures of a defensive character to safeguard her security. Furthermore, owing to the fact that Paraguay was concentrating troops at points very close to the line along which contact at present exists, and that the Paraguayan General Staff has also thought fit to take measures, it was natural to anticipate that fresh conflicts would take place.

In view of this possibility, it is my Government's duty to be prepared. Unfortunately, these apprehensions have now been shown to be justified.

According to despatches received from the Chief of the military zone, two new detachments of Paraguayan troops prepared an attack against Bolivian forts, which led to fresh engagements; as a result, the Paraguayans were repulsed and the Boqueron fort was occupied by our troops.

This fort was constructed recently by Paraguay in an area over which Bolivia has indisputable rights.

In conformity with its international obligations, my Government has hastened to inform the Council of the League of Nations of this new development, which was the natural sequel of the attack directed against us last week.

Paraguay is now clearly responsible for a breach of the most solemn international undertakings and has failed in the duties of all civilised nations for the maintenance of peace.

12. TELEGRAM FROM THE PRESIDENT OF THE COUNCIL TO THE BOLIVIAN MINISTER FOR FOREIGN AFFAIRS.

Lugano, December 16th, 1928.

I have the honour to acknowledge receipt of your telegram of December 15th, which was of course despatched from La Paz before the receipt of that sent by me to Your Excellency on behalf of the Council on the same date.

The facts which you report to me show still more clearly the dangers to peace created by the contact between military forces belonging to the two countries on the frontier, and the urgency, to which the Council has drawn your attention, of taking measures to prevent further incidents capable of compromising the success of any peaceful procedure.

I venture to emphasise afresh the suggestions which were made to you by the Council on receipt of your Government's solemn assurances that it would respect the obligations of the Covenant. — Aristide BRIAND, *Acting President of the Council*.

13. TELEGRAM FROM THE PRESIDENT OF THE COUNCIL TO THE PARAGUAYAN MINISTER FOR FOREIGN AFFAIRS.

Lugano, December 16th, 1928.

I have the honour to forward to Your Excellency the following communication which I have received from the Bolivian Government:

(Here follows the text of the communication: see No. 11.)

The facts reported to me in this telegram, etc. (see No. 12).

Aristide BRIAND, *Acting President of the Council*.

14. TELEGRAM FROM THE BOLIVIAN GOVERNMENT TO THE PRESIDENT OF THE COUNCIL.

La Paz, December 17th, 1928.

I have the honour to refer to your telegram of the 16th of this month in which Your Excellency, on behalf of the Council, renews his recommendations with a view to avoiding further incidents that might compromise the success of pacific procedure in the dispute between Bolivia and the Republic of Paraguay. My Government, accepting these suggestions, assures Your Excellency that it has ordered the commanders of military posts to refrain from any advance and any attack as far as they are concerned, and to confine themselves to defensive measures. I notify the Council that Paraguay has decreed the mobilisation of the classes from 18 to 28 years. Bolivia is confining herself to the measures of precaution essential to her security. — Tomas Manuel ELIO, *Bolivian Minister for Foreign Affairs*.

15. TELEGRAM FROM THE PARAGUAYAN GOVERNMENT TO THE PRESIDENT OF THE COUNCIL.

[*Translation.*]

Asunción, December 17th, 1928.

I have the honour to acknowledge receipt of your telegram of yesterday's date, forwarding a communication from the Bolivian Foreign Office to the Council of the League of Nations, according to which its anticipations concerning further armed conflicts have proved to be correct and Paraguayan detachments have attacked the Bolivian forts, the result being that Bolivian forces have occupied the Paraguayan fort of Boqueron. In the name of my country and of my Government, I protest before the Council against the unheard-of distortion of the truth contained in the Bolivian Government's assertions. It was Bolivian troops who, taking us by surprise and without previous declaration of war, thus acting contrary to the practices in use between civilised nations, invaded our territory, attacked our military outposts and bombarded our positions from the air. The Bolivian Government's fears and anticipations referred to in your communication were nothing more than a calculated device under which Bolivia wished to cloak beforehand her deliberate intention of attacking Paraguay so as afterwards to pose before the public opinion of the world, which detests war, as a victim of aggression on the part of my country. Paraguay, keeping strictly to her international obligations, asked from the outset that an investigation should be made into the facts and has accordingly accepted without objection all the suggestions and modes of pacific procedure put before her. A country which acts in this way is not and cannot be an aggressor. Bolivia, on the other hand, rejects any enquiry as if she feared it. This alone shows on what side is the truth and reveals the aggressor. Bolivia refuses to follow this procedure. She declared in a note addressed to the Permanent Commission at Montevideo, set up in accordance with the Gondra Pact, that "her position was unassailable"; she prefers to appear in the eyes

of the world rebellious to peaceful suggestions rather than to accept formulas of pacification before having obtained satisfaction for her alleged wrongs. It is impossible to believe that a State which speaks and acts in this way will confine itself to purely defensive measures. Bolivia is taking up the attitude of an aggressor country, desiring to satisfy its rancour by its own action. My Government has just accepted the good offices of the Pan-American Conference and its attitude provides fresh proof of its loyal desire for peace and of the action it has taken with this end in view. Paraguay has done nothing to aggravate the situation or to hinder conciliation proceedings, and accordingly I notify Your Excellency of my Government's intention of submitting to the Secretariat of the League of Nations a circumstantial report on the incidents which, in spite of its good faith and the correctness of its attitude, have taken place. — Geronimo ZUBIZARRETA, *Paraguayan Minister for Foreign Affairs.*

16. AIDE-MÉMOIRE HANDED BY M. BRIAND, ACTING PRESIDENT OF THE COUNCIL, TO THE CHARGÉS D'AFFAIRES OF THE ARGENTINE AND THE UNITED STATES OF AMERICA.

If, in the next few days, the two Governments do not, in some form or other, accept such mediation as will afford a likelihood of the settling by pacific methods of the request for reparation submitted by the Bolivian Government—thereby excluding the possibility of further hostilities—the Council can hardly avoid holding an extraordinary session. The Council will, in such an eventuality, have to consider what measures should be taken, either because war has broken out—or because it is on the point of breaking out—between two Members of the League, neither of which appears to recognise any common contractual obligation not to resort to war other than that arising under the League Covenant, by which they are both bound.

The Council has reason to believe that highly influential efforts are being made in two different quarters with a view to avoiding war and settling the existing difficulties by pacific methods. This is the trend of the action now being taken by the Argentine Government and by the Pan-American Arbitration Conference, which is at present in session at Washington under the presidency of the United States Secretary of State. The Council has not, however, received any official information from either of these parties.

The Argentine Government and the Governments represented at the Pan-American Conference are now fully informed of the action taken by the Council and of the replies received from the Governments of the two countries. The Council thinks it essential, in the interests of peace, that the efforts of all those at present engaged in securing a settlement of this dispute by pacific means should be completely co-ordinated.

The President of the Council of the League of Nations, who has been instructed by the Council to follow the development of the dispute, therefore feels that it would be of the greatest importance for the maintenance of peace—the supreme object which all must have in view—that the Argentine Government should inform him what measures could, in its opinion, be the most advantageously taken by all who are working to bring about a pacific settlement of the dispute.

Paris, December 18th, 1928.

17. TELEGRAM FROM THE SECRETARY-GENERAL TO THE MEMBERS OF THE COUNCIL.

Paris, December 18th, 1928.

M. Briand asks me to inform you that it is not unlikely that he may summon an extraordinary session of the Council towards the end of the week. Definite information regarding this meeting will be telegraphed to you as soon as possible. — DRUMMOND, *Secretary-General.*

18. TELEGRAM FROM THE PARAGUAYAN MINISTER FOR FOREIGN AFFAIRS TO THE SECRETARY-GENERAL, RECEIVED DECEMBER 19TH, 1928.

[*Translation.*]

Asunción (undated).

I have the honour to acknowledge receipt of your cable of to-day's date. It notified me of a fresh communication from the Bolivian Government to the League of Nations. The Paraguayan Government frankly admits that it has called up all citizens between the ages of 18 and 29, but this measure, which was provoked by the invasion of our territory by numerous Bolivian troops and by the attack directed against different Paraguayan military posts, was fully justified, and is of a purely defensive character. On one and the same day Bolivian troops made surprise attacks on our forts of Boqueron, Marshal Lopez, Lieutenant Valois Rivarola and General Genes. They dropped bombs on the Paraguayan garrison of Bahia-Negra and other points. During the attack on our forts, the Paraguayan Lieutenant Figari and several soldiers met their death. Before the attack, the Bolivians concentrated troops at Villa Montes, at the fort of Munoz, and at the port of Suares, with full war material and transport. The truth of these facts is easy to establish. Previous to the conflict, and on the pretext of applying the penalties of military law against the insurgents, the Bolivian Government sent them in considerable numbers into the Chaco to

reinforce the garrisons. This same Government has — by misappropriating the proceeds of its loans — just devoted considerable sums quite beyond its financial means to its defensive requirements and to big purchases of war material, which can only be directed against Paraguay. Bolivia has not ordered mobilisation, but has carried it out in practice, with a secrecy which in itself is suspicious. As Bolivia was penetrating into our territory with numerous forces and attacking the forts, at the same time rejecting pacific suggestions and admitting that she preferred to appear before the world as deaf to all appeals for conciliation rather than to bury her rancour, nothing could be more legitimate than for Paraguay to defend herself. If my Government had not done so — without ceasing on that account to explore every possible avenue of concord — it would have incurred a grave responsibility before the nation. The League of Nations may be sure, moreover, that Paraguay, adhering firmly to her traditional policy of peace, will not indulge in any act which might hamper or impede that policy and will confine herself to taking the steps necessary to safeguarding her legitimate right of self-defence. — Geronimo ZUBIZARRETA, *Paraguayan Minister for Foreign Affairs.*

19. TELEGRAM FROM THE BOLIVIAN MINISTER FOR FOREIGN AFFAIRS TO THE ACTING
PRESIDENT OF THE COUNCIL.

[*Translation.*]

La Paz, December 18th, 1928.

I have the honour to inform Your Excellency that, in accordance with the nobly inspired suggestions of the Council of the League of Nations, the Bolivian Government has now accepted the good offices of the Conciliation and Arbitration Conference at present in session at Washington. Bolivia once more affirms that she maintains her loyal observance of international treaties, and, in accepting the good offices of the Washington Conference, she asks that an investigation should first be made into the attack on Fort Vanguardia, independently of the essential questions in the dispute which are submitted to arbitration on concrete and specific points. My Government will not cease to declare and reiterate at every opportunity that Bolivia did not provoke the conflict and has throughout observed with the utmost strictness the rules of international law. — Respectfully yours. — Tomas Manuel ELIO, *Minister for Foreign Affairs.*

20. TELEGRAM FROM THE ACTING PRESIDENT OF THE COUNCIL TO THE PARAGUAYAN MINISTER
FOR FOREIGN AFFAIRS, M. G. ZUBIZARRETA.

Paris, December 19th, 1928.

I have the honour to communicate to you the following telegram which I have just received from the Bolivian Government (See No. 19).

As your Government has already informed me that it has accepted the good offices of the Pan-American Arbitration Conference, the Council, all of whose efforts were directed towards preventing any aggravation of the dispute and facilitating a peaceful settlement by any possible method, cannot but be gratified at the cessation of a conflict between two Members of the League united by common bonds of race and tradition, and at the favourable reception given to the generous initiative of the Pan-American Arbitration Conference. The Council can but trust that the procedure to which the two parties have now agreed will lead to the speediest possible settlement of their dispute and the restoration of a good understanding and of peaceful co-operation between them. — Aristide BRIAND.

21. TELEGRAM FROM THE ACTING PRESIDENT OF THE COUNCIL TO THE BOLIVIAN MINISTER FOR
FOREIGN AFFAIRS, M. TOMAS MANUEL ELIO.

Paris, December 19th, 1928.

I have the honour to acknowledge the receipt of your telegram of December 18th in forming me that in accordance with the Council's suggestions your Government has now accepted the good offices offered by the Conciliation and Arbitration Conference at present in session at Washington. As the Government of Paraguay has informed me that it has also accepted this offer, the Council, all of whose efforts were directed towards preventing any aggravation of the dispute and facilitating a peaceful settlement by any possible method, cannot but be gratified at the cessation of a conflict between two Members of the League united by common bonds of race and tradition, and at the favourable reception given to the generous initiative of the Pan-American Arbitration Conference. The Council can but trust that the procedure to which the two parties have now agreed will lead to the speediest possible settlement of their dispute and the restoration of a good understanding and of peaceful co-operation between them. — Aristide BRIAND.

22. TELEGRAM FROM THE ACTING PRESIDENT OF THE COUNCIL TO THE MEMBERS OF THE COUNCIL.

Paris, December 19th, 1928.

I have received a telegram from the Bolivian Government informing me that, in accordance with the Council's suggestions, Bolivia has accepted the good offices offered by the Pan-American Arbitration Conference. As Paraguay had already notified the Council of its acceptance of this offer, I have sent a telegram to the two Governments on the Council's behalf, congratulating them on the fact that a peaceful method of settling their dispute, acceptable to both parties, has been found. At the same time I expressed our sincere trust that the future negotiations will speedily be brought to a completely successful issue. — Aristide BRIAND.

23. LETTER FROM THE ACTING PRESIDENT OF THE COUNCIL TO THE MEMBERS OF THE COUNCIL.

Paris, December 21st, 1928.

My dear Colleague,

The Council having asked me to keep abreast of developments, I have the honour to inform you of the steps I have thought it advisable to take in order to further the settlement of the dispute between Bolivia and Paraguay.

At its Lugano session, the Council reminded the two parties of their obligations under the Covenant, and emphasised that it was their duty to "have recourse to such methods as would be in conformity with their international obligations and would appear in the present circumstances to be the most likely to secure the maintenance of peace and the settlement of the dispute".

On December 15th, after expressly calling the attention of the two Governments to the undertakings contained in Articles 12 and 13 of the Covenant, and pointing out emphatically that they could not, without failing in their obligations, "omit to resort by some method or other to one of the procedures of pacific settlement provided for" therein, the Council urged that military measures should be confined to "those which cannot be regarded as aggressive against the other country", in order to avoid "an aggravation of the situation rendering more difficult the efforts being made for the maintenance of peace".

After the close of the session, I received at Lugano another telegram from the Bolivian Government. I replied by calling the attention of the two Governments to "the urgency, to which the Council had drawn their attention, of taking measures to prevent further incidents capable of compromising the success of any peaceful procedure".

On my return to Paris, I received a telegram from the Bolivian Government stating, in reply to my last communication from Lugano, that, "accepting the Council's suggestions, it had ordered the commanders of military posts to refrain from any advance and any attack, as far as they were concerned, and to confine themselves to defensive measures". At the same time, I received a telegram from the Paraguayan Government announcing that it had just accepted the good offices of the Pan-American Arbitration Conference with a view to a peaceful settlement.

In these circumstances, which offered some hope that the efforts exerted to maintain peace might fairly soon prove successful, I decided — after consulting the Secretary-General and notifying my colleagues that I might have to summon them to a meeting towards the end of the week — to engage in a number of conversations in order to see how a settlement of the conflict might be facilitated.

On December 18th, I asked the Bolivian and Paraguayan Ministers, the Argentine Chargé d'Affaires (whose Government, it was semi-officially reported, was endeavouring to induce the two parties to accept mediation) and the United States Chargé d'Affaires (whose Government's representative was President of the Pan-American Arbitration Conference) to come and see me.

In the course of my conversations with the Argentine and United States Chargés d'Affaires, I explained the significance of the steps so far taken by the Council, and suggested that, should the crisis be prolonged, we might try to co-ordinate the efforts which were being made from different quarters to preserve peace.

I also received the representatives in Paris of the American States Members of the Council.

I am happy to be able to inform my colleagues that I shall not need to summon an extraordinary session to deal with this question. On the morning of the day before yesterday, I received a telegram from Asunción stating that the calling-up of citizens between the ages of 18 and 29 was a measure "of a purely defensive character", and that "the League of Nations might be sure, moreover, that Paraguay, adhering firmly to her traditional policy of peace, would not indulge in any act that might hamper or impede that policy, and would confine herself to taking the steps necessary to safeguard her legitimate right of self-defence". The Bolivian Government also informed me that, "in accordance with the suggestions of the Council", like the Paraguayan Government, it accepted the good offices of the Pan-American Arbitration Conference.

The Council, all of whose efforts were directed towards preventing any aggravation of the dispute and facilitating a peaceful settlement by any possible method, cannot but be gratified at the cessation of this dangerous conflict between two Members of the League united by common bonds of race and tradition, and at the favourable reception given to the generous action of the Pan-American Arbitration Conference. The Council can but trust that the procedure to which the two

parties have now agreed will lead to the speediest possible settlement of their dispute and the restoration of a good understanding and of peaceful co-operation between them.

I therefore had no doubt that the Council would join me in congratulating the two Governments and in expressing our sincere trust that the future negotiations would be brought to a completely successful issue.

The entire documentation relating to this question will be transmitted to all the Members of the League as soon as possible.

(Signed) Aristide BRIAND,

Acting President of the Council of the League of Nations.

24. NOTE VERBALE FROM THE PARAGUAYAN LEGATION IN FRANCE TO THE SECRETARY-GENERAL.

On behalf of its Government, the Paraguayan Legation in France desires to call the attention of the Secretariat of the League of Nations to the bombardment of Paraguayan towns in the centre of the Gran Chaco by Bolivian aircraft without any preliminary declaration of war.

Paraguay protests most emphatically against this violation of international law, which governs the relations between civilised States.

Paris, December 17th, 1928. ¹

Annex I.

REPLIES FROM THE MEMBERS OF THE LEAGUE TO THE TELEGRAM SENT BY
THE PRESIDENT OF THE COUNCIL FROM LUGANO
ON DECEMBER 15TH, 1928 (see No. 9 above).

I. TELEGRAM FROM THE VENEZUELAN GOVERNMENT TO THE PRESIDENT OF THE COUNCIL,

[Translations.]

Caracas, December 17th, 1928.

The Venezuelan Government has noted with interest Your Excellency's cable informing us of the action taken by the Council to bring about a friendly settlement, in conformity with existing treaties and the Covenant of the League of Nations, of the dispute which has arisen between the Governments of Bolivia and Paraguay. Venezuela, which is bound to the two Republics by treaties and above all by historic ties, will hail with satisfaction the success of the Council's efforts and hopes that the action undertaken will have the happiest results. — ITRIAGO CHACIN, *Venezuelan Minister for Foreign Affairs.*

2. TELEGRAM FROM THE NICARAGUAN GOVERNMENT TO THE PRESIDENT OF THE COUNCIL.

[Translation.]

Managua, December 17th, 1928.

Taken note of cable regarding measures adopted by Council to settle peacefully dispute between Bolivia and Paraguay in conformity with Covenant. — FOREIGN AFFAIRS.

3. TELEGRAM FROM THE GOVERNMENT OF SIAM TO THE PRESIDENT OF THE COUNCIL.

[Translation.]

Bangkok, December 18th, 1928.

His Majesty wishes to thank Your Excellency for your telegram of the 15th instant regarding the conflict between Bolivia and Paraguay and to assure you that His Majesty's Government has noted this carefully. — TRAIKOS, *Minister for Foreign Affairs, Siam.*

¹ This note was not received in the Secretariat until December 22nd.

4. TELEGRAM FROM THE GOVERNMENT OF COLOMBIA TO THE PRESIDENT OF THE COUNCIL.

[*Translation.*]

Bogotá, December 18th, 1928.

The Government of Colombia is indebted to Your Excellency for the information regarding the measures which the League has taken from the beginning of the dispute to prevent war between Bolivia and Paraguay. It is glad to inform Your Excellency that it has approached the Governments of these countries expressing the hope that peace may be maintained on the American continent. — Carlos URIBE, *Colombian Minister for Foreign Affairs.*

5. TELEGRAM FROM THE GOVERNMENT OF HONDURAS TO THE PRESIDENT OF THE COUNCIL.

[*Translation.*]

Tegucigalpa, December 18th, 1928.

Have taken note of the message concerning the Bolivian-Paraguayan conflict. — Augusto C. COELLO, *Minister for Foreign Affairs.*

6. TELEGRAM FROM THE PERSIAN GOVERNMENT TO THE PRESIDENT OF THE COUNCIL.

[*Translation.*]

Teheran, December 19th, 1928.

I have the honour to acknowledge receipt of your Excellency's telegram despatched from Lugano, and to assure you that Persia will support you in your efforts to appease the conflict between Bolivia and Paraguay. — PAKREVAN, *Head of the Ministry for Foreign Affairs.*

7. TELEGRAM FROM THE CHINESE GOVERNMENT TO THE PRESIDENT OF THE COUNCIL.

Nanking, December 20th, 1928.

I have taken note of all the communications between the League of Nations and the Governments of Bolivia and Paraguay and I express my admiration for the untiring efforts of the League of Nations to keep abreast of its ideals. — WANG, *Minister for Foreign Affairs.*

8. TELEGRAM FROM THE GOVERNMENT OF URUGUAY TO THE PRESIDENT OF THE COUNCIL.

[*Translation.*]

Montevideo, December 21st, 1928.

I have the honour to acknowledge receipt of your telegram of December 15th, informing me of the communications exchanged between the Council and the Governments of Paraguay and Bolivia with reference to the deplorable incidents which have recently occurred on the frontier between the two countries. The Uruguayan Government is happy to possess this evidence of the Council's valuable action on behalf of peace which brings into prominence the exalted rôle of the League and the admirable spirit of co-operation and concord that animates the distinguished members of its Council, who have so definitely, and by such well-chosen means, upheld the prestige and illuminated the lofty aims of the League of Nations, an institution of which Uruguay has the honour of being a Member. — Rufino T. DOMINGUEZ, *Minister for Foreign Affairs of Uruguay.*

9. TELEGRAM FROM THE NETHERLANDS GOVERNMENT TO THE PRESIDENT OF THE COUNCIL.

[*Translation.*]

'Sgravenhage, December 22nd, 1928.

I beg to acknowledge receipt of Your Excellency's telegram of the 15th instant, and to offer cordial congratulations to the Council, and especially its distinguished President, on their speedy and beneficent action in regard to the incidents between Bolivia and Paraguay. At the same time I desire to express profound satisfaction that these two Members of the League have conformed to the Council's recommendations and declared themselves willing to seek a peaceful settlement of their dispute. — BEELAERTS, *Minister for Foreign Affairs of the Netherlands.*

10. TELEGRAM FROM THE GOVERNMENT OF GUATEMALA TO THE PRESIDENT OF THE COUNCIL.

[*Translation.*]

Guatemala, December 22nd, 1928.

Have taken note of your telegram with reference to the resolution of the Council on the Bolivia-Paraguay incident. — SALAZAR.

II. TELEGRAM FROM THE BELGIAN GOVERNMENT TO THE PRESIDENT OF THE COUNCIL.

[*Translation.*]

Brussels, December 24th, 1928.

I beg to offer, in the name of the Belgian Government, our cordial congratulations on the happy outcome of your intervention and that of the Council of the League in the dispute between Bolivia and Paraguay. Your efforts have aroused a responsive spirit of moderation in the two States concerned, and have led them to submit their dispute to a procedure of peaceful settlement.

— HYMANS.

Annex II.

REPLIES FROM MEMBERS OF THE COUNCIL TO THE TELEGRAM SENT FROM PARIS ON DECEMBER 19TH, 1928, BY M. BRIAND, ACTING PRESIDENT, AND REPRODUCED ABOVE UNDER No. 22.

I. TELEGRAM FROM M. PROCOPÉ, MINISTER FOR FOREIGN AFFAIRS OF FINLAND.

[*Translation.*]

Helsingfors, December 20th, 1928.

I beg to acknowledge receipt of your telegram of yesterday's date concerning the dispute between Paraguay and Bolivia. Please accept my cordial congratulations on the striking success constituted by the fact that the parties concerned have accepted a peaceful method of settling their dispute, in accordance with the recommendations made to them by Your Excellency on behalf of the Council. — PROCOPÉ, *Minister for Foreign Affairs of Finland.*

2. TELEGRAM FROM M. VILLEGAS, REPRESENTATIVE OF CHILE ON THE COUNCIL.

[*Translation.*]

Rome, December 20th, 1928.

I thank Your Excellency for notifying me of Bolivia's and Paraguay's acceptance of the good offices offered by the Pan-American Conference. I am delighted that your efforts have achieved the result which the Council desired.

I am very glad to inform you that my Government, for its part, has co-operated to the utmost of its power in bringing about this happy solution.

Please accept my cordial congratulations. — VILLEGAS.

3. LETTER FROM M. ZUMETA, REPRESENTATIVE OF VENEZUELA ON THE COUNCIL.

[*Translation.*]

Paris, December 22nd, 1928.

Your Excellency,

Your notification that Bolivia, in accordance with the Council's suggestions and in conformity with the Covenant, has accepted, as has Paraguay, one of the procedures of pacific settlement provided for in the Covenant, establishes a most encouraging precedent for the maintenance of peace beyond the Atlantic by the harmonious co-ordination of all the efforts exerted in the direction of mediation and arbitration.

Once more Your Excellency has rendered a striking service to the great cause of friendly international co-operation by your firm and unshaken determination to maintain peace and concord between the peoples of the world.

(Signed) C. ZUMETA.

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

C. 138. M. 31. 1928. VIII.

Geneva, November 15th, 1928.

LEAGUE OF NATIONS

ADVISORY AND TECHNICAL COMMITTEE FOR COMMUNICATIONS
AND TRANSIT

Permanent Committee for Ports and Maritime Navigation.

TECHNICAL COMMITTEE
ON MARITIME TONNAGE MEASUREMENT

REPORT

ON

THE DIFFERENCES IN THE EXISTING RULES FOR
TONNAGE MEASUREMENT AND IN THE APPLICATION
THEREOF

AND ON

THE ESTABLISHMENT OF A UNIFORM METHOD OF
TONNAGE MEASUREMENT

Publications of the League of Nations

VIII. TRANSIT
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REPORT OF THE TECHNICAL COMMITTEE ON MARITIME TONNAGE MEASUREMENT

ON THE DIFFERENCES IN THE EXISTING RULES FOR TONNAGE MEASUREMENT AND IN THE APPLICATION THEREOF, AND ON THE ESTABLISHMENT OF A UNIFORM METHOD OF TONNAGE MEASUREMENT.

The Technical Committee on Maritime Tonnage Measurement, set up by virtue of a resolution adopted by the Permanent Committee for Ports and Maritime Navigation in November 1925, at its first session, held in Amsterdam in October 1926, after a general exchange of views on the rules now in force in various countries for the measurement of sea-going vessels, and on the actual application of those rules, decided to entrust a Sub-Committee of Experts with the technical examination of the existing difference, with a view to drawing up a detailed report, and if possible to submitting recommendations for the unification of the rules for tonnage measurement and their application. This Sub-Committee, as originally appointed, was composed as follows:

M. A. VAN DRIEL, Advisory Naval Architect to the Netherlands Navigation Inspection Service, The Hague, *Chairman*;

Captain L. AALL, Principal Surveyor for Tonnage in Norway, Oslo;

M. A. ROTTMANN, Chief Councillor to the Tonnage Measurement Department of the Reich, Berlin.

The Permanent Committee for Ports and Maritime Navigation, at its third session, held in London in February 1927, after having taken note of the report of the first session of the Technical Committee on Maritime Tonnage Measurement, thought it desirable to define more precisely the terms of reference of the Technical Committee on Tonnage Measurement, taking into account the fact that it was desirable to pay particular attention to those aspects of the problem which might have a direct influence on equality between flags and equitable treatment of maritime commerce, adopted in this respect the following resolution:

"1. To ascertain the extent to which differences arise in the ascertainment of the tonnage assigned by the competent authorities of different nationalities to the same ship or to ships of substantially the same class or type under the existing systems.

"2. To suggest what steps can be taken to secure practical equality to ships under all flags under the existing systems.

"If the Technical Committee should be of opinion that practical equality to ships under all flags cannot be attained under the existing systems, it will so report, giving reasons with a view to the position thereby created being considered."

As a result of the deliberations at the third session of the Permanent Committee for Ports and Maritime Navigation, Mr. F. W. BICKLE, Principal Surveyor for Tonnage at the Board of Trade, London, accepted an invitation to serve on the Technical Committee on Maritime Tonnage Measurement and also to become a member of the Sub-Committee of Experts.

The Sub-Committee, thus enlarged, held two sessions in London, the first from April 6th to 8th and the second from July 5th to 15th, 1927. At the end of its second session the Sub-Committee thought it desirable that experts of some other nationalities should participate in the work of the Sub-Committee from the very beginning of the preliminary discussions of technical details, in order that the work of the Sub-Committee might profit by the qualifications and experience of those experts, and therefore decided to make use of the powers conferred upon it by the Technical Committee on Maritime Tonnage Measurement to co-opt one or more experts and instructed the Secretariat to take the necessary steps in order to ensure if possible the collaboration of a French and an Italian expert.

Subsequently, the Secretariat, having been informed that the United States Government was willing to participate in the work of the Technical Committee on Maritime Tonnage Measurement, the Secretary-General of the League, at the request of the Chairman, invited the United States Government to nominate an expert to attend the meetings of the Sub-Committee.

As a result of the various decisions referred to above, the following were appointed members of the Sub-Committee:

M. G. FALCETTI, Head of the Technical Department of the Italian Mercantile Marine, Rome;

M. F. RICHARD, Head of Section of the Customs Department, Ministry of Finance, Paris;

Mr. Charles SKENTELBERY, European Manager of the Maintenance and Repair Department, United States Shipping Board, London.

The Sub-Committee, in its new form, held a third session from October 27th to November 10th, 1927, and a fourth session from February 15th to February 23rd, 1928, in London. At the end of its fourth session it adopted the present report, which contains a detailed statement on the work of the Sub-Committee, mentioning the differences in the existing rules for tonnage measurement in force in various countries and in the application of those rules, and indicating the various proposals which the Sub-Committee wishes to submit to the Technical Committee on Tonnage Measurement with a view to establishing a uniform method of tonnage measurement to be adopted by all seafaring nations, and to ensuring a uniform application of this method.

The Technical Committee, at its second session held in London from October 18th till 23rd, 1928, examined the report submitted to it by the Sub-Committee. This report, with the alterations resulting from the discussions in the Committee, was adopted in the following form for submission to the Permanent Committee for Ports and Maritime Navigation.

I. INTRODUCTION.

The Committee made, on the basis of the British rules, a detailed examination of rules for tonnage measurement in force in the various countries and the different practice in existence in each country. In this examination it followed the programme established by the Permanent Committee for Ports and Maritime Navigation at its last session, held in London in February 1927. The Committee was unanimously of opinion that a direct investigation into the differences resulting from the measurement of one and the same vessel or of sister ships would involve a very considerable amount of work and would still not enable the Committee to answer completely the question contained in paragraph 1 of the resolution of the Committee on Ports and Maritime Navigation, whereby this Committee desires to be informed "as to the extent to which differences arise in the ascertainment of the tonnage assigned by the competent authorities of different nationalities to the same ship or to ships of *substantially* the same class or type under the existing systems". It therefore decided to adopt the following procedure: (1) to ascertain what differences exist in the rules for tonnage measurement and in the instructions to surveyors in various countries; (2) to ascertain what differences exist in the interpretation and application of identical rules in various countries.

In order to give effect to paragraph 2 of the above-mentioned resolution of the Committee for Ports and Maritime Navigation as to "what steps can be taken to secure practical equality to ships under all flags under the existing systems", the Committee was unanimously of opinion that it should endeavour to draw up proposals: (i) As to the rule to be internationally adopted in case of differences in rules at present existing in various countries; (ii) As to the application and interpretation of a rule to be internationally adopted in case there exist differences in the way that rule is at present applied or interpreted in various countries; and (iii) As to the modification of an existing rule in case such a rule is generally considered to give rise to difficulties owing to the fact that it no longer complies with up-to-date requirements of modern shipbuilding, or that it does not present a sufficient degree of exactitude.

The Committee also unanimously agreed that it was essential to avoid as far as possible any alterations which might render the task of tonnage surveyors more difficult than at present.

The results of the very detailed deliberations may be summarised as follows:

II. GROSS TONNAGE.

I. MEASUREMENT UNDER RULE I.

The gross tonnage consists of the sum of the following items:

1. The cubical capacity of the vessel below the tonnage deck (under tonnage-deck space, see A).

2. The cubical capacity of each space between decks above the tonnage deck ('tween-deck space, see B).

3. The cubical capacity of the permanent closed-in spaces on the upper deck available for cargo or stores or for the berthing or accommodation of passengers or crew (see C (3)).

4. Excess of hatchways (see D).

A. Under Tonnage-Deck Space.

I. DEFINITION OF TONNAGE DECK.

The Committee agreed to the definition of tonnage deck contained in Section 8 of the British Instructions, which reads as follows:

“The tonnage deck is the upper deck in all ships which have less than three decks, and the second deck from below in all other ships.”

The Committee noted that in certain countries, in case of practical difficulties with regard to the carrying out of the measurement, the third deck from below has been considered as tonnage deck. It was thought that the present rule (Section 8, British Instructions) should be strictly observed. The Committee was informed that in certain countries regulations existed to the effect that, in case a deck extended over more than half of the length of the vessel, it should be regarded as a deck when interpreting the definition of tonnage deck. The Committee could not adhere to this practice, and was of opinion that a deck should be considered as continuous if it was interrupted only by engine-room, boiler space, coffer-dams and peak tanks.¹ Although in most cases the stringer plates will be continuous, it was thought nevertheless that this was purely a matter of construction and that therefore the continuation or non-continuation of the stringer plates should not be taken into account. If a deck was interrupted by any other space, it should not be regarded as continuous and therefore not be counted as deck when determining the tonnage deck. In cases where the deck line is not continuous, but broken, as may, for instance, be the case in passenger steamers for saloons, swimming-baths, etc., difficulties may arise as to what line should be regarded as continuous deck line.

In practice, it may be found that the solution of this matter is not always an easy one; the Committee has indicated under “General Remarks” a possible method by which provision might be made for meeting such difficulties.

2. MEASUREMENT OF TONNAGE LENGTH.

The Committee noted that the determination of the length of the tonnage deck did not give rise to particular difficulties.

It agreed to the following provisions contained in Section 12 of the British Instructions:

“The length of the tonnage deck in all vessels of the usual sheer is to be taken on the upper surface of the deck at such parallel distance from the middle line of the ship as to clear the several hatchways and other obstacles that may present themselves. Having fixed upon the ends of this parallel line so far, both forward and aft, as may be found convenient, mark them on the deck, and square them into the middle line of the ship; then take the distances from the points thus determined on the middle line to the inside of the plank at the bow and stern respectively, or to the inside of the angle irons or frames in iron or steel ships if not ceiled at bow and stern, making the requisite deductions for the rakes of the bow and stern; the sum of these two distances, added to the length of the parallel line marked on the deck as aforesaid, gives the whole length required.”

3. NUMBER OF TRANSVERSE SECTIONS.

With regard to the suggestion made at the first session of the Committee to the effect that, at the end of the vessel, additional transverse sections should be introduced half-way between the two sections taken at present, the Committee, after having noted the results of comparative calculations reproduced in Annex I, decided not to make any proposal to this effect, since it did not seem that the differences in the results obtained justified an alteration involving additional work.

4. ROUND OF BEAM.

The Committee noted that in some countries, according to established practice, the round of beam is measured at three transverse sections only, namely, at sections 2, 7 and 12. In most other countries, however, it seems that, for the large majority of vessels, the round of beam is measured at five sections, namely, sections 2, 3, 7, 11 and 12. The Committee was of opinion that to measure the round of beam at three sections only seemed insufficient in many cases. It therefore recommended that the round of beam should be taken at each point of division of the length except when the sides of the vessel at the level of the tonnage deck are parallel or almost parallel.

¹ It is obvious that a coffer-dam does not constitute a break in the deck. It is also obvious that hatchways, skylights, ladderways, staircases, etc., are not to be considered as breaks in the deck.

5. MEASUREMENT OF TONNAGE DEPTH.

(a) *General.*

The Committee very carefully examined all problems relating to the measurement of tonnage depths.

• With regard to double bottoms it was thought that, although in many cases the height of the double bottom was excessive, the position of the floors was the only criterion by which to decide as to what level the tonnage depth ought to be measured. In the case of cellular double bottoms with full floors on every frame, the tonnage depth should be measured to the tank top, and the double bottom thus be excluded from the gross tonnage. In cases, however, where the double bottom does not have floors on every frame, the situation is different and, generally speaking, the depth ought to be measured in those cases to the top of the ordinary floors. But there may be cases for which either of the two solutions may seem defensible.

The question as to how to determine the level to which the tonnage depth ought to be measured was examined very carefully. The Committee urged that the basis of comparison ought to be the ordinary cellular construction with floors on every frame, and that any variation from this construction can only be considered as a cellular double bottom if equivalent to the standard mentioned. The principal difficulty proved, however, to be to find an adequate definition of the ordinary floors or the main floors of the vessel.

Finally, after very full discussion, the following text was unanimously adopted:

"Indications for Surveyors.

"1. Tonnage depths are in all cases to be taken to the upper edge of the main floors, whether transverse or longitudinal, or to the upper surface of the tank-top, if a double bottom is fitted, constructed in conformity with regulations for strength and safety.

"2. The bottom construction with solid transverse floors on every frame is to be considered as a standard construction and whenever such floors are fitted they shall be regarded as the main floors referred to above and the tonnage depths ascertained accordingly (see Diagram I, Fig. 1).

"3. When a double-bottom tank of ordinary depth and equivalent to the standard of paragraph 2 is constructed on the top of ordinary transverse floors, the tonnage depth is to be taken to the tank-top (see Diagram I, Fig. 2).

"4. If the bottom construction consists of solid floors of ordinary depth two or more frame spaces apart and skeleton floors of same depth on the intermediate frames, such floors constitute the main floors referred to above (see Diagram I, Figs. 3 and 4).

"5. If the bottom construction consists of solid floors of excessive depth two or more frame spaces apart and skeleton floors of same depth on the intermediate frames, the tonnage depth must be measured to the upper edge of the shell frame (see Diagram I, Fig. 5).

"6. If the bottom construction consists of floors of different depth, the surveyor has to determine whether the higher or the lower floors should be considered as the main floors referred to above. As a general indication, it should be noted that the lower floors are to be considered as the main floors: (a) when the higher floors are more than two frame spaces apart; and (b) in all cases where the higher floors are of excessive depth (see Diagram I, Fig. 6).

"7. In the case of a bottom construction with longitudinal framing of a uniform depth, the upper edge of the longitudinals should be considered as the top of main floors (see Diagram I, Fig. 7).

"8. Should the longitudinal system consist of elements of different depth, the same provisions as given in paragraph (6) will apply (see Diagram I, Fig. 8).

"9. Mixed constructions of transverse and longitudinal framing are to be compared with the various systems referred to in the preceding paragraphs for the purpose of determining the depth of main floors."

With regard to the question whether and to what extent double bottoms should be included in gross tonnage, the Committee decided not to include the double bottom in the underdeck tonnage; the Committee was, however, well aware that cases of unequal treatment as between ship and ship would inevitably occur, for instance, when cargo, fuel, oil or stores, e.g., feedwater, are carried in a double bottom.

It should be noted that, in Great Britain, with a view to overcoming such difficulties, Article 85, paragraph 1, of the Merchant Shipping Act of 1894 was also applied to cargo and stores carried in a double bottom. This paragraph reads as follows:

"Space occupied by Deck Cargo to be Liable to Dues. — If any ship, British or foreign, other than a home-trade ship as defined by this Act, carries as deck-cargo, that is to say, in any uncovered space upon deck, or in any covered spaces not included in the cubical contents forming the ship's registered tonnage, timber, stores or other goods, all dues payable on the ship's tonnage shall be payable as if there were added to the ship's registered tonnage the tonnage of the space occupied by those goods at the time at which the dues become payable."

In any event, the Committee would recommend that, in all countries, the cubical contents of the various double-bottom tanks should be marked on the national tonnage certificate, as is already done in some countries, and as is also required for the Suez Canal certificate. The capacity of such spaces should be ascertained by the formula: Length X, breadth X, mean depth, — Simpson's rule to be adopted (see Second Schedule to the British Merchant Shipping Act, Section 5, viz., Instructions to Surveyors, ed. 1927, page 71), and all dimensions to be taken between plating. This means that the measurements of the double-bottom tanks should be taken up to the shell, the margin plate end and the tank-top plating, not considering frames and stiffeners.

(b) *Ceiling.* — The Committee was of opinion that the prescription of Section 17 of the British Instructions, which says that, "From the depth thus ascertained, is to be deducted . . . the average thickness of the ceiling on the floor timber", should be interpreted in all countries in such a way that the maximum thickness of ceiling to be deducted should be *three inches* in the case of iron and steel vessels. It was also decided not to include the transverse battens under the ceiling in the deduction.

In the case of double bottoms the ordinary rule, of course, applies with regard to the thickness of ceiling, but differences of interpretation may arise in the case of ceiling fitted solely under the hatchways. Should they be included in or excluded from the under-deck tonnage? In most countries they are at present included, although it must be recognised that their surface may be of considerable extent. For this reason, some countries allowed for the thickness of ceiling in such cases and therefore measured the under-deck tonnage to the top of the double-bottom tanks and reduced it by the cubical content of the bottom ceiling under the hatches. After carefully considering the matter, the Committee decided to exempt the partial ceilings under the hatchways. Consequently, these ceilings should be measured in the under-deck tonnage, their space should then be calculated separately and subsequently deducted from the under-deck tonnage.

(c) *Different Depth of Floor, in the case of Double Bottom or Partial Double Bottom.* — The Committee was informed that in some countries, in the case of vessels with a double bottom constructed with a different depth of floor, the vessel is measured in one part as if the depth of floor was the same throughout the whole vessel. Corrections are then made subsequently with regard to the parts where the floor is of different depth, and the space contained between the ordinary floor and the floor of different depths is calculated separately and deducted or added as the case may be (see Diagram II, Fig. 1). It was thought, however, that this method could not be recommended, because the system of corrections was liable to give rise to errors and seemed unnecessarily complicated. The Committee recommended the universal adoption of the method at present already followed by most of the seafaring nations, whereby in the case of different depth of floor the vessel is divided into an adequate number of parts, each part having only one depth of floor and being measured separately (see Diagram II, Fig. 2).

There might, however, still be differences of interpretation as to the number of parts to be taken. This was shown by the example quoted of an ordinary tanker with a cargo hold and a deep tank forward, with longitudinal framing under the tanks and a double bottom in the machinery space aft. In some countries such a vessel is measured in two parts, the forepart including fore-peak, cargo hold plus deep tank and cargo tanks, the second part including the rest of the vessel. In other countries, however, such a vessel is divided into three parts, whereby the cargo hold plus coffer-dams form the middle part. The Committee was of opinion that in the case mentioned a division into two parts was satisfactory.

Finally the Committee noted that in one country a different rule was followed, leading to a greater number of subdivisions, whereby in the case, e.g., of a vessel with raised quarter-deck the volume of this latter is treated as forming part of the under-tonnage-deck space (see Diagram II, Fig. 3). The Committee recommends that in future one uniform rule should be applied in all countries.

(d) *Determination of Tonnage Depth in case Cargo is carried between the Floors.*

The Committee expressed the view that the tonnage depth should always be measured to the top of the main floors, even in the case when cargo (for instance, oil) may be carried between the floors (see also Indications for Surveyors).

(e) *Tonnage Depth in case of Non-horizontal Double Bottom or Non-horizontal Top Line of Ordinary Floors.*

The Committee was of opinion that the method introduced by the British Tonnage Commission of 1881, and inserted in the British Rules in 1889, and subsequently in the rules of most

other countries, although constituting an improvement on the previous method, still does not give very accurate results.

The method generally employed was the following:

First of all, the whole depth in the centre line is measured and divided by 7 or 5 according as the depth of the midship area exceeds or not 16 feet; and, secondly, the lowest part is subdivided into four equal parts.

The breadths are measured at every point of division of the depths and the area of the section is equal to the sum of the upper and lower areas (see Diagram III, Fig. 1).

In some countries, in the case of vessels where the inner bottom rises from the middle line to the wings, the transverse area is not divided into two parts. The depths are measured in the centre line and divided by 6 or 4 according as the depth of the midship area exceeds or not 16 feet, whereafter the area of the section is adjusted by means of the lowest breadth, by measuring this as usual to where the ceiling begins to rise. Only two-thirds of this breadth is used for the calculation (see Diagram III, Fig. 2).

As a result of a number of calculations made, the Committee considered that a correction of the tonnage depth similar to the correction in depth on account of the round of beam would give satisfactory results (see Diagram III, Figs. 3 and 4).

The Committee also noted that a few cases occurred of vessels with curved tank-tops. Although these cases were very rare, the Committee thought that provision should be made for their measurement, e.g., by modifying the tonnage depths.

The Committee agreed to the following provision:

"In vessels where the inner bottom rises or falls in a straight line from the middle line to the wings, the depth should be taken at the middle line and decreased or increased by one-half of the rise or fall. In the case of a curved line, the depth should be decreased or increased by one-third of the rise or fall.

"The lowest breadth should be taken on the tank-top at the margin plate."

The Committee recommended that the same method should apply to the measurement of tonnage depth in case the top lines of ordinary floors fall or rise from middle line to wings.

Two members of the Committee could not adhere to this recommendation with regard to ordinary floors rising from middle line to wings on account of the difficulty of determining in many cases, and particularly in cases of wooden vessels, the level at which the lowest breadth should be taken. They therefore recommended that in this case the present practice of measuring tonnage depth and lowest breadth should be maintained.

(f) Determination of Tonnage Depth in case of Differences in Depth of Double Bottom in the Transverse Direction or in case of a Non-continuous Top Line of Ordinary Floors athwartships.

In case the double bottom is partly lower or higher in the transverse direction, the depth should be taken to the top of the double bottom (see Diagram IV), and a correction made to the under-deck tonnage for the recessed or projecting part of the double bottom.

The Committee recommended that the same method should apply in case the top-line of ordinary floors athwartships is broken by recesses or projections.

(g) Perforated Double Bottom.

After full discussion, the Committee adopted the following text:

"Where the tank-top is perforated, the depth should be taken to the top of the floors, but not necessarily to the tank-top. This depth will in all cases depend on the construction of the tank."

(h) Tonnage-deck Beams rising in a Straight Line from Side to Middle of Vessel.

The Committee was of opinion that the rule at present generally in force with regard to the measurement of depth in the case of a vessel with tonnage-deck beams rising in a straight line from side to middle of vessels, and which provides that in such a case half instead of one-third of the spring of the beam should be deducted from the total depth measured in each section, should be adhered to universally.

6. MEASUREMENT OF BREADTH.

(a) Lowest Breadth.

The measurement of the lowest breadth in the case of a horizontal double bottom or of a horizontal top-line of ordinary floors depends, in the opinion of the Committee, on the existence or non-existence of a ceiling over the frame-brackets (see Diagram V).

(b) *Spar Ceiling.*

The Committee was of opinion that Section 21 of the British Instructions should be universally adopted. The spacing between the battens or bars should not exceed one foot if the breadth is to be taken to the face of the battens or bars; otherwise, the breadth should be taken to the inner edge of the frames (see Diagram VI). The uppermost spacing should be taken from the under-side of the beam. When side stringers exist, they should not be counted as battens or bars for the determination of the spacing.

(c) *Frames of Different Heights.*

The Committee agreed that no attention need be paid to the case of *concrete vessels*, since concrete seagoing vessels are out of date and are no longer constructed.

As to the differences in height occurring with *iron or steel framing*, the Committee was of opinion that the normal place of the cargo battens gives an indication as to the breadth to be measured. In case there are no cargo battens it should be considered whether the normal length of battens could be fitted. (The two examples given in Diagram VII illustrate the Committee's views on this subject.)

(d) *Longitudinal Framing.*

In the case of a vessel built according to the longitudinal system, the breadth is measured up to the imaginary line that joins the inner sides of the longitudinal frames (see Diagram VIII).

(e) *Corrugated Vessels.*

With regard to corrugated vessels, the Committee recognised that the method recently applied in some countries (see Diagram IX) is only suitable for the particular construction shown in the diagram. In case the form of the bulges or other details are altered, some other rule should be adopted for measuring the breadth. It seemed hardly possible to lay down any general rule, and the Committee was therefore of opinion that each case should be considered on its merits.

B. 'Tween-Deck Space.

I. MEASUREMENT OF HEIGHT.

The Committee noted that the number of sections at which the breadth and the height are to be measured does not give rise to difficulties. This number will be the same as that taken for the under-deck measurement, but with regard to the aftermost sections several questions may arise. Furthermore, the present calculation of the mean height is not a very accurate one (see Diagram X, Figs. 1, 2, 3).

It was proposed to calculate the 'tween-deck space in the following manner:

$$\text{'Tween-deck space} = \frac{1}{3} l \times (h_0 b_0 + 4 h_1 b_1 + 2 h_2 b_2 + 4 h_3 b_3 + \dots + 4 h_{11} b_{11} + h_{12} b_{12})$$

It was explained that, for a certain type of vessel, the difference in sheer between the two decks was considerable. The Committee, while recognising that the method proposed for the purpose of measuring 'tween-decks in the case of different sheer in the two decks was very accurate, was yet of opinion that the application of this method involved too much work. On the other hand, it was suggested to take as mean height the arithmetical mean of all the heights taken. Several members objected, however, that this method was not satisfactory in the case of different sheer in the two decks owing to the fact that the height at the two ends carried too much weight. Investigations were carried out, in particular with regard to the mean depth as effected by excessive sheer. Finally, it was proposed that calculations should be made in order to ascertain whether satisfactory results could not be obtained by taking the mean of the various heights, starting with No. 3 and ending with No. 12, or by taking the mean of heights Nos. 4, 7 and 10.

As a result of the calculations made (see Annex II), it was decided to take the arithmetical mean of all the heights except the first and last.

The heights should be measured in the middle line of the vessel, except when there exists a difference in the round of beam of the two decks between which the spaces are to be measured. In this latter case, it was recommended that all nations should adopt the practice of measuring the heights at one-fourth of the breadth of each section (see Diagram XI). The Committee, making this recommendation, was well aware of the fact that the method proposed was not quite correct; it was thought, nevertheless, that the actual error was only of minor importance, whereas it was felt quite essential that the prescribed method of measurement should be simple and easy to carry out.

2. AFTERMOST BREADTH.

The Committee discussed at great length at which place the aftermost breadth should be measured. On this occasion, an amendment was suggested for the calculation of the 'tween-deck space to the effect that the last height and breadth should be taken at the transom. The part of the 'tween-deck behind the transom should in this case be measured separately. With a

stern of ordinary form, the following method might be adopted (see Diagram XII). The additional measurement and calculation would amount to the following: b_{12} has already been measured, so the only new measure to be taken would be a . The volume of the space behind the transom would then approximately be:

$$1/6 h_{12} \times b_{12} (0 + 4a + 0) = 2/3 a \times h_{12} \times b_{12}$$

As a result of the calculations made (see tables in Annexes III a and III b), the Committee adopted the following text:

"In all cases the aftermost breadth of a 'tween-deck should be calculated, or the capacity of the aftermost part of the 'tween-deck should be computed by separate calculations and added to the main portion."

This text leaves the possibility of the application of either the method now in use in Great Britain or of the proposed method. The British method requires the use of a planimeter and therefore might not so easily be applied in countries where the tonnage surveyors have no technical education.

C. Superstructures and Shelter-deck Spaces.

I. PRINCIPLE OF OPEN AND PERMANENTLY CLOSED-IN SPACES.

The question if and to what extent superstructures should be included in the gross tonnage gave rise to lengthy discussions. Three alternative solutions were examined:

(1) To include all superstructures in the gross tonnage. The adoption of this principle would lead, of course, to considerable alterations in the practice at present followed by the overwhelming majority of seafaring nations.

(2) To exempt all superstructures, whatever be the means of closing, from inclusion in the gross tonnage. The adoption of this principle would be fairly in agreement with the common practice for the large majority of cargo vessels whose structures are always "open", but for passenger vessels it would introduce an immense advantage as compared with present-day practice.

(3) To establish a discrimination between cargo and passenger vessels by only measuring in superstructures available for the berthing or accommodation of passengers.

The Committee, after very carefully examining point (3), came, however, to the conclusion that it was not practicable to fix a limit which was not to a large extent open to abuse. It therefore found that the only possible solution was a clear definition as to what would be regarded as an "open" space.

The Committee unanimously adopted the following conclusions with regard to the treatment of superstructures and shelter-deck spaces:

1. There was no possibility of finding a system which would satisfy all possible contingencies.

2. The present system had become an internationally accepted fact, and any alteration in the principles governing it would entail a very large amount of work for the various authorities concerned.

3. Nevertheless, it was considered that cases of unequal treatment as between ship and ship would inevitably occur. In this respect, the Committee desires once more to refer to the solution provided in Article 85 of the British Merchant Shipping Act of 1894, to cover cases of cargo carried in open spaces. In any event, the Committee would recommend that the dimensions and the capacity of the various open spaces should be marked on the national tonnage certificate.

4. Taking account of the above considerations it was agreed that the existing principles laid down in Sections 32 and 33 of the British Instructions for Surveyors should be retained, subject to the following provision:¹

"The spaces referred to in Section 32, British Instructions, if available and fitted and used for the berthing or accommodation of crew, must be measured and included in the gross tonnage."

When discussing the questions relating to the measurement of open shelter-deck vessels, one of the members of the Committee pointed out that, according to his experience, all the trouble, both for tonnage authorities and for shipowners, with respect to this type of vessel was caused by the requirement of scuppers. Personally, he was of opinion that the withdrawal of this requirement

¹ The Committee adopted this additional provision after considering the wording of the existing French regulations, which was found to be more precise.

Examples of the measurement of the superstructures partially used for crew accommodation are shown in Diagram XIII, Figs. 1 and 2.

ought to be considered. At the same time, he drew attention to the advisability of keeping the freeing port and scupper on each side of the tonnage well. He thought that this type of vessel would not thereby be unduly favoured, since such an arrangement would, as far as he knew, have no influence on the freeboard. Moreover, it was well known that scuppers must be closed on loaded vessels in any case. He furthermore pointed out that formerly scuppers were required even in an ordinary bridge with tonnage openings in the front bulkhead and adjoining a break. This requirement had been withdrawn long ago.

Other members observed that the question of scuppers was in the main a question to be dealt with by the freeboard assigning authorities.

The Committee thereafter examined various details with regard to tonnage openings and their closing appliances. The following conclusions were unanimously adopted:

"OPEN SPACES.

"Detached Superstructures and Shelter-deck Spaces.

"1. Openings in Bulkheads.

(a) Superstructures on or above the upper deck may be exempted from inclusion in gross tonnage if the openings in the bulkheads are of the prescribed dimensions and closed by weather boards only, fitted in channel bars, the latter being riveted to the bulkheads. Therefore plates, or covers of other materials, secured by hook bolts or by any other means are not allowed.

(b) In order that detached superstructures on the upper deck may be regarded as open spaces there should be a permanent opening in the bulkhead on each side of the middle line of the vessel, the height extending from deck to deck but being in no case less than 4 feet, and the breadth being at least 3 feet. If coamings are fitted, their height must not exceed 2 feet. Instead of two openings, one on each side, it is permissible to have one opening in the middle line of the vessel.

(c) No coamings are allowed to any tonnage openings in bulkheads within open spaces.

(d) Furthermore, the second paragraph of Section 34 of the British Instructions was adopted. This paragraph reads as follows:

"A single opening at one side of a bulkhead is not considered sufficient to entitle the space thus partitioned off to exemption, unless, in addition to this, there are a number of freeing ports and scuppers fitted on each side of the space claimed. In such cases, the owner's application for exemption and also a sketch of the space drawn to scale must be forwarded to the Principal Surveyor for Tonnage for examination, and exemption must not be allowed without the Board's approval."

(e) The above rules as regards tonnage openings in bulkheads apply equally to bulkheads in open shelter-deck spaces.

"2. Deck Openings.

(f) When exemption from inclusion in gross tonnage is claimed for superstructures or for the space between upper and shelter-decks on the ground of a permanent middle line opening in the deck overhead, the length of this opening must not be less than 4 feet clear and the width must be at least equal to that of the after cargo hatch upon the same deck, but the clear surface of the opening should in no case be less than 64 square feet. In the case of shelter decks, the distance between the after-coaming of the deck openings and the aft side of the stern post must not be less than one-twentieth of the registered length of the vessel, or, if the opening is placed forward, the foreside must not be less than one-fifth of the length of the vessel from the foreside of the stem.

(g) The coamings of the deck openings must not exceed 12 inches mean height above the deck; the stanchions around the tonnage openings in the deck must be riveted or socketed to the upper edge of the coamings in such a manner as to prevent any battening down of the openings. If portable wood covers are fitted, the lashings beneath for holding them in place are to be of hemp.

(h) The tonnage openings in the deck must in all cases be open to weather and sea at sides and overhead, and must not be enclosed within a structure (open or otherwise).

"3. Side Openings.¹

(i) If exemption of a space is claimed on account of openings in side plating, the following rules shall apply:

¹ The dimensions indicated give the clear surface of the opening. In determining those dimensions, however, the frame angles will not be taken into account.

"I. If one side opening only is fitted, it must not be less than 20 feet long and 3 feet high.

"II. If more than one opening is fitted, each opening should not be less than 10 feet long and 3 feet high, and in this case the total area of the side openings should be increased by 50 per cent.

"III. All openings must be in corresponding positions on both sides of the vessel.

"(k) In the case of wells between closed thwartship bulkheads, the openings in the shell must have a length of 20 feet if possible, and in no case less than three-quarters of the average length between the thwartship bulkheads.

"(l) Side openings should not be closed by plates or any permanent means of closing. Channel bars for the fitting of weather boards are not objected to.

"(m) The side openings should not be enclosed by bulkheads or otherwise.

"4. *Means for Clearing the Tonnage Well.*

"(n) Suitable means must be provided both in cases of deck openings and side openings for clearing the tonnage well by means of at least one freeing port and one or more scuppers on each side.

"5. *Scuppers.*

"The existence or non-existence of scuppers within open spaces will have no influence on the treatment of such spaces from the point of view of tonnage measurement."

The Committee considered that it was not possible to prohibit all methods of closing openings, for the captain of the ship is responsible for the security of the vessel under his command, and consequently he should not and could not be forbidden to take all necessary measures in order to assure at all times the safety of his ship. The Committee therefore indicated what closing appliances it considered permissible for the closing of "open" spaces. It was further of opinion that tonnage openings should constitute the only means of access to spaces for which exemption was claimed on account of such tonnage openings.

One of the members of the Committee proposed that portable wooden bulkheads without tonnage-openings should be allowed within open shelter-deck spaces. Such portable wooden bulkheads may be required, *e.g.*, in the case of spare bunkers. The large majority of the Committee was, however, of opinion that there was no reason for making a distinction between portable and fixed bulkheads and that therefore such portable wooden bulkheads should be fitted with tonnage openings as prescribed for bulkheads within open spaces.

The Committee was of opinion that the last paragraph of Section 35 of the British Instructions dealt exclusively with a matter of safety, and, as questions of this kind fall, in many countries, within the competence of other authorities than authorities for tonnage measurement, the clause was not proposed for international acceptance.

With regard to side openings, the Committee unanimously agreed that only the shell flanges of the frame angles should be allowed to encroach on the free surface of the opening.

The Committee recognised that the above rules still left open the possibility that nearly two complete erections situated one above the other would be exempted, as is the case given in Diagram XIV. It was thought, however, that, although such cases might occur, it was nevertheless impossible in practice to draft the rules in such a way as to prevent such cases. Moreover, the freeboard requirements would in general induce shipowners to close permanently the lower "open" shelter-deck space. The principal object which the Committee had in view by drafting the above rules was to limit *as far as possible* the evasion of tonnage rules.

The Committee discussed various details of questions that might arise as to the application of the aforesaid rules.

2. SHELTER FOR DECK PASSENGERS.

British legislation relating to tonnage measurement provides that no addition shall be made to gross tonnage in respect of any building above the upper deck erected for the shelter of deck passengers, and approved by the Board of Trade.

It was pointed out that the regulations with regard to shelter for deck passengers (see Section 37, British Instructions) originated from the desirability, in the case of cattle transport, of providing a shelter for cattle-drovers. Such shelters were exempted from measurement for humanitarian reasons.

Later on, similar shelters were constructed on ferry-boats and some other passenger boats for short journeys. They may be completely closed, but they may not be provided with any accommodation. Separate shelters are prescribed for male and female passengers. No provision is to be made for serving meals in such shelters. The installation of water-closets is, however, compulsory. It is to be noted that the crew should have no access to such shelters for deck passengers, except in cases of emergency. Moreover, it was pointed out that every case has to be considered by a central control office. The members of the Committee, after taking cognisance of the preceding explanations, had no objection to recommending this rule for international application. It was agreed, however, to add to the conditions for the exemption of such spaces contained in the British Instructions the provision of the French regulations which stipulates that no additional charge should be made for the use of such spaces by deck passengers. The capacity of the shelter for deck-passengers should be marked on the national tonnage certificate.

3. PERMANENT CLOSED-IN SPACES ON THE UPPER DECK.

(a) *General.*

The Committee discussed at great length Section 30 of the British Instructions, which stipulates that permanent closed-in spaces on the upper deck "available for cargo or stores or for the berthing or accommodation of passengers or crew must be measured and included in the gross tonnage". The proposal was made to measure and include in the gross tonnage all closed superstructures and to allow for the subsequent deduction of all spaces not available for the storage of cargo and stores or the berthing and accommodation of passengers. Furthermore, the point of view was expressed that it did not seem logical and desirable to have two different principles governing the measurement of the hull under the upper deck and the measurement of superstructures. The present regulations only allow for deduction from the tonnage under the upper deck: (1) for machinery and fuel spaces (allowance for propelling power); and (2) for space necessary for navigation purposes (master's and crew's spaces, helm-house, chart-room, etc., and water-ballast spaces). The principle adopted, however, as to superstructures is one of "exemption". Only spaces available for certain specified purposes are to be included in the gross tonnage. In practice, this leads to a different treatment of spaces, dependent on their situation under the upper deck or in a superstructure, in the following cases:

(i) Spaces for accessory machinery situated above the upper deck do not count in the gross tonnage and therefore not in the net tonnage. Such accessory machinery space situated under the upper deck is included in the gross tonnage and may count in the net tonnage.

(ii) Lavatories and water-closets for passengers situated above the upper deck do not count in the gross tonnage and therefore not in the net tonnage, whereas such spaces situated below the upper deck are included in the gross tonnage and count in the net tonnage.

On the other hand, it was urged that an alteration of the existing rule might lead to considerable difficulties, since any alteration in the gross tonnage would in many cases affect the allowance for propelling power.

After giving this matter very full consideration, the Committee finally unanimously agreed, subject to the observations, amendments and additional provisions indicated below, to retain Sections 30 and 38 of the British Instructions, which read as follows:

"Section 30. — The Act provides that if there be a break, poop, or any other permanent closed-in space on the upper deck available for cargo or stores, or for the berthing or accommodation of passengers or crew, it must be measured and included in the gross tonnage."

"Section 38. *Closed-in spaces which may be exempted.* — The following exceptions to the general rule of measuring all closed-in or weather-protected spaces are allowed:

"(a) Any closed-in space or spaces solely appropriated to and fitted with machinery.

"(b) The wheel-house for sheltering the man or men at the wheel.

"(c) The cook-house and also the bakeries when fitted with ovens and used entirely for such purposes.

"(d) The condenser space, provided always that the spaces are not larger than required for the purposes mentioned.

"(e) *Water-closets or privies* for the officers and crew: and in the case of vessels fitted particularly for passengers, an additional one may be allowed for every fifty persons."

Observations presented by the Committee and Amendments and Additional Provisions proposed.
re Section 38 (a). — During the discussions on the details of machinery in deck-houses, it was pointed out that cases had occurred in which factories were fitted in superstructures (e.g., on whalers). It was considered that these spaces should be strictly limited in extent, as was already expressed in the existing Section 38 by the clause: "provided always that the spaces are no larger than required for the purposes mentioned".

• Spaces exclusively used for the fitting of coils for refrigerating purposes are to be considered as machinery space, but it should be carefully examined whether the space is not available for the storage of goods or stores.

Spaces for storage batteries should equally be considered as machinery spaces.

Spaces taken up by ash-ejector appliances in superstructures should equally be exempted, being not appropriate for the storage of goods and the berthing or accommodation of passengers.

Passenger and baggage lifts when situated above the upper deck are to be exempted from inclusion in the gross tonnage on the grounds that the spaces occupied are fitted with machinery and, moreover, that such lifts may be considered as auxiliary staircases.

re Section 38(b) and (c). — No observations.

re Section 38 (d). — It was noted that this item would find no application as far as modern ship construction was concerned.

New Items. — It was agreed that Section 38 should be completed by the insertion of new items (e) and (f), the existing item (e) becoming item (g), these items being copied from Article 20 (f) and (g) of the United States Rules (ed. 1925, page 17).

Section 38 (new (e)) would read as follows:

(e) Skylights and domes affording ventilation, light and air to the erection served, but none of the space below the roof or covering of such erection is exempt, except where an opening is left in the floor of the superstructure directly under the skylight to give ventilation and light to the dining-saloon, etc., below the said floor. This additional exemption, however, is to be approved by the controlling office. The request for such approval is to be accompanied by a blueprint or sketch of the said space.

Section 38 (new (f)) would read as follows:

(f) Companions, except the portion of them used as a smoking-room, and booby-hatches used exclusively to protect companion-ways and ladders leading to spaces below, whether such spaces are exempt or not.

re Section 38 (e) (new g). — The Committee considered that the provisions of this item were not in complete agreement with modern practice. It therefore proposed the following text:

"Section 38 (g). Water-closets or privies for officers, crew and passengers, unless a charge is made in the case of the latter."

It may be, as a matter of fact, that in the case of ferry-boats, for instance, a charge is made for the use of water-closets or privies, and this is also considered to be the case with *suites de luxe* with private bathrooms and water-closets.

Lavatories may be exempted only when the space occupied by the lavatory is of no importance as compared with the water-closets in the same place.

The Committee noted that, according to the rules in force in one country, sundry spaces set apart exclusively for passengers, and constructed entirely above the first deck, which is not a deck to the hull, are exempted from gross tonnage. This question was considered an important one owing to the amount of tonnage involved, which is sometimes considerable. It was felt that this practice, being contrary to the principles governing tonnage measurement, could not be recommended for universal adoption, and therefore the Committee unanimously expressed the wish that the above rule should be altered so as to correspond to the general practice.

Measurement of Superstructures.

As to prescriptions in detail concerning the carrying out of the measurement, the Committee agreed to the following provisions:

In all superstructures, the measurements shall be taken to the inner edges of the normally spaced stiffeners of the bulkheads, or to the linings, if fitted. The same is to be applied in the case of the round-house.

As to the panelled decks, the height is measured to the upper side of the deck beams, the panelling being entirely neglected.

If different thicknesses of deck covering (concrete, rubber, insulating material, etc.) have been applied in parts of a superstructure, the excess in thickness is neglected if the

surface of the deck covered by a layer of greater thickness is small in comparison with the whole deck surface. In other cases, an average thickness of the deck covering is taken. As it is impossible to foresee all questions which may arise with regard to this point, no hard-and-fast rule can be given.

(b) Forecastles of all Descriptions.

The Committee unanimously agreed that the present method of measuring superstructures with three breadths only was very unsatisfactory. The Committee examined the existing United States Rules on this subject, which were considered more satisfactory, but rather complicated (see Diagram XV). The following proposal was put forward:

If $l \leq 50'$, divide into 2 parts (3 breadths);

If $l \begin{matrix} > 50' \\ < 225' \end{matrix}$, divide into 4 parts (5 breadths);

If $l \geq 225'$, divide into 6 parts (7 breadths).

(l being the length of the superstructure.)

After examining the results of the calculations carried out (see Annexes IV and V), the Committee unanimously agreed to lay down that forecastles of all descriptions should be measured according to the proposed rule.

(c) PooPs and Breaks of all Descriptions.

The same grievances exist with regard to the present measurement of pooPs. The following proposals were made for calculating the aftermost part (see Diagram XVI Figs. 1 and 2). At present, a similar practice as that shown in Fig. 2 is followed in several countries, but the position of Section A is not a fixed one, but is chosen by the surveyor. The Committee thought that the same solution as adopted for the measurement of 'tween-decks might be applied in this case; consequently, the following text was adopted:

"In all cases the aftermost breadth of a poop should be calculated, or the capacity of the aftermost part of the poop should be computed by separate calculation and added to the main portion."

With regard to the number of breadths to be taken, the Committee adopted the same rule as for the measurement of forecastles. Therefore the following rule will apply:

If $l \leq 50'$, divide into 2 parts (3 breadths);

If $l \begin{matrix} > 50' \\ < 225' \end{matrix}$, divide into 4 parts (5 breadths);

If $l \geq 225'$, divide into 6 parts (7 breadths)

(l is the length of the superstructure.)

(d) Turret-deck Vessels (see Diagram XVII).

The Committee was of opinion that, as this kind of vessel is not at present constructed it was not necessary to pay much attention to it for the time being. If a similar type should be constructed in future, any superstructures like turrets should be measured according to the method that has been recommended for the measurement of forecastles. The Committee has indicated in "General Remarks" a possible method by which provision might be made for meeting difficulties which might arise.

(e) Trunk-deck Vessels.

The Committee was of opinion that trunk-deck vessels very seldom gave rise to difficulties, as there was always a forecastle and a poop at the ends of the trunks.

D. Excess of Hatchways.

It was realised that the present method was not altogether logical; nevertheless, it was felt that the reasons for alteration were not sufficiently strong to justify a recommendation that the existing and long established practice should be modified. It was therefore decided to maintain the existing practice of exempting hatchways up to one half per cent of gross tonnage.

An example was given of hatchways built on a kind of trunk but not connected with the superstructure (see Diagram XVIII). The Committee unanimously agreed that only the part hatched in the diagram should be considered as hatchway; the other part should therefore be included in the gross tonnage for the purpose of calculating the half per cent.

The Committee also examined the case of steel corrugated hatch-covers — for instance, according to the Hogg-Carr system of construction. This form of hatch-cover is very seldom used in other countries than Great Britain. The Committee noted that the practice of the British tonnage authorities was to include the bulges in the gross tonnage (see Diagram XIX).

2. MEASUREMENT UNDER RULE II (GIRTING MEASUREMENT).

Rule II, as modified by the Board of Trade under Section 77 (7) of the British Merchant Shipping Act, contains the following provisions:

1. *Measurement of Ships not requiring Registry with Cargo on board and Ships which cannot be measured under Rule I. — Length. — Breadth. — Girting of the Ship.* — Measure the length on the uppermost deck from the outside of the outer plank at the stem to the aft side of the stern-post, deducting therefrom the distance between the aft side of the stern-post and the rabbet of the stern-post at the point where the counter plank crosses it; measure also the greatest breadth of the ship to the outside of the outer planking or wales, and then, having first marked on the outside of the ship on both sides thereof the height of the upper deck at the ship's sides, girt the ship at the greatest breadth in a direction perpendicular to the keel from the height so marked on the outside of the ship on the one side to the height so marked on the other side by passing a chain under the keel; to half the girth thus taken add half the main breadth; square the sum; multiply the result by the length of the ship taken as aforesaid; then multiply this product by the factor .0017 (seventeen ten-thousandths) in the case of ships built of wood, and .0018 (eighteen ten-thousandths) in the case of ships built of iron, and the product shall be deemed the register tonnage of the ship.

2. *Poop, Deck-house, Forecastle, and other Closed-in Spaces on Upper Deck.* — If there be a break, a poop, or other closed-in space on the upper deck, the tonnage of that space shall be ascertained by multiplying together the mean length, breadth and depth of the space, and dividing the product by 100, and the quotient so obtained shall be deemed to be the tonnage of the space, and shall be added to the tonnage of the ship ascertained as aforesaid."

The Committee recommended that this rule should only be used in exceptional cases, and, in conformity with actual British practice, should only be applied after authorisation by the central control office. The Committee noted that in some countries a somewhat different rule was in force, but it was thought that there would be no objection as to an international agreement on the basis of the British rule.

III. NET TONNAGE.

A. Deduction for Propelling-power Space.

I. GENERAL.

The Committee discussed this question very thoroughly. Various objections against the method now in force were raised in the course of the discussion. Several members advocated the adoption of the so-called Danube rule, although they admitted that this rule was also far from ideal and showed great anomalies with regard to modern ship construction. On the other hand, they pointed out that, in their opinion, the principal defect perhaps of the existing British rule (Section 78, British Merchant Shipping Act, 1894) was the very considerable difference in the deduction to be granted for vessels whose engine-room space is not above 13 per cent of the vessel's gross tonnage.

Other members of the Committee admitted that the method now in force showed certain anomalies and that therefore they could in theory sympathise with the desire to find a better system. In their opinion, however, it was very doubtful whether it would be possible to work out a rule which could be considered to be entirely satisfactory. Every percentage was, of course, arbitrary, and this would naturally be the case with any new rule. Moreover, they thought that it would prove impossible to make any reasonable discrimination between vessels for long trade and for short trade, for slow and fast vessels, for motor vessels, turbine vessels and vessels with reciprocating steam engines, for the use of coal, liquid fuel, etc. With regard to the limit of 13 per cent, one of the members expressed the view that, according to his experience, there were no difficulties in the case of modern motor vessels in arriving at this percentage, as it happened that modern motor vessels were constructed for greater speed than cargo vessels in former days. Moreover, the auxiliary machinery plant had been considerably extended. He therefore came to the conclusion that the aforesaid percentage at present still constituted a fair limit between mechanically driven vessels and those with auxiliary propelling power.

It was stated on the other hand, however, that for some types of motor vessels it had been found difficult to reach an engine-room space of more than 13 per cent of the gross tonnage. Some members therefore proposed to introduce a sliding scale or one or two grades in the percentages below 13 per cent (*e.g.*, from 13 to 20 per cent, 32 per cent deduction; from 11 to 13 per cent, 27 per cent deduction; and, if desired, from 9 to 11 per cent, 22 per cent deduction). Other members

pointed out that the introduction of new grades would lead to still more difficulties of the kind that the original proposal had intended to do away with. These members declared that an entirely new rule, provided that it were possible to draw up such a rule, would seem to them distinctly preferable to alterations in the present rule as proposed.

Another proposal was made by one of the members with a view to removing certain hardships in the case of vessels with a small engine-room: to replace the factor 1.75 by the factor 2.4 for those vessels whose machinery space does not exceed 13 per cent of the gross tonnage. It was thought, however, that no general agreement as to such a modification of the existing rules seemed possible, at least at present.

Finally, the Committee came to a unanimous agreement on the following statement:

"The Committee thoroughly examined the question of propelling-power allowance, and unanimously agreed that the existing percentage or British system presented certain anomalies.

"It was, however, agreed that the substitution of any other system would also present difficulties.

"Taking into consideration the fact that the existing system is adopted by practically all maritime nations, that a very large number of vessels have been dealt with accordingly, and that considerable confusion would result from the adoption of a new system, the Committee decided to recommend that no change should at present be made in the existing practice of determining the propelling power allowance."

The Committee also discussed Section 78 (b) of the British Merchant Shipping Act. In reply to objections raised as to the possibilities of abuse to which the provisions of this Section lead, it was pointed out that Section 78 (b) had never been applied in Great Britain for the purpose of allowing a deduction of 32 per cent where such deduction would not have resulted from the capacity of the engine-room space, and in practice the Board of Trade has never agreed to an allowance of 32 per cent if this was not in accordance with Section 78 (a). The object of Section 78 (b) was, however, to give the Board the power of decision, and thus it was of great practical value in all doubtful cases.

The Committee unanimously agreed to the adoption of the existing British provision as to the restriction of deduction for space occupied by propelling power (British Merchant Shipping Act, 1907) by which it is stipulated that the deduction for the space occupied by the propelling power of a vessel shall not in any case exceed 55 per cent of that portion of the vessel's tonnage which remains after deducting from the gross tonnage any deductions allowed for as master's and crew spaces or spaces for navigation purposes. It was understood that this section should not apply to tugs exclusively employed for the purpose of towing vessels, or to vessels constructed and intended exclusively for ice-breaking. Salvage tugs should not fall under this exception, nor should fire floats be considered as tugs, but the limitation of propelling-power allowance referred to should not apply to tugs equipped with a fire pump or extinguisher.

2. MEASUREMENT OF PROPELLING-MACHINERY SPACE.

(a) Spaces under the Upper Deck.

The Committee noted that in general the rules for the measurement of the main part of the machinery space do not differ in the various countries. It was pointed out that in most modern ships the omission of the correction for the round of beam leads to incorrect results. The present rule which does not prescribe this correction was probably based on the assumption that the side-bunkers extended over a very considerable part of the length of the machinery space, which formerly used to be the case. At present, in many cases, especially in large vessels, the boundaries of the machinery space at the sides are formed by the shell and therefore the main portion has the full breadth of the vessel. In such cases, a deduction of one-third of the round of beam would seem fully justified. The Committee, however, realised that it was not possible to draw up a detailed rule to meet all cases but proposed that it should be laid down that the depth taken for the machinery space should not exceed the tonnage depth in way of same.

Diagram XX gives an example of the measurement of the main portion of the machinery space in the case of a machinery space situated between bunker bulkheads.

The Committee was of opinion that the provisions of the Second Schedule of the British Merchant Shipping Act, Rule III (i) and (ii), presented no difficulties and were sufficiently accurate.

These provisions read as follows:

"*Measurement of Allowance for Engine-room Space in Steamships.* — (i) Measure the mean depth of the space from its crown¹ to the ceiling at the limber strake, measure also three, or if necessary more than three, breadths of the space at the middle of its depth, taking one of those measurements at each end, and another at the middle of the length; take the mean of those breadths; measure also the mean length of the space between the foremost and aftermost bulkheads or limits of its length, excluding such parts, if any, as are not actually occupied by or required for the proper working of the machinery, multiply

¹ The Committee agreed to replace the word "crown" by the words "top of the main space".

together these three dimensions of length, breadth and depth, divide the product by 100 and the result shall be deemed the tonnage of the space below the crown¹; then find the cubical contents of the space or spaces, if any, above the crown¹ aforesaid, which are framed in for the machinery or for the admission of light and air, by multiplying together the length, depth and breadth thereof; add such contents to the cubical contents of the space below the crown¹; divide the sum by 100; and the result shall (subject to the provisions hereinafter contained) be deemed to be the tonnage of the space.

“(ii) If in any ship in which the space for propelling power is to be measured the engines and boilers are fitted in separate compartments, the contents of each shall be measured severally in like manner, according to the above rules, and the sum of their several results shall be deemed to be the tonnage of the said space.”

The Committee agreed that this rule could be recommended for international adoption, subject to the following provisions:

1. When measuring the depth of the main portion of the machinery space, this depth should not exceed the tonnage depth in way of same, and be corrected, if necessary, as to the rise or fall of the tank-top in the same manner as laid down for the measurement of tonnage depth.

2. The main portion of the machinery space should be divided into a number of parts which would be most suitable for practical measurement.

3. The Committee agreed to the indications given in Section 55 of the British Instructions with regard to restrictions to be applied in certain cases as to the measurement of the length of the machinery space.

4. The Committee was, however, of opinion that the application of the restrictions referred to in Section 55 should be clearly limited to certain categories of vessels and therefore decided to propose the following text to replace the first paragraph of Section 56 of the British Instructions:

“The restrictions of the machinery space referred to in Section 55 of the British Instructions shall *only* apply to screw or paddle steamers in which the actual machinery space *exceeds* 20 per cent or 30 per cent respectively of the gross tonnage. No such restrictions should, however, be applied to fishing vessels, tugs or yachts, whatever be the size of the machinery space.”

5. In the case of motor vessels, the following indication is given for the purpose of determining the length of the actual machinery space:

“The actual machinery space should be the space occupied by and necessary for the working of the main engines and of the auxiliary machinery necessary for same.”

6. In the case of turbine vessels, the indications given in Section 55 as to boiler spaces shall be followed subject to the provision contained in 4. Other machinery spaces in turbine vessels are to be dealt with in the manner laid down for motor vessels in 5.

(b) Spaces above the Upper Deck.

The Committee agreed to Section 59 of the British Instructions, which stipulates that, at the request of the owner, engine spaces above the upper deck may be measured and their contents added to the gross tonnage as well as to the actual engine room, provided they are: (a) reasonable in extent; (b) safe and seaworthy; and (c) so constructed that they cannot be used for any purpose other than for machinery or for the admission of light and air to the machinery and boilers of the vessel. For the purpose of interpreting the words “reasonable in extent”, it should be noted: (1) that the length should not exceed the length of the machinery space, and, if any portion is plated over, the length of the plated part should be deducted from the full length; and (2) whatever the breadth of the casing may be, no greater breadth is to be allowed for the purpose of machinery-space deduction than one-half of the extreme tonnage breadth of the ship amidships. It should be noted, however, in this respect that the spaces added to the gross tonnage should be the same as those added to the machinery space. The Committee thought it necessary to complete Section 59 of the British Instructions by the following provision:

“A portion of one or more light and air spaces may be included in the gross tonnage and in the propelling-power space for the purpose of obtaining the necessary percentage. It is understood that the decision as to inclusion of light and air spaces is in all cases to be left to the owner.”

¹ The Committee agreed to replace the word “crown” by the words “top of the main space”.

The Committee agreed to the indications to surveyors contained in Section 59, according to which the surveyor should be careful to report whether the extra erections are necessary at all, and whether light and air could not be safely admitted to the machinery space without these erections being carried above the upper deck, and, if such is the case, he should not regard them as reasonable in extent. Furthermore, the surveyor should indicate in his report whether, in his judgment, the spaces are safe and seaworthy.

The Committee unanimously agreed that these erections have in the past greatly exceeded all reasonable requirements for the admission of light and air, and it was therefore of opinion that it was necessary to insist on the condition that these spaces should be reasonable in extent. No restriction should, however, apply to light and air spaces in fishing vessels, tugs or yachts.

Funnels are not to be regarded as light and air space since they are considered unreasonable in extent.

The portion of a break or raised quarter-deck above the machinery space is to be considered as light and air space and may only be added to the gross tonnage at the owner's request, but the limitation as to breadth is not compulsory in these cases.

(c) Shaft-Tunnels or Trunks.

The Committee adopted Section 60 of the British Instructions.

It was pointed out that the second paragraph of this section was only applicable to twin-screw vessels with a large space or recess from side to side aft of the machinery space.

(d) Escape Ladders from Shaft-tunnels or Trunks.

The Committee adopted Section 61 of the British Instructions, it being understood that the part of such a ladder-way situated above the upper deck may be considered as light and air space.

3. DETERMINATION OF THE ACTUAL MACHINERY SPACE.

The Committee adopted the following general provision:

“Should be regarded as actual machinery space: the space occupied by and necessary for the working of propelling machinery and auxiliary machinery necessary in connection with the main propelling machinery.”

Consequently, the cubical contents of the machinery space having been ascertained as described above, the cubical capacity of cabins or store-rooms which may be fitted in the machinery space, and also any space occupied by and necessary for the safe working of machinery not used in propelling the vessel, should not be included in the propelling-power space. The Committee thought it useful, in order to facilitate the application of this provision, to give the following indications:

(1) Engineers' Stores and Workshops. — Some members were of opinion that these spaces should be considered as part of the machinery space. Other members strongly opposed this proposal, it being against established principles to allow for deduction of store-rooms. Moreover, in many cases the inclusion in the machinery space would result in a deduction considerably larger than the actual space occupied by the engineers' stores and workshops. Those members considered that such a measure was not justified with regard to the harbour and dock authorities.

On the other hand, it was pointed out that those stores and workshops were indispensable and were undoubtedly far more necessary in the case of modern motor machinery with numerous auxiliary machines than in the case of the old-fashioned steam-engine plant. A proposal was made to the effect that those spaces might be deducted in the same way as boatswain's stores, *i.e.*, without the extra percentage for machinery space. After a careful study, the Committee came to the following conclusion:

“Spaces for engineers' stores and workshops of moderate dimensions and necessary for the daily operation and repair of the propelling machinery if situated within the boundaries of the machinery space below the upper deck are to be considered as forming part of the propelling power space.”

The Committee considered that a maximum of three-quarters of one per cent of gross tonnage was sufficient to meet reasonable requirements in this respect.

The Committee considered that engineers' stores were exclusively used for storing spare gear; though, of course, there was no objection to the storage of some cotton-waste, petrol, etc. The Committee was further of opinion that large workshops which were sometimes located in the 'tween-deck were not for the exclusive use of repairing propelling machinery, and therefore the space could not be regarded as part of the propelling-machinery space.

(2) *Settling Tanks for Fuel-oil.* — The Committee recognised that fuel-oil settling tanks were necessary for the proper working of the propelling machinery of oil-burning vessels¹, and was therefore of opinion that the space occupied by the settling apparatus should be considered as part of the machinery space, provided that the fuel-oil settling tanks are situated within the boundaries of the machinery space, in the casings above same, or directly adjacent to such space, or casings. However, no part of such settling apparatus which constitutes bunker space should be allowed for.

(3) *Dynamos.* — It was pointed out that dynamos are very often used for mixed purposes according to modern practice: they are, in general, connected parallel to the main rails on the switchboard and the electric current from these main rails on the switchboard feeds both the propelling machinery and the machinery for navigation purposes and also the machinery for all other purposes. The Committee agreed to the following provision:

“Spaces occupied by the dynamos necessary for the proper working of the propelling machinery and of the auxiliary machinery necessary for the operation of same may be dealt with as part of the propelling-machinery space. A spare dynamo for the same use is to be treated in the same way.”

(4) *A donkey-boiler for starting purposes* may be regarded as part of propelling-power machinery; if several of such donkey-boilers exist, and, if they serve at the same time for general purposes, one donkey-boiler may be regarded as part of the propelling-power machinery.

Spaces occupied by the following apparatus, machinery or appliances are also to be regarded as part of the propelling-machinery space:

(5) *Silencers*, wherever situated (including silencers in funnels).

(6) *Hot-wells*.

(7) *Ash-ejectors*, wherever situated.

(8) *Apparatus for forced draft to boilers*.

(9) *Oil-refiners and oil-coolers*, for fuel-oil and lubricating oil.

Spaces occupied by the following apparatus, machinery or appliances may be considered as part of propelling-machinery spaces provided the special conditions mentioned are fulfilled:

(10) *Feed-water heating apparatus and other similar plant* necessary for the working of the main machinery.

(11) *Evaporators solely for boiler-feed water*.

(12) *Pumps for lubricating oil*, but not space occupied by tanks for lubricating oil.

(13) *Ventilating plant* situated in, and necessary for, the ventilation of machinery space.

(14) *Storage batteries*, if such batteries are used solely in connection with the main propelling power.

(15) *Steam and electric compressors and air-reservoirs*, if used in connection with the propelling machinery.

Spaces occupied by the following apparatus, machinery or appliances are not to be regarded as part of propelling-machinery space:

(16) *Auxiliary condenser plant*.

(17) *Fire-extinguishing plant*.

(18) *Refrigerating engines and machinery for ventilation and for heating crew's and passengers' quarters*.

(19) *Sanitary pumps, bilge pumps and ballast pumps*.

B. Sail Room.

The Committee agreed that Section 73 of the British Instructions and Article 33 of the United States Regulations should be replaced by the following provision:

“In the case of a vessel propelled wholly by sails any space not exceeding 4 per cent of the gross tonnage used exclusively for the storage of sails shall be deducted from the gross tonnage, provided that such spaces are properly and efficiently constructed for the purposes for which they are intended and that they are marked as required by the regulations.”

The Committee was of opinion that sailing craft were in an unfavourable position with regard to tonnage as compared with mechanically propelled vessels. The Committee therefore thought it justifiable to increase the rather low percentage at present allowed for sail room (2½ per cent) to 4 per cent of the gross tonnage of the ship.

¹ Oil-burning vessels do not include motor vessels with internal-combustion machinery.

Some of the members proposed that sailing vessels with an auxiliary motor should be allowed, besides the deduction for propelling power, a certain deduction for sail room (for instance, up to 2 per cent of the gross tonnage), at least for those vessels of this category whose machinery space does not exceed 13 per cent of the gross tonnage.

These members expressed the opinion that the sailing vessel with an auxiliary motor was a type of vessel that was becoming more and more frequent, and they therefore thought that it was necessary that the regulations for tonnage measurement should contain some special provisions, with regard to this type of vessel.

The other members of the Committee, however, could not agree to this proposal, on the ground that such vessels with auxiliary motors were already in a favoured position with regard to vessels solely propelled by sails. Moreover, these members pointed out that in many steam vessels (*e.g.*, in steam trawlers) sails were used for steadiness. After very full discussion, the Committee decided that in the case of vessels with auxiliary propelling machinery no allowance for sail room should be given. Therefore the sail room should always be included in the vessel's net tonnage, but the capacity of such sail room up to 2 per cent of gross tonnage might be noted separately on the tonnage certificate. One member, however, could not agree to this decision and maintained that a deduction for sail room up to 2 per cent of the gross tonnage should be allowed in the case of vessels partly propelled by sail and partly by mechanical means, the capacity of the machinery space not exceeding 13 per cent of gross tonnage.

C. Spaces used exclusively for Working of Helm, Capstan and Anchor Gear.

The Committee agreed that Section 74 of the British Instructions should be replaced by the following provisions:

"When situated above the upper deck, these spaces are not included in the measurement and therefore will not be deducted under this section, but, when situated below the upper deck, such spaces are to be deducted from the gross tonnage, if reasonable in extent, and if marked as required by the regulations. Spaces occupied exclusively by chain lockers, if above deck, should be exempted from measurement, but if below deck, they shall be dealt with as a deduction.¹

"Spaces for submarine signalling and sounding apparatus are to be considered as spaces required for navigation purposes, and consequently deducted as such.

"Spaces for automatic-steering compasses are to be considered as part of the steering gear, and deducted as such.

"Spaces occupied by gyro-stabilisers or similar apparatus may be deducted on the ground that such apparatus are to be considered as aids to navigation.

"In cases where the helm, capstan or anchor gear are situated in large rooms the actual space occupied by each of these installations has to be measured, and in addition an allowance will be made on every side of the apparatus for the space necessary for its working (in general, not more than two feet on all sides); the height to be allowed should in general not exceed that of a 'tween-deck. Space necessary for a change in the working should also be taken into account, as, for instance, the change from steam steering to hand steering."

D. Chart-room, Boatswain's Store and Space for Wireless Installation.

The Committee examined the provisions of Section 75 of the British Instructions. It agreed to allow for a deduction for lamp-rooms if such rooms were solely provided and used for lamps for navigation purposes, but for no other lamps. Signal lockers for rockets, etc., may be deducted as space for navigation purposes.

The Committee considered that, in small vessels where the steering-house is also used as a chart-room, an imaginary line should be drawn, one part being allowed as a chart-room and the other as a space used exclusively for the working of the helm.

As a result of an exchange of views as to boatswain's stores, it was agreed that the following should be regarded as boatswain's stores: "All stores necessary for working and upkeep of the vessel and which are in charge of the boatswain." In general, the boatswain's store will contain wires, hawsers, tar, some petrol, paint, blocks, shackles, awnings, tarpaulins, etc. With regard to

¹ The Committee considered that the chain locker, if above deck, could be exempted from measurement on the ground that it is not available for cargo or stores or for the accommodation or berthing of passengers or crew. If the chain locker is situated under deck, the allowance for deduction is based on the consideration that this space is necessary for the working of the anchor gear.

the allowance for boatswain's-store space, one of the members of the Committee was of opinion that the maximum of 75 tons was too small in the case of very large liners. His proposal to fix a higher limit for vessels over 20,000 tons gross was, however, not supported by the other members, but the Committee unanimously agreed that the scale at present in use by most of the seafaring nations was not entirely satisfactory — in particular, in the case of small vessels (see Annex VI).

With regard to wireless installations, the Committee noted that, according to the existing rule, wireless-installation space is only to be deducted if such an installation is required. However, in practice, a deduction has been granted in every case where a wireless installation has been fitted. The Committee, being of opinion that it was highly desirable that all vessels should be fitted with a wireless apparatus, decided to propose an alteration in the present rule in order to bring it into line with the existing practice.

Consequently, as a result of the discussion, the Committee agreed that Section 75 of the British Instructions should be replaced by the following provisions :

“Any spaces used exclusively for keeping signals, navigation-lamps, etc., and for keeping and using charts and instruments of navigation, and boatswain's-store space, wherever situated, are added to the gross tonnage and are therefore to be deducted, provided they are reasonable in extent.

“In small vessels, where the cabin or saloon is the only space available for chart purposes, and the surveyor is satisfied that charts are required, one-half the cabin or saloon, but not more than 3 tons, may be allowed for this purpose.

“The allowance for boatswain's-store space should be made according to the following scale:

Gross tonnage	Deduction not to exceed:	
	Percentage of gross tonnage	Tons total
Over 2,000	1	75
1,000 to 2,000	1½	20
500 to 1,000	2	15
150 to 500	2½	10
Under 150	—	3

“In the case of sailing ships in which sail-room and boatswain's store are combined, the sail-room space shall first be deducted up to 4 per cent of gross tonnage and a deduction for boatswain's store shall then be made in accordance with the above scale in respect of the remaining space.

“In small vessels below 150 tons gross where boatswain's stores are kept in a space not solely appropriated for such purpose, the allowance for boatswain's store must not exceed 3 tons.

“In fishing vessels and whalers that have no separate boatswain's-store room, a deduction not exceeding 3 tons may be allowed for the boatswain's stores carried in the room for fishing gear.

“Where a wireless installation is fitted in a vessel, the space occupied by the installation shall be deducted, provided such space is reasonable in extent. The waiting-room for passengers should not be included in this deduction.”

E. Spaces occupied by Various Machines and Appliances for separating Oil from Water.

The Committee noted the recommendations contained in the Final Act of the preliminary Conference on Oil Pollution of Navigable Waters held at Washington in June 1926, which deals with machines and appliances for separating oil from water. These recommendations read as follows:

“7. That no penalty or disability of any kind whatever in the matter of tonnage measurement or payment of dues be incurred by any vessel by reason only of the fitting of any device or apparatus for separating oil from water.

“8. That dues based on tonnage shall not be charged in respect of any space rendered unavailable for cargo by the installation of any device or apparatus for separating oil from water.

“9. That the term ‘device or apparatus for separating oil from water’, as used in Recommendations Nos. 7 and 8, shall include any tank or tanks, of reasonable size, used exclusively for receiving waste oil recovered from the device or apparatus, and also the piping and fittings necessary for its operation.”

The Committee recognised that, if an International Convention on Oil Pollution of Navigable Waters, as contemplated by the Conference held at Washington in June 1926, were

generally accepted, it would become necessary to insert in the rules for tonnage measurement a provision with a view to giving effect to the stipulations of such a convention.

In the Committee's opinion, such a provision might read as follows:

"Spaces occupied by various machinery and appliances for separating oil from water when situated under the upper deck and outside the double bottom may be deducted from gross tonnage provided they are reasonable in extent."

The Committee thought, however, that the insertion in such a convention of a clause corresponding to paragraph (9) of the Washington Resolutions would present very considerable difficulties from the point of view of tonnage measurement, and might lead to serious abuses. It therefore strongly deprecated the adoption of such a clause.

F. Donkey-boiler Space and Pumping Installations.

Section 76 of the British Instructions dealing with donkey-engine and boiler space was very fully discussed.

The Committee noted that, although donkey-engines no longer exist, donkey-boilers are used frequently. Various questions arose with regard to the place where such donkey-boilers are situated and with regard to the connection with the main pumps of the vessel.

The Committee also examined the question of pumping installations and more particularly paid attention to oil-fuel pumps and to cargo pumps in vessels carrying liquid cargo in bulk. The Committee came to the conclusion that in many countries the deduction for pump-rooms is too large. This deduction should not exceed the space necessary for the working of the pumps, *i.e.*, the floor space occupied by the pumps and sufficient space around them for efficient working and a height of not more than that of the pump or 7 feet, whichever is the larger. The case of a large tanker where only one-fifth of the pump-room had been deducted was shown as an example.

It was not thought advisable to measure in the deduction every space around a valve in the oil-pipes in pump-rooms, or the space giving access to such a valve. The question of access to pump-rooms should be treated with great care. The Committee was of opinion that for ladders ways an allowance not exceeding the product of the breadth of the ladder by 3 feet (but in no case more than 3 feet square) should be given.

The investigations carried out (see Annex VII) resulted in the Committee's unanimous agreement to propose that, in vessels carrying liquid cargo in bulk, an allowance for pump-room space might be granted according to the scale given hereafter.

As a result of the discussion that took place, the Committee agreed to replace Section 76 of the British Instructions by the following provisions:

"1. If the donkey-boiler is situated within the boundaries of the machinery space or the casings above it, and if it is used in connection with the main machinery for propelling the vessel, the space forms part of the actual engine-room, and therefore should not be the subject of a separate allowance.

"2. If the donkey-boiler is situated outside the boundaries of the machinery space, it can only be included in the latter for tonnage purposes if connected to the main machinery, and, in the case of a steamship, if of the same working pressure as the main boilers of the vessel.

"3. When the donkey-boiler is in a house above the upper deck, it is not subject to measurement in the gross tonnage of the vessel, and therefore must not form a deduction. If connected with the main machinery, the space may, at the request of the owner, be regarded as light and air space. In such cases, it must be measured in the gross tonnage as part of the machinery space.

"4. In all other cases, the space occupied by the donkey-boiler, if connected with the main pumps of the vessel, is to be allowed as a deduction from the tonnage, if reasonable in extent and properly and efficiently constructed.

"5. If the donkey-boiler is not connected with the main pumps of the vessel but serves exclusively for the working of the helm, capstan and anchor gear, the space occupied is to be treated in the same manner as space exclusively reserved for navigation purposes, and deducted as such.

"6. Spaces occupied by and necessary for working of bilge-pumps and for exclusive access to same are to be deducted from gross tonnage. The same shall apply to pumps for water ballast if available for pumping out the vessel.

"7. Oil-fuel pumps can only be considered as part of machinery space if situated within the boundaries of or directly adjacent to such space and used solely for oil-fuel purposes, and if situated elsewhere, they can only be deducted if they are available as main pumps of the vessel.

“8. In vessels carrying liquid cargo in bulk, deduction may be made for spaces occupied by and strictly necessary for access to and for working purposes of pumps available as main pumps of the vessel. The deduction should be made according to the following scale:

Allowance for Pump-rooms.

Gross tonnage	Deduction not to exceed:	
	Percentage of gross tonnage	Tons total
Over 3,000	0.9	60
1,500 to 3,000	1.2	27
500 to 1,500	2	18
Under 500	4	10

“9. Tunnels exclusively used for or parts of tunnels wholly occupied by pipes for general purposes are not to be deducted.”

G. Water-ballast Spaces.

I. GENERAL.

These spaces include water-ballast tanks in the double bottom and all water-ballast spaces outside the double bottom, wherever situated, including forward and after-peak tanks above the top of the double bottom or floors.

No exemption from gross tonnage shall be allowed in respect of water-ballast space other than a double bottom.

No deduction can be allowed for water-ballast spaces outside the double bottom unless it is certified that they are adapted only for water ballast. They should be entered by an ordinary sized manhole only. The dimensions of this man-hole should not exceed 22 inches diameter when circular, or 24 inches by 18 inches when oval.

The question was raised whether a part of a tank could be allowed as a deduction. It was decided that this might be agreed to, provided the whole tank was fitted, constructed, caulked and tested for water-ballast purposes. Peaks and other tanks having at their upper limit a platform, the sides being made watertight by cement round the frames, are not to be considered as adapted for carrying water-ballast. Nor are tanks which are not sufficiently strengthened by stiffeners. The Committee was of opinion that, in the present practice, the allowance for water-ballast spaces was often far beyond all reasonable limits. It therefore adopted the following provisions:

“(1) Water-ballast tanks, other than a double bottom, may only be allowed wholly or partially as a deduction if properly constructed and tested as a ballast tank.

“(2) Double-bottom tanks if connected with the ballast-pumping system will be considered as water-ballast spaces for the purpose of determining water-ballast allowance.

“(3) The total capacity of water-ballast spaces which are exempted or deducted, including whole or partial double bottom, peak tanks, coffer-dams, and all other types of bona-fide water-ballast tanks, must not exceed the percentages of gross tonnage or the total number of registered tons indicated in the table below:

“Water-ballast Spaces.

Gross tonnage	Deductions and exemptions not to exceed:	
	Percentage of gross tonnage	Total registered tons
Over 15,000	6.5	—
10,000 to 15,000	7.5	975
7,000 to 10,000	9.5	750
4,000 to 7,000	11	665
2,000 to 4,000	12	440
1,000 to 2,000	13	240
Under 1,000	14	130

It was agreed that, for the application of paragraph (2), it should be noted that parts of the double bottom which do not constitute water-ballast spaces are not to be counted in. The scale for water-ballast spaces was drawn up by taking into account the results of investigations made with respect to the various water-ballast spaces in a number of vessels. The results of these investigations are shown in Annexes VIII and IX.

Difficulties which had occurred in the case of certain vessels carrying liquid cargo in bulk were also brought to the notice of the Committee. These vessels had originally been built as

ordinary freighters, but had been reconstructed as tankers by fitting cylindrical tanks in the holds and by perforating the double bottom. The spaces between the tanks and the shell had been claimed as water-ballast spaces. The Committee unanimously agreed that the spaces outside these cylindrical tanks could not be considered as adapted, fitted and available for water ballast and consequently deductions should not be allowed in respect of same.

2. COFFER-DAMS.

The attention of the Committee was drawn to the fact that in the most important maritime country serious objections had been raised by harbour and dock authorities against the deduction of coffer-dams as water-ballast tanks in vessels carrying oil in bulk, since such coffer-dams are very rarely used as water-ballast tanks. On the other hand, the Committee noted that the Suez Canal authorities prescribe that tankers passing through the Canal should have their coffer-dams filled with water. Moreover, the Committee was of opinion that it was not desirable to put oil-tankers at a disadvantage from the point of view of tonnage as compared with ordinary freighters. Consequently, the Committee adopted the following provision:

“Coffer-dams fitted and adapted as water-ballast spaces and used for this purpose will be dealt with as deductions. It is to be noted, however, that they should not be connected with the pumps for liquid cargo.”

3. MEASUREMENT OF PEAK TANKS (see Diagrams XXI and XXII).

Peak tanks are to be measured according to the prescriptions for the measurement of the under-deck tonnage. The cubical capacity of the peak tanks is to be measured by dividing into two parts and measuring in three sections, the number of breadths to be taken in each section being five. The breadths are to be measured up to the average depths of the hold frames, but care should be exercised not to include in the measurement any portion which has not been included in the gross tonnage. The length should be measured on the top of the peak tank.

If a portion of the tunnel recess is situated in a peak tank, it should be measured separately and deducted from the capacity of the tank.

4. MEANS OF FILLING AND EMPTYING WATER-BALLAST SPACES.

Means of filling and emptying water-ballast spaces must be of a permanent and satisfactory character and independent of the installations for water for feed or domestic purposes, oil-fuel or cargo. If portable pumps or hose connections constitute the only means of filling or emptying, this is not considered satisfactory.

In sailing ships and in vessels under 200 tons gross where hand-pumps constitute the only practicable means of filling and emptying water-ballast spaces, such hand pumps will not be objected to but the installation must be of a permanent character.¹

In all cases, the pumping installation must be of suitable type and dimensions for dealing efficiently with the water ballast; suction and delivery pipes should generally be of not less than 2 1/8 inches diameter.

H. Master's and Crew Spaces.

The Committee very fully discussed the existing British Instructions as to the survey of master's and crew spaces, together with regulations contained in the rules of several other countries. It adopted the following provisions:

“The ship's personnel consists of master and crew. The expression 'crew' includes every person (except pilots) employed or engaged in any capacity on board a ship. The emigration commissioner on board a ship may be considered as member of the ship's crew.

“The spaces for the accommodation of the master and crew must conform with the national regulations governing the manning of vessels, and before deduction will be granted for such spaces they must be certified as for the exclusive use of the ship's personnel.

¹ The case was mentioned of small craft with the machinery aft and having in many cases rather large fore-peak tanks, which are in practice generally filled and emptied by means of a hand-pump.

"Such spaces should in no case be used for the berthing or accommodation of passengers or for the stowage or carriage of cargo or stores.

"Any space used exclusively for the accommodation of the master, provided that it is reasonable in extent, may be deducted from gross tonnage.

"The deductible master's space may include a sleeping-room, with a living-room and a bathroom adjacent thereto. In case the master's quarters are not adjacent to the wheel-house, a master's watchroom, if existing adjacent to the wheel-house, may also be included in the deductible master's space.

"Any space occupied by the crew and appropriated exclusively to their use may be deducted from gross tonnage.

"The deductible crew space may consist of sleeping-rooms, mess-rooms, bathrooms, washing-places, oilskin or overall rooms or lockers, pantries, food lockers¹, drying-room, smoke-room, recreation-room, library, hospital, galleys and bakeries.

"The deductible chief-engineer's space may include a sleeping-room, with a living-room and a bathroom adjacent thereto.

"The purser's office is not to be deducted, nor the doctor's consulting-room on a passenger vessel. On a cargo vessel, where no hospital exists, a dispensary-room may be deducted.

"Space occupied by drinking-water filtration or distilling plant for the exclusive use of the crew may be deducted.

"Water-closets and privies for the exclusive use of the master and crew when situated under the upper deck may be deducted as part of the crew space.

"Spare rooms will not be deducted. The existence, however, of not more than two spare rooms (including pilot's cabin, if any) fitted with berths, the number of which should not exceed four (sofa-berths included) for the two cabins together, will not be considered as rendering the vessel a passenger-vessel and thereby reducing the allowance for mess-room and other similar crew spaces, provided that no paying passengers will be carried in those spare rooms."

"No deduction can be allowed in respect of any space which has not first been included in the measurement of gross tonnage."

Some members proposed that, in the case of vessels exclusively carrying cargo, any space actually used for the storage of food for the crew's requirements should be deducted in full. They pointed out that the legislation of certain countries prescribed that rations should be provided for the crew of a character which made it necessary for more space to be used for storage of food than in the case of ships whose crew was of a different nationality. The extra space had to be taken from space available for carrying cargo. Therefore the earning capacity of the ship was lessened. Tonnage dues were, however, still levied on such space, although it was no longer available for carrying cargo. Vessels of certain nationalities were therefore placed in an unfavourable position. They considered that the principle laid down "that any space appropriated exclusively to the use of the crew should be deducted" would cover the case of provision rooms. They pointed out that a number of deductions had already been authorised on the basis of that principle, and that it was somewhat illogical that, although provision was made for intellectual nourishment, *i.e.*, the library, no allowance should be made for material nourishment, *i.e.*, space in which food was kept. In the case of passenger ships, it might be impossible to make such a deduction, in view of the difficulty of separating food intended for passengers from that intended for the crew, but such a deduction seemed logical and fair in the case of ships only carrying cargo.

After giving the matter very full consideration, the majority of the Committee was of opinion that, as such an allowance might lead to abuse, no deduction should be made for provision room. It is to be noted that at present no allowance is made for provision rooms except in the Japanese regulations.

One member suggested that, in the case of ships not carrying passengers, a room for the berthing of a pilot should be allowed to count as part of the space used by the crew and be deducted in full. The Committee did not, however, see its way to authorise such a deduction, and decided that the pilot's cabin is not to be deducted except in pilot vessels, and then only for those pilots who are members of the crew.

Measurement of Master's and Crew Spaces.

When ascertaining the cubical capacity of spaces to be deducted, it should be noted that in no case should the capacity deducted exceed the capacity included in the gross tonnage.

¹ Deduction for food lockers is only to be allowed in cases where the crew provide their own food.

² One member could not agree to this provision and therefore wished to make a reservation in this respect. He was, however, prepared to accept the following provision: "The existence, however, of one spare room for the use of a pilot or extra officer will not be considered, etc."

In general, the height of such spaces is to be measured according to the rules for the measurement of deck erections included in the gross tonnage (see II, C. (3) (a), Measurement of Superstructures).

The horizontal measurements must be taken for every space separately between the partitions and linings, or to the inner edges of the bulkhead stiffeners in case no lining is fitted.

I. Access to Deducted or Exempted Spaces.

The Committee discussed at great length the question of the access to deducted spaces. Some of the members were of opinion that all spaces necessary to give access to deducted or exempted spaces should be allowed as a deduction. Other members thought that deduction should only be allowed for spaces exclusively giving access to master's and crew spaces. Several members saw no objection to adopting the criterion that deductions should only be given for spaces giving access to master's and crew spaces, but they were of opinion that the deduction should still be allowed in case such space should serve at the same time as access to other deducted or exempted spaces.

Finally, the Committee adopted, with a reservation on the part of one member, the following provision:

"Passage ways exclusively serving as access to master's and crew spaces, whether deducted or exempted, may be deducted from gross tonnage.

"Ladder-ways and staircases are to be treated in the same way as passage-ways."

An amendment to insert in the provision adopted, between the words "passage-ways" and "exclusively", the words "and parts of passage-ways" was not adopted. Therefore parts of passage-ways, even when those parts are serving exclusively as access to master's and crew spaces, are not to be deducted.

K. Marking.

All the above-mentioned spaces, referred to under A, B, C, D, E, F, G, H, and I, if deducted from the tonnage, must be indelibly marked, their proper designation being stated in each case and the volume in tons (cubic metres) of the space deducted being indicated.

IV. MEASUREMENT UNDER RULE IV.

The Sub-Committee unanimously agreed that the application of Rule IV for the measurement of open boats, though not internationally accepted, never gave rise to complaints, and was not, in its opinion, of international importance.

V. REGISTERED DIMENSIONS.

These dimensions, which serve to identify the vessel, should be as invariable as possible. The following provisions were adopted:

"(a) Registered Length.

"The registered length should be measured from the forepart of the uppermost end of the stem to the aft side of the uppermost end of the stern post, it being understood that measurements should never be taken beyond the afterpart of the rudder post. Should no stern post exist, the length should be measured to the foreside of the rudder trunk."

"(b) Registered Breadth.

"The registered breadth should be the greatest breadth of the vessel measured over the plating or planking. Rubbing pieces should not be included in this breadth."

"(c) Registered Depth.

"The registered depth should be measured at the middle line of the vessel and at half the registered length from the under side of the tonnage deck to the tank-top or the top of the floors. In cases in which a ceiling is fitted, this measurement should include the thickness of the ceiling."

It is to be noted that, in the determination of the registered depth, difficulties might arise in the case of a partial double bottom or higher floors being fitted in the middle of the length.

Two members suggested that, as the question of registered dimensions was also of interest to authorities other than those dealing exclusively with tonnage measurement, it might be advisable that their views on this subject should be ascertained. Most of the other members were of opinion that such a procedure did not appear to be necessary.

VI. GENERAL REMARKS.

The Committee, in terminating the present report, wishes to emphasise that it has by no means endeavoured to formulate at present the precise text of new international rules for tonnage measurement. Neither has it dealt in its present report with all questions relating to tonnage measurement and which are dealt with in national regulations, but only with those questions which to its knowledge have given rise to difficulties. In the idea of the Committee, it would be necessary, that a small drafting Committee be entrusted with the task of drawing up complete instructions to surveyors. Such draft instructions would, in the opinion of the Committee, form a suitable basis for discussions at a Conference to which representatives of all seafaring nations should be invited. It should be noted in this respect that it would seem desirable that those international instructions should contain a definition of "registered ton" and should also define the degree of exactitude of the measurements to be carried out.

The Committee also unanimously expressed the opinion that it was essential for the purpose of ensuring a uniform application of the rules for tonnage measurement that such uniformity should be secured in the first place with regard to the various districts in one and the same country, and for this reason it strongly recommended that in each country the surveyors for tonnage should be under the control of a central office where the calculations are checked and the tonnage certificates are issued.

Naturally, it will be impossible to provide in the new regulations for every possible case that might arise in the future. Furthermore, it is probable that difficulties with regard to the application or interpretation of the new regulations may be met with in practice. It might therefore be advisable, with a view to ensuring as far as possible a uniform application of tonnage measurement rules, for the Conference or the Permanent Committee for Ports and Maritime Navigation to provide some means for solving such difficulties.¹

In the course of its deliberations, the Committee's constant preoccupation was not to introduce any substantial changes either in total gross tonnage or in total net tonnage. It is obvious, however, that a modification of the rules for tonnage measurement might have an influence on gross and net tonnage of certain vessels and even of certain categories of vessels. The Committee, however, was unanimously of opinion that, should new regulations for tonnage measurement be introduced, such regulations should only apply to the measurement of new vessels measured for the first time after the coming-into-force of the new regulations, and which had been put under construction after a certain date, to be fixed internationally. Consequently, a re-measurement of existing vessels in accordance with the new regulations should only be undertaken at the request of the owners. The Committee noted that some transitory measures would be necessary, particularly in the case of re-measurement of existing vessels changing flag, and in the case of re-measurement of existing vessels after modifications in construction. The Committee thought that all provisions regarding transitory measures to be adopted were very intimately connected with the question of the coming-into-force of new regulations, and therefore considered that the international Conference itself would be best in a position to deal with such provisions.

Annex XI contains the results of comparative calculations on the basis of existing and proposed rules for a certain number of British, Dutch, German and Norwegian vessels.

Finally, the Committee considered the advisability of establishing a uniform type of tonnage certificate and of the various documents used in preparing the certificate. It thought, however, that it could not usefully draw up such a uniform type of tonnage certificate before the Conference had come to a decision with regard to the principles governing the measurement of vessels.

October 23rd, 1928.

J. ROMEIN,
Secretary.

A. VAN DRIEL,
Chairman.

L. AALL.
F. W. BICKLE.
G. BRETON.
G. FALCETTI, replacing A. PALANCA.
A. LINDBLAD.
F. ROBINOW.
Y. SAITO.
C. SKENTELBERY.

¹ With regard to this paragraph, Mr. Bickle made the following statement:
"I am unable to concur in this paragraph, as the possible establishment of a new and permanent international body to deal with tonnage measurement raises a question of policy, on which I am unable to express any opinion."

Annex I. *

COMPARISON OF UNDER-DECK TONNAGE AS MEASURED UNDER BRITISH MERCHANT SHIPPING ACT 1894 WITH UNDER-DECK TONNAGE MEASURED WITH ADDITIONAL AREA AT EACH END.

No. of Ship (Steamer)	Registered Dimensions (Feet)	Trade	Under-deck Tonnage M. S. A. 1894 and Number of Areas	Under-deck Tonnage with Additional Areas	Increase Tons	Decrease Tons	Percentage of M. S. A. 1894 Under-deck Tonnage	Remarks
1	630,7 × 73,58 × 41,51	Passenger	12.123,84 13	12.110,05 15	—	13,79	0,11	
2	630,5 × 78,5 × 40,5	Passenger	12.387,84 16	12.386,52 20	—	1,32	0,01	Vessel measured in two parts: 1st = 3 areas and 5 areas. 2nd = $\frac{13}{16}$ " " $\frac{15}{20}$ "
3	550,25 × 67,3 × 41,1	Passenger	9.487,76 13	9.449,78 15	—	37,98	0,4	
4	485,65 × 62,3 × 35,8	Cargo	6.505,37 13	6.502,05 15	—	3,32	0,05	
5	460,5 × 62,75 × 35,2	Cargo	6.235,53 13	6.246,65 15	11,12	—	0,18	
6	459,6 × 58,4 × 32,6	Passenger and cargo	6.591,18 13	6.612,17 15	21	—	0,32	
7	440,4 × 59,3 × 32,7	Tanker	6.788,81 20	6.785,94 24	—	2,87	0,044	Vessel measured in two parts. 1st = 13 areas and 15 areas. 2nd = $\frac{7}{20}$ " " $\frac{9}{24}$ "
8	356,3 × 48,75 × 23,9	Cargo	3.324,52 13	3.320,26 15	—	4,26	0,13	
9	390,1 × 55,0 × 27,7	Cargo	4.781,17 13	4.779,53 15	—	1,64	0,03	
10	329,5 × 45,1 × 17,15	Passenger, Cross-Channel	1.532,54 13	1.537,40 15	4,86	—	0,32	
11	406,5 × 54,1 × 24,75	Cargo	4.207,87 13	4.209,47 15	1,60	—	0,04	
12	200 × 32,2 × 10,65	Cargo	459,58 11	457,59 13	—	1,99	0,5	
13	220,7 × 37,1 × 12,45	Passenger	805,78 11	801,82 13	—	3,96	0,5	
14	138,1 × 24,3 × 10,0	Cargo	265,75 12	265,43 16	—	0,32	0,12	Vessel measured in two parts. 1st = 7 areas and 9 areas. 2nd = $\frac{5}{12}$ " " $\frac{7}{16}$ "
15	122,0 × 24,2 × 9,1	Cargo coaster	229,96 9	230,85 11	0,89	—	0,4	
16	173,7 × 32,15 × 12,8	Hopper	564,85 9	563,81 11	—	1,04	0,2	
17	140,25 × 23,7 × 11,0	Cargo coaster	276,26 9	278,01 11	1,75	—	0,6	
18	124,5 × 22,2 × 8,8	Cargo	187,62 9	188,57 11	0,95	—	0,5	
19	100,3 × 20,1 × 8,85	Cargo	134,95 7	135,96 9	1,01	—	0,8	
20	97,3 × 20,1 × 8,2	Cargo	122,37 7	120,60 9	—	1,77	1,44	

Increase of work due to measuring extra areas ranges from 18.2 per cent in 13-area vessel to 40 per cent in 7-area vessel.

* For technical reasons and with a view to economy, the tables throughout the annexes follow the French system of punctuation: i. e., the decimals are indicated by the comma and thousands by the full stop.

Annex II.

MEASUREMENT OF 'TWEEN-DECKS.

A. According to the present British regulations.

B. Tonnage of 'tween-deck space = $\frac{1}{3} l \times (h_1 b_1 + 4 h_2 b_2 + 2 h_3 b_3 + \dots + 2 h_{11} b_{11} + 4 h_{12} b_{12} + h_{13} b_{13})$.

C. According to method A, but by using the mean of 'tween-deck heights $h_2 - h_{12}$.

D. According to method A, but by using the mean of 'tween-deck heights $h_2 - h_{12}$.

E. According to method A, but by using the mean of 'tween-deck heights h_6, h_7 and h_{10} .

Number	Registered Dimensions	Measurements of 'tween-deck	Measurements taken at the Sections (Metres)													Tonnage in Cubic Metres					Remarks
			1	2	3	4	5	6	7	8	9	10	11	12	13	A	B	C	D	E	
1	264'5" X 39'2" X 14'10" * Gross ton.: 1.405,58 reg. tons.	Height Breadth	3.60 0.05	3.10 7.04	2.73 10.16	2.43 11.26	2.28 11.35	2.17 11.35	2.12 11.35	2.14 11.35	2.16 11.35	2.17 11.00	2.15 10.13	2.13 8.15	2.16 3.00	1.980,10	1.892,63	1.846,24	1.909,48	1.839,67	Diff. in sheer.
2	454'9" X 59'10" X 27'8" * Gross ton.: 6.492,42 reg. tons.	Height Breadth	2.30 0.08	2.32 12.50	2.31 16.32	2.30 16.80	2.30 16.84	2.30 16.86	2.30 16.88	2.30 16.96	2.30 16.88	2.30 16.36	2.32 15.06	2.34 12.74	2.43 4.00	4.936,34	4.917,95	4.915,04	4.917,17	4.900,13	Diff. in sheer.
3	450'6" X 60'4" X 37'0" * Gross ton.: 8.420,03 reg. tons.	Height Breadth	2.43 0	2.55 12.73	2.66 16.92	2.68 17.61	2.68 17.61	2.68 17.61	2.68 17.61	2.68 17.61	2.68 17.61	2.68 17.55	2.64 17.14	2.55 16.00	2.45 12.70	5.784,26	5.853,83	5.879,27	5.857,17	5.921,25	Diff. in sheer.
4	448'9" X 57'11" X 26'9" * Gross ton.: 7.978,80 reg. tons.	Height Breadth	2.50 0	2.48 12.22	2.48 16.30	2.48 16.73	2.48 16.78	2.49 16.80	2.49 16.80	2.49 16.80	2.49 16.80	2.49 16.67	2.48 16.05	2.45 14.23	2.44 8.00	5.270,02	5.273,73	5.274,27	5.274,27	5.284,90	
5	365'11" X 39'3" X 14'9" * Gross ton.: 1.415,44 reg. tons.	Height Breadth	3.27 0.06	2.98 8.02	2.65 10.84	2.42 11.22	2.29 11.34	2.20 11.34	2.17 11.34	2.13 11.34	2.12 11.28	2.12 10.95	2.12 9.12	2.10 7.73	2.04 3.00	1.943,58	1.891,74	1.842,09	1.898,19	1.846,20	
6	420'6" X 56'3" X 26'5" * Gross ton.: 5.421,94 reg. tons.	Height Breadth	2.43 0	2.48 12.47	2.45 15.66	2.43 16.16	2.44 16.26	2.42 16.26	2.42 16.26	2.42 16.26	2.42 16.24	2.45 15.90	2.44 14.74	2.48 12.10	2.46 6.00	4.662,19	4.660,38	4.652,65	4.660,28	4.645,01	
7	441'8" X 62'9" X 30'2" * Gross ton.: 6.944,12 reg. tons.	Height Breadth	3.73 0.08	3.52 12.41	3.12 16.92	2.84 18.02	2.59 18.15	2.49 18.17	2.42 18.17	2.42 18.17	2.42 18.17	2.42 17.97	2.43 16.76	2.43 12.92	2.43 3.00	6.040,40	5.866,40	5.701,60	5.895,52	5.706,06	Diff. in sheer.
8	500'1" X 63'9" X 31'3" * Gross ton.: 10.835,79 reg. tons.	Height Breadth	3.56 0	3.40 12.47	3.04 16.93	2.78 18.23	2.56 18.42	2.46 18.45	2.40 18.45	2.40 18.45	2.40 18.45	2.40 18.10	2.40 17.20	2.30 14.70	2.28 7.00	6.743,81	6.567,78	6.429,25	6.610,83	6.462,50	Diff. in sheer.
9	419'11" X 59'2" X 27'10" * Gross ton.: 7.905,51 reg. tons.	Height Breadth	2.29 0	2.28 11.44	2.31 16.10	2.35 17.53	2.40 17.61	2.41 17.61	2.41 17.61	2.41 17.61	2.41 17.61	2.37 17.32	2.32 15.87	2.27 13.15	2.28 2.00	4.758,86	4.787,18	4.797,38	4.781,16	4.819,69	
10	400'7" X 58'4" X 26'4" * Gross ton.: 5.480,61 reg. tons.	Height Breadth	3.69 0	3.79 12.73	3.55 16.76	3.09 17.17	2.73 17.17	2.52 17.17	2.44 17.17	2.52 17.17	2.64 17.17	2.87 16.87	3.16 15.78	3.48 12.94	3.38 4.00	5.888,84	5.694,45	5.570,00	5.725,58	5.377,93	Diff. in sheer.
11	474'5" X 65'7" X 32'1" * Gross ton.: 8.669,96 reg. tons.	Height Breadth	3.83 0.08	3.48 13.52	3.14 17.67	2.84 18.84	2.68 19.14	2.60 19.18	2.57 19.18	2.54 19.14	2.51 19.04	2.48 18.93	2.44 17.70	2.36 14.36	2.28 5.50	6.909,76	6.733,48	6.573,07	6.771,56	6.608,24	Diff. in sheer.
12	341'1" X 48'3" X 25'11" * Gross ton.: 3.981,00 reg. tons.	Height Breadth	3.80 0.06	3.39 11.91	2.91 13.74	2.72 13.93	2.51 13.98	2.43 13.98	2.38 13.98	2.42 13.98	2.46 13.98	2.43 13.86	2.38 12.70	2.27 9.90	2.17 2.00	3.545,25	3.472,33	3.344,62	3.454,72	3.370,13	Diff. in sheer.
13	347'2" X 48'3" X 18'4" * Gross ton.: 2.667,25 reg. tons.	Height Breadth	4.04 0.07	3.65 11.11	3.12 13.63	2.92 13.85	2.54 13.90	2.37 13.94	2.28 13.94	2.28 13.94	2.28 13.94	2.28 13.57	2.29 12.30	2.34 9.38	2.40 3.00	3.574,01	3.444,00	3.291,95	3.436,47	3.291,95	Diff. in sheer.
14	264'6" X 39'2" X 14'10" * Gross ton.: 1.385,77 reg. tons.	Height Breadth	3.32 0.06	3.10 7.12	2.78 10.11	2.55 11.23	2.37 11.37	2.23 11.34	2.18 11.34	2.18 11.34	2.26 11.34	2.25 11.05	2.23 10.12	2.15 8.09	2.15 2.50	2.000,83	1.941,01	1.900,04	1.958,24	1.907,42	Diff. in sheer.

* Open shelter-deck.

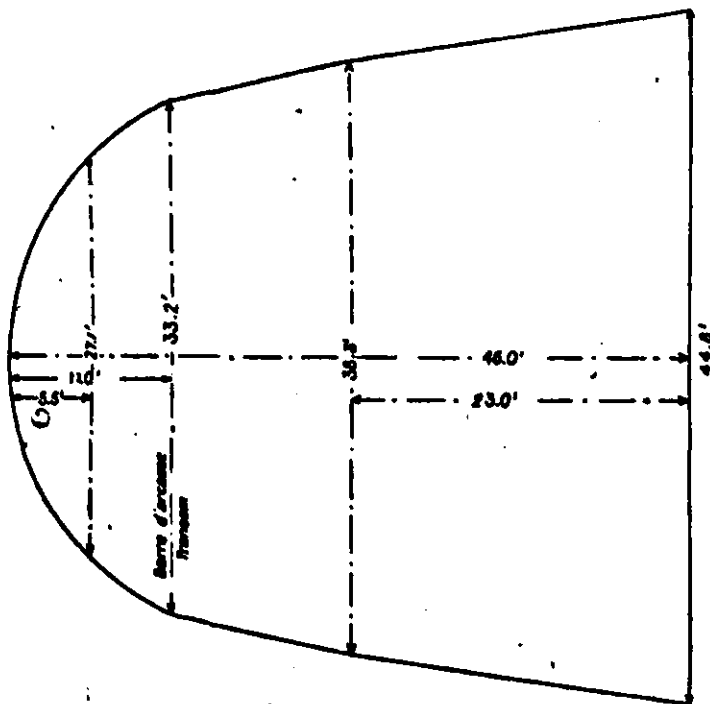
Annex III a.

'TWEEN-DECK TONNAGE.

No.	Registered Dimensions (Feet)	Tons as measured by			Difference between A and B per cent	Remarks
		Present Rule A	Planimeter	Proposed System B		
1	630,5 × 78,5 × 40,5	3.838,38	3.837	3.839	Nil	Pointed cruiser stern.
2	268,5 × 39,1 × 16,8	733,59	726,48	723,36	1,4	Counter stern.

Proposed system: Length of 'tween-decks divided into same number of parts as under-deck plus one; with the aftermost part subdivided into four parts and Simpson's multipliers adjusted accordingly.

CALCULATION FOR ASSESSMENT OF AFTERMOST BREADTH OF 'TWEEN-DECK OR POOP.



Area by planimeter = 1.667 sq. ft.
 $L = 46,0^1$ (length poop); $h = 7,6^1$ (height poop or 'tween-deck).
 Area = $\frac{1}{8} L_1 \times (b_1 + 4 b_2 + b_3)$.
 $L_1 =$ Common interval = $\frac{L}{2} = 23,0^1$
 $b_1 = 44,8$
 $4 b_2 = 4 \times 38,3 = 153,2$
 $b_3 = X$

198,0 + X

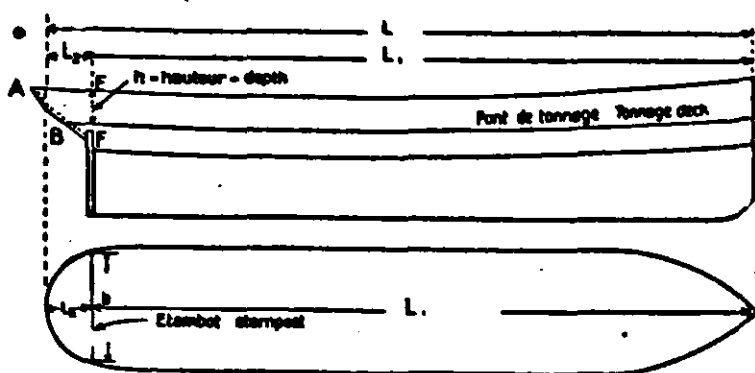
Area = $\frac{1}{8} \times 23,0 \times (198,0 + X) = 1.667$
 $198,0 + X = 217,3$
 $X = 19,3$
 (aftermost breadth)

Tonnage of poop:
 $\frac{1}{8} \times L_1 \times (b_1 + 4 b_2 + b_3) \times h$.
 $\frac{1}{8} \times 23,0 \times 217,3 \times 7,6 = 12667$ cub. ft.
 = 126,67 tons.

Measurements taken by the Surveyor on the ship, and submitted to the Central Office for purpose of calculating the aftermost breadth.

Annex III b.

'TWEEN-DECK TONNAGE.



PLAN AT 'TWEEN-DECK HALF HEIGHT

The tonnage of ABCD and EFCD calculated in the usual manner by means of a number of breadths depending on vessel's size. Aftermost breadth of ABCD taken equal to the breadth at transom plate (forepart of stern post). Aftermost breadth of EFCD equal to breadth at transom plate.

The tonnage of ABEF calculated by formula: cubic contents = $\frac{2}{3} \times L_2 \times b \times h$.

J. No.	Registered Dimensions (Feet)	Height at Transom = h.	By Method now in Use.		By Proposed Method.						Difference in the two Methods = T - (T ₁ + T ₂)
			L.	Tonnage of ABCD = T	L ₁	Tonnage of EFCD = T ₁	L ₂	b	Tonnage of ABEF = T ₂	Sum = T ₁ + T ₂	
M-4900	452.0 × 59.5 × ^{27.9} / _{35.9}	7.95	463.8	1.921.05	448.7	1.869.80	15.1	38.2	30.57	1.900.37	+ 20.68
M-4837	435.9 × 56.2 × ^{27.6} / _{36.0}	8.5	438.95	1.729.33	431.65	1.709.73	7.3	16.8	6.95	1.716.68	+ 12.65
M-4902	380.5 × 54.7 × ^{25.7} / _{36.0}	9.0	391.2	1.670.45	378.4	1.627.99	12.8	32.9	25.27	1.653.26	+ 17.19
M-4717	375.6 × 52.5 × ^{24.7} / _{36.0}	8.5	383.4	1.472.12	371.1	1.433.71	12.3	29.7	20.70	1.454.41	+ 17.71
B-4990	360.7 × 52.2 × ^{23.5} / _{36.0}	7.4	367.85	1.195.45	358.05	1.172.12	9.8	23.5	11.36	1.183.49	+ 11.96
M-4892	269.0 × 37.6 × ^{14.7} / _{21.9}	7.1	269.4	567.41	265.4	562.93	4.0	12.0	2.27	565.20	+ 2.21
B-5635	225.9 × 35.2 × ^{14.1} / _{21.3}	7.1	227.2	471.84	221.6	461.15	5.6	24.5	6.49	467.64	+ 4.20

Annex IV.

FORECASTLES. — TABLES SHOWING THE DIFFERENCE IN THE TONNAGE WITH VARYING LENGTHS AND MEASURED WITH THREE, FIVE AND SEVEN BREADTHS RESPECTIVELY.

TABLE I.

(L = length before the tonnage well.)
Total length = 182,15 ft. H = 7,4 ft. B — 5202.

L	Three Breadths			Tons	Five Breadths					Tons	Seven Breadths							Tons	Difference
75	0,0	30,7	32,3	143,47	0,0	23,7	30,7	32,2	32,3	146,75									+ 3,28
100	0,0	32,0	32,3	197,74	0,0	27,2	32,0	32,3	32,3	206,07									+ 8,33
125	0,0	32,3	32,3	248,94	0,0	29,4	32,3	32,3	32,3	265,02									+ 16,08
150	0,0	32,3	32,3	298,78	0,0	30,7	32,3	32,3	32,3	322,73									+ 23,95
175	0,0	32,3	31,1	346,02	0,0	31,7	32,3	32,3	31,1	379,46									+ 33,44
182,15	0,0	32,3	30,6	359,01	0,0	31,7	32,3	32,3	30,6	394,51									+ 35,50

TABLE 2.

Total length = 206,8 ft. H = 7,65 ft. B — 5617.

L	Three Breadths			Tons	Five Breadths					Tons	Seven Breadths							Tons	Difference
75	0,0	31,2	33,1	150,99	0,0	23,2	31,2	33,0	33,1	153,14									+ 2,15
100	0,0	32,6	33,1	208,50	0,0	27,4	32,6	33,1	33,1	216,85									+ 8,35
125	0,0	33,1	33,2	263,88	0,0	29,9	33,1	33,1	33,2	280,11									+ 16,23
150	0,0	33,1	33,1	316,52	0,0	31,2	33,1	33,2	33,1	341,29									+ 24,77
175	0,0	33,1	32,8	368,64	0,0	32,2	33,1	33,2	32,8	402,20									+ 33,56
200	0,0	33,1	31,6	418,16	0,0	32,6	33,1	33,1	31,6	459,86									+ 41,70
206,8	0,0	33,1	30,6	429,82	0,0	32,7	33,1	33,1	30,6	474,51									+ 44,69

TABLE 3.
Total length = 249.5 ft. H = 8.3 ft. B = 5464.

L	Three Breadths			Tons	Five Breadths				Tons	Seven Breadths							Tons	Difference		
75	0.0	33.0	39.0	177.41	0.0	22.5	33.0	37.0	39.0	177.93										+ 0.52 ^o
100	0.0	35.8	39.6	252.92	0.0	27.1	35.8	39.0	39.6	259.69										+ 6.77
125	0.0	38.0	39.6	331.26	0.0	30.7	38.0	39.5	39.6	342.83										+ 11.57
150	0.0	39.0	39.6	405.87	0.0	33.0	39.0	39.6	39.6	423.30										+ 17.43
175	0.0	39.4	39.6	477.44	0.0	34.6	39.4	39.6	39.6	502.45										+ 25.01
200	0.0	39.6	39.6	547.75	0.0	35.8	39.6	39.6	39.6	581.67										+ 33.92
225	0.0	39.6	39.5	615.96	0.0	37.0	39.6	39.6	39.5	661.57										+ 45.61
249.5	0.0	39.6	38.2	678.49							0.0	34.1	39.3	39.6	39.6	39.5	38.2	746.37		+ 67.88

TABLE 4.
Total length = 321.5 ft. H = 8.0 ft. M = 4284.

L	Three Breadths			Tons	Five Breadths				Tons	Seven Breadths							Tons	Difference		
75	0.0	36.4	46.5	192.10	0.0	22.0	36.4	44.2	46.5	192.05										- 0.05
100	0.0	42.4	47.3	289.26	0.0	27.7	42.4	46.5	47.3	285.82										- 3.44
125	0.0	45.3	47.5	382.44	0.0	32.4	45.5	47.2	47.5	380.87										- 1.57
150	0.0	46.5	47.6	467.20	0.0	36.4	46.5	47.4	47.6	475.80										+ 8.60
175	0.0	47.1	47.6	550.73	0.0	39.8	47.1	47.5	47.6	572.70										+ 21.97
200	0.0	47.3	47.6	631.40	0.0	42.4	47.3	47.6	47.6	669.74										+ 38.33
225	0.0	47.4	47.6	711.60	0.0	44.2	47.4	47.6	47.6	764.40										+ 52.80
250	0.0	47.5	47.6	792.06							0.0	38.6	46.9	47.5	47.6	47.6	47.6	857.18		+ 65.12
275	0.0	47.6	47.6	872.60							0.0	40.7	47.2	47.6	47.6	47.6	47.6	954.45		+ 81.85
300	0.0	47.6	46.3	946.80							0.0	42.4	47.3	47.6	47.6	47.6	46.3	1.048.83		+ 102.08
321.5	0.0	47.6	42.1	996.59							0.0	43.6	47.4	47.6	47.6	47.6	42.1	1.124.89		+ 128.30

TABLE 5.
Total length = 342.2 ft. H = 9.0 ft. M = 4902.

L	Three Breadths			Tons	Five Breadths					Tons	Seven Breadths							Tons	Difference	
	0,0				0,0						0,0									
75	0,0	41,9	51,6	246,60	0,0	26,6	41,9	48,7	51,6	245,59										- 1,01
100	0,0	47,0	52,5	360,82	0,0	33,0	47,0	51,6	52,5	363,53										+ 2,71
125	0,0	49,9	52,5	472,61	0,0	37,9	49,9	52,4	52,5	481,56										+ 8,95
150	0,0	51,6	52,7	582,98	0,0	41,9	51,6	52,5	52,7	600,19										+ 17,21
175	0,0	52,2	52,7	686,52	0,0	44,9	52,2	52,5	52,7	717,38										+ 30,86
200	0,0	52,5	52,7	788,02	0,0	47,0	52,5	52,7	52,7	834,92										+ 46,90
225	0,0	52,5	52,7	886,61	0,0	48,7	52,5	52,7	52,7	950,57										+ 63,96
250	0,0	52,5	52,7	985,20							0,0	44,0	52,0	52,5	52,7	52,7	52,7	1,073,71		+ 88,51
275	0,0	52,5	52,4	1,082,32							0,0	45,8	52,2	52,5	52,7	52,7	52,4	1,191,20		+ 108,88
300	0,0	52,7	50,8	1,177,20							0,0	47,0	52,5	52,7	52,7	52,7	50,8	1,306,46		+ 129,26
325	0,0	52,7	48,6	1,264,65							0,0	48,2	52,4	52,7	52,7	52,5	48,6	1,418,00		+ 153,35
342,2	0,0	52,7	46,1	1,318,59							0,0	48,8	52,4	52,7	52,7	51,8	46,1	1,487,53		+ 169,04

TABLE 6.
Total length = 346.15 ft. H = 7.75 ft. M = 4764.

L	Three Breadths			Tons	Five Breadths					Tons	Seven Breadths							Tons	Difference	
	0,0				0,0						0,0									
75	0,0	38,7	48,2	196,66	0,0	23,8	38,7	45,6	48,2	195,30										- 1,36
100	0,0	44,0	49,5	291,33	0,0	29,7	44,0	48,2	49,5	289,93										- 1,40
125	0,0	46,7	49,7	381,79	0,0	34,8	46,7	49,4	49,7	387,54										+ 5,75
150	0,0	48,2	49,8	470,04	0,0	38,7	48,2	49,7	49,8	484,18										+ 14,14
175	0,0	49,2	49,9	557,71	0,0	41,8	49,2	49,7	49,9	581,13										+ 23,42
200	0,0	49,5	49,9	640,34	0,0	44,0	49,5	49,8	49,9	677,10										+ 36,76
225	0,0	49,7	49,9	722,78	0,0	45,6	49,7	49,9	49,9	772,05										+ 49,27
250	0,0	49,7	49,8	802,83							0,0	40,8	48,8	49,7	49,9	49,9	49,8	870,65		+ 67,82
275	0,0	49,8	49,4	882,98							0,0	42,6	49,4	49,8	49,9	49,9	49,4	967,73		+ 84,75
300	0,0	49,8	49,3	962,94							0,0	44,0	49,5	49,8	49,9	49,8	49,9	1,062,61		+ 99,67
325	0,0	49,9	47,9	1,039,05							0,0	45,1	49,6	49,9	49,9	49,4	47,9	1,154,01		+ 114,96
346,15	0,0	49,9	45,3	1,094,94							0,0	45,8	49,7	49,9	49,9	49,4	45,3	1,229,37		+ 134,43

Annex V.

VESSELS WITH FORECASTLE AND BRIDGE COMBINED

No.	Registered Dimensions (Feet)	Length and Height of Erection (Feet)	Tons, as measured by			
			Present Rules A	Planimeter	Proposed System B	Difference between A and B %
1	549.5 X 70.2 X 40.2	492.5 X 8	2,139.33	2,332.88	2,327.20	8.8
2	230.5 X 32.7 X 16.35	149.9 X 7	263.86	286.88	288.43	9.3

VESSELS WITH FORECASTLE ONLY.

1	491.0 X 57.8 X 32.5	82.7 X 7.4	219.04	220.5	221.60	1.2
2	491.0 X 57.8 X 32.5	61.4 X 7.4	144.31	141.0	143.81	0.3

Proposed system:

To 50 ft. in length	three breadths (two parts)
Above 50 ft. to 225 ft. in length	five " (four ")
Above 225 ft. in length	seven " (six ")

Annex VI.

MEASUREMENT OF BOATSWAIN'S STORES.

During the year June 1921 to June 1922, in the port of Rotterdam, 200 seagoing vessels have been measured. 70 of them (fishing vessels, small tugs, lighters, dredgers, hoppers, etc.) are not to be used for estimating percentage of gross tonnage taken in by boatswain's stores. From the remaining 130 vessels 53 had boatswain's stores exceeding the maximum allowed, and in 77 vessels these stores proved to be smaller.

The said 53 vessels are to be classed as follows:

- 43 vessels measuring 1,000 tons gross and over (maximum deduction 75 tons);
- 2 " " from 500 tons to 1,000 tons gross (maximum deduction 10 tons);
- 4 " " from 150 tons to 500 tons gross (maximum deduction 2 per cent);
- 4 " " under 150 tons gross (maximum deduction 3 tons).

[For list of vessels, see following page.]

LIST OF VESSELS.

Gross Tonnage	Real Capacity of Boatwain's Stores in Tons	Deduction allowed for Boatwain's Stores	Remarks
<i>1. Vessels of 1,000 Tons Gross and Over.</i>			
8,811,54	84.45	75	
6,853,69	73.35	68.54	
8,854,10	84.98	75	
1,398,69	20.40	20.40	
7,242,00	113.65	72.42	
1,057.43	10.84	10.57	
6,872,65	75.03	68.73	
1,184,08	26.90	11.84	
3,311,73	45.76	33.12	
1,809,69	36.54	18.10	
1,810,33	36.36	18.10	
4,938,17	56.42	49.38	
4,166,51	59.35	41.67	
8,123,35	81.15	75	
6,872,65	75.03	68.73	
2,422,86	39.52	24.23	In 33 per cent of these vessels the boatwain's stores exceed 1 per cent of the gross tonnage.
1,392,54	42.11	13.93	
2,696,22	30.64	26.96	
5,918,97	69.60	59.19	
4,929,75	56.42	49.30	
5,792,57	59.39	57.93	
3,618,09	44.21	36.18	
6,860,51	72.66	68.61	
6,855,19	74.93	68.55	
3,112,49	32.70	31.12	
1,995,98	22.93	19.96	
1,341,47	24.87	13.41	
1,877,25	28.53	18.77	
4,930,10	56.42	49.30	
4,536,80	60.20	45.37	
6,856,19	74.17	68.56	
5,652,59	59.12	56.53	
6,869,06	72.66	68.69	
4,860,59	66.80	48.61	
2,007,06	22.44	20.07	
8,856,92	85.33	75	
1,415,44	26.34	14.15	
6,856,19	74.17	68.56	
2,142,81	22.22	21.43	
3,809,18	44.05	38.09	
1,182,56	21.17	11.83	
6,872,42	75.24	68.72	
6,872,42	75.24	68.72	
<i>2. Vessels from 500 to 1,000 Tons Gross.</i>			
515.81	16.29	10	
758.40	10.22	10	
<i>3. Vessels from 150 to 500 Tons Gross.</i>			
481.09	35.14	9.62	
479.11	34.68	9.58	
479.01	34.84	9.58	
292.41	13.89	5.85	
<i>4. Vessels of under 150 Tons Gross.</i>			
100.70	3.94	3	
116.66	3.04	3	
116.60	3.04	3	
116.57	3.04	3	

Annex VII.

MEASUREMENT OF PUMP ROOMS.

LIST OF TANKERS.

Gross Tonnage	Pumproom deduction in Tons	Percentage of Pumproom deduction to Gross Tonnage	Remarks
<i>1. Ships of 3,000 Tons Gross and Over.</i>			
3,809,18	32,94	0,87	Sum of deductions (1,714,4 tons) to sum of gross tonnages (126,157,13 tons) is 1,36 per cent.
5,789,48	39,66	0,68	
5,792,12	39,66	0,68	
5,788,88	39,66	0,68	
5,131,45	40,76	0,79	
3,477,52	61,50	1,76	
4,609,26	80,29	1,74	
4,646,88	80,34	1,73	
5,214,00	36,37	0,70	
4,668,26	80,37	1,72	
8,967,85	346,25	3,86	
8,970,82	346,70	3,87	
3,110,12	22,73	0,73	
5,175,88	46,13	0,89	
5,873,20	32,64	0,56	
7,408,33	97,05	1,31	
6,221,85	33,16	0,53	
5,304,37	47,80	0,90	
3,125,98	16,43	0,52	
4,401,51	30,82	0,70	
5,723,18	36,06	0,63	
7,411,57	95,74	1,29	
5,535,35	31,34	0,57	
<i>2. Ships from 1,000 to 3,000 Tons Gross.</i>			
2,702,44	41,96	1,54	Sum of deductions (726,43 tons) to sum of gross tonnages is 1,26 per cent.
2,697,73	38,89	1,44	
2,698,49	38,89	1,44	
2,046,65	12,88	0,63	
2,681,02	38,90	1,45	
2,681,91	38,90	1,45	
2,702,14	41,38	1,53	
2,700,68	41,38	1,53	
2,693,58	38,89	1,44	
2,695,84	41,69	1,55	
2,600,81	34,86	1,34	
2,046,10	17,42	0,85	
2,683,03	39,18	1,45	
2,679,19	38,90	1,45	
2,678,95	38,90	1,45	
2,579,55	29,86	1,16	
2,610,81	23,33	0,89	
2,601,58	34,95	1,34	
2,604,21	34,24	1,31	
2,609,43	23,33	0,89	
2,769,76	18,85	0,68	
2,770,44	18,85	0,68	
<i>3. Ships from 500 to 1,000 Tons Gross.</i>			
960,17	11,80	1,23	
<i>4. Ships of 500 Tons Gross and Less.</i>			
116,57	4,67	4	
116,60	4,67	4	
116,66	4,67	4	

Annex VIII.

WATER-BALLAST SPACES.

TABLES SHOWING CAPACITY OF DOUBLE BOTTOMS AND PEAK TANKS AND THE PERCENTAGES OF GROSS TONNAGE TAKEN IN BY THOSE WATER-BALLAST SPACES.

Name of Ship	Built in	Gross Tonnage	Water Ballast in Eng. Tons				Water Ballast in Reg. Tons	Water Ballast in Percentage of Gross Tons
			Double Bottom	Fore-peak Tank	Aft-peak Tank	Total		
20,000 tons and above:								
<i>Aquitania</i>	1914	45,647	5,555	240	—	5,795	2,259	5.0
<i>Ile-de-France</i>	1926	43,548	2,848	90	40	2,978	1,072	2.5
<i>Roma</i>	1926	32,583	4,622	145	185	4,952	1,783	5.5
<i>Mauretania</i>	1907	30,696	4,389	202	53	4,644	1,672	5.4
<i>Belgenland</i>	1917	27,132	3,533	108	141	3,782	1,362	5.0
<i>Duilio</i>	1923	24,281	2,755	182	118	3,055	1,100	4.5
<i>Rotterdam</i>	1908	24,149	3,073	197	92	3,362	1,210	5.0
<i>Empress of Canada</i>	1922	21,517	3,020	109	228	3,357	1,209	5.6
<i>Maloja</i>	1923	20,837	2,615	182	254	3,051	1,098	5.3
<i>Carinthia</i>	1925	20,277	2,578	112	80	2,770	997	4.9
							average %	4.9
20,000-15,000 tons:								
<i>Samaria</i>	1921	19,597	2,623	122	86	2,831	1,019	5.2
<i>De Grusse</i>	1924	17,759	562	108	82	752	271	1.5
<i>Aorangi</i>	1924	17,491	1,653	151	167	1,971	710	4.1
<i>Empress of Aisa</i>	1913	16,909	1,548	160	—	1,708	615	3.6
<i>Montrose</i>	1922	16,402	2,361	181	160	2,702	973	5.9
<i>Cameronia</i>	1920	16,365	2,218	71	102	2,391	861	5.3
<i>Orduna</i>	1914	15,503	1,898	211	125	2,234	804	5.2
<i>Manchuria</i>	1904	15,445	2,270	123	89	2,482	894	5.8
<i>Volendam</i>	1922	15,434	2,254	190	245	2,689	968	6.3
<i>Melita</i>	1918	15,183	2,053	106	57	2,216	798	5.3
							average %	4.8
15,000-10,000 tons:								
<i>Euripides</i>	1914	14,947	1,966	125	152	2,243	807	5.4
<i>Pieter Corn. van Hoof</i>	1925	14,642	2,395	161	167	2,723	980	6.7
<i>Antonia</i>	1921	13,867	1,796	108	49	1,953	703	5.1
<i>Moreton Bay</i>	1921	13,855	2,228	128	142	2,498	899	6.5
<i>Mongolia</i>	1904	13,638	2,270	123	89	2,482	894	6.5
<i>Vandyck</i>	1921	13,232	1,745	180	185	2,110	760	5.7
<i>Avila</i>	1927	12,864	1,770	97	86	1,953	703	5.5
<i>Noordam</i>	1902	12,528	1,847	147	75	2,069	745	5.9
<i>Tamara</i>	1922	12,354	1,822	175	158	2,155	776	6.3
<i>Finland</i>	1902	12,223	2,008	167	—	2,175	783	6.4
<i>Lafayette</i>	1915	12,220	1,126	30	—	1,156	416	3.4
<i>Siberia Maru</i>	1901	11,790	2,850	225	271	3,346	1,205	10.2
<i>Llandoverly Castle</i>	1925	10,609	1,237	116	140	1,493	537	5.1
<i>Ramah</i>	1925	10,602	1,298	57	102	1,457	525	5.0
<i>City of Nagpur</i>	1922	10,138	1,372	90	120	1,582	570	5.6
							average %	6.0
10,000-7,000 tons:								
<i>Hellig Olav</i>	1903	9,939	1,315	—	51	1,366	492	5.0
<i>Mau</i>	1917	9,801	1,695	125	277	2,097	755	7.7
<i>Killean Castle</i>	1899	9,688	1,643	—	—	1,643	591	6.1
<i>Alabama Maru</i>	1920	9,617	1,664	137	51	1,752	631	6.6
<i>Angolinai R.</i>	1903	9,481	1,839	103	85	2,027	730	7.7
<i>Arawa</i>	1907	9,372	1,447	—	—	1,447	521	5.6
<i>Byron</i>	1914	9,272	1,129	38	70	1,237	445	4.8
<i>Magdapor</i>	1921	9,237	2,018	142	79	2,239	806	8.7
<i>Port Melbourne</i>	1914	9,152	1,645	—	70	1,715	617	6.7
<i>Anglo Chilean</i>	1916	9,097	1,610	186	53	1,849	666	7.3

Name of Ship	Built in	Gross Tonnage	Water Ballast in Eng. Tons				Water Ballast in Reg. Tons	Water Ballast in Percentage of Gross Tons
			Double Bottom	Fore-peak Tank	Aft-peak Tank	Total		
7,000-5,000 tons:								
<i>(continued)</i>								
<i>Sado Maru</i>	1898	5,898	1,150	95	45	1,290	464	7.9
<i>Seminole</i>	1925	5,896	947	58	136	1,141	411	7.0
<i>Borneo Maru</i>	1917	5,864	1,114	126	91	1,331	479	8.2
<i>Yei-fuku Maru</i>	1918	5,861	1,118	126	98	1,342	483	8.2
<i>Maimyo</i>	1918	5,819	1,181	90	31	1,302	469	8.1
<i>Telesf. De Larrinaga</i>	1920	5,780	1,452	93	60	1,605	578	10.0
<i>Artemisia</i>	1901	5,731	1,207	170	60	1,437	517	9.0
<i>Port Albany</i>	1914	5,714	1,033	—	27	1,060	382	6.7
<i>Glentworth</i>	1920	5,677	1,319	133	70	1,522	548	9.7
<i>Fantes</i>	1920	5,663	1,290	60	60	1,430	515	9.1
<i>Lancaster Castle</i>	1919	5,625	1,290	60	90	1,440	518	9.2
<i>Vera Radcliffe</i>	1925	5,587	1,581	113	147	1,841	663	11.9
<i>Barcelona</i>	1908	5,574	877	100	34	1,011	364	6.5
<i>Corvus</i>	1919	5,551	1,139	132	143	1,414	509	9.2
<i>Vestalia</i>	1912	5,528	1,213	—	26	1,239	446	8.1
<i>Cairnross</i>	1921	5,494	1,301	185	81	1,567	564	10.3
<i>Clan Alps</i>	1918	5,485	1,221	—	45	1,266	456	8.3
<i>Canadian Winner</i>	1920	5,482	1,026	149	131	1,306	470	8.6
<i>Winding Gulf</i>	1918	5,430	1,832	220	201	2,253	811	14.9
<i>Meigen Maru</i>	1920	5,435	941	—	28	969	349	6.4
<i>Kilnsea</i>	1923	5,415	860	119	163	1,142	411	7.6
<i>Hakuho Maru</i>	1900	5,397	1,087	234	179	1,500	540	10.0
<i>Sulaco</i>	1926	5,389	800	—	21	821	296	5.5
<i>Salina</i>	1915	5,345	1,295	105	226	1,626	585	10.9
<i>City of Glasgow</i>	1920	5,321	1,243	—	—	1,243	447	8.4
<i>Biela</i>	1918	5,298	1,067	135	198	1,400	504	9.5
<i>Innerton</i>	1919	5,276	1,072	131	214	1,417	510	9.7
<i>Trecarrell</i>	1919	5,272	1,035	125	210	1,370	493	9.4
<i>Fort-de-Douaumont</i>	1918	5,266	1,092	133	204	1,429	514	9.8
<i>Heathfield</i>	1919	5,263	1,072	131	214	1,417	510	9.7
<i>Dundrum Castle</i>	1919	5,259	1,051	132	220	1,403	505	9.6
<i>Barracco</i>	1919	5,234	1,057	137	213	1,407	507	9.7
<i>Drisbergen</i>	1923	5,231	705	218	139	1,062	382	7.3
<i>Japan</i>	1911	5,230	990	82	25	1,097	395	7.6
<i>Clan Sinclair</i>	1907	5,215	1,009	—	40	1,049	377	7.2
<i>Vittoria</i>	1920	5,187	957	—	110	1,067	384	7.4
<i>Alynbank</i>	1925	5,151	1,121	106	132	1,359	489	9.5
<i>Weirbank</i>	1925	5,150	1,121	106	132	1,359	489	9.5
<i>Eika Richmers</i>	1906	5,149	1,113	99	34	1,246	449	8.7
<i>Amistà</i>	1902	5,106	969	104	32	1,105	398	7.8
<i>Kapalo</i>	1917	5,074	1,152	113	166	1,431	515	10.2
<i>Bardale</i>	1925	5,072	1,034	160	200	1,394	502	9.9
<i>Everett</i>	1907	5,065	1,383	280	143	1,806	650	12.8
<i>Invidia</i>	1924	5,026	926	129	106	1,151	418	8.3
<i>Brant County</i>	1915	5,000	1,246	67	12	1,325	477	9.5
							average %	8.4
5,000-4,000 tons:								
<i>Florence Luckenbach</i>	1910	4,953	994	141	265	1,400	504	10.2
<i>Dara</i>	1915	4,922	105	66	29	200	72	1.5
<i>Willesden</i>	1905	4,881	1,208	143	58	1,409	507	10.4
<i>San Giuseppe</i>	1917	4,859	1,106	118	185	1,409	507	10.4
<i>Reedpool</i>	1924	4,838	1,059	162	194	1,415	509	10.5
<i>Intaba</i>	1910	4,835	795	—	—	795	286	5.9
<i>Salmonpool</i>	1924	4,803	1,097	120	146	1,363	491	10.2
<i>Gaditano</i>	1893	4,750	252	—	—	252	91	1.9
<i>Bradburn</i>	1912	4,707	1,126	186	215	1,527	550	11.7
<i>Kohki Maru</i>	1914	4,689	961	68	154	1,183	426	9.1
<i>Atholl</i>	1901	4,647	1,059	—	38	1,097	395	8.5
<i>Newton Ash</i>	1925	4,619	1,064	131	283	1,478	532	11.5
<i>Munindias</i>	1917	4,576	1,033	138	271	1,442	519	11.4
<i>Antinods</i>	1925	4,563	960	—	125	1,085	391	8.6
<i>Oremer</i>	1926	4,559	654	54	55	763	275	6.0
<i>Kobe</i>	1901	4,535	830	188	59	1,077	388	8.6
<i>Trafalgar</i>	1924	4,530	1,031	—	20	1,051	378	8.3
<i>Bourbonnais</i>	1914	4,484	1,003	—	105	1,108	399	8.9
<i>Basso Piave</i>	1906	4,482	1,115	—	123	1,238	446	10.0
<i>Elder Branch</i>	1905	4,476	902	—	46	948	341	7.6

Name of Ship	Built in	Gross Tonnage	Water Ballast in Eng. Tons				Water Ballast in Reg. Tons	Water Ballast in Percentage of Gross Tons
			Double Bottom	Fore-peak Tank	Aft-peak Tank	Total		
1,000-500 tons								
(continued):								
<i>Ardensa</i>	1920	933	205	17	13	235	85	9.1
<i>Kong Björn</i>	1921	931	199	29	31	259	93	10.0
<i>Grutto</i>	1925	920	299	26	31	356	128	13.9
<i>Gloucester Coast</i>	1913	919	203	30	14	247	89	9.7
<i>Saga</i>	1904	919	282	—	10	292	105	11.4
<i>Bro</i>	1901	908	215	30	22	267	96	10.6
<i>Glen Gairn</i>	1922	904	227	46	46	319	115	12.7
<i>Iris</i>	1920	899	267	31	12	310	112	12.4
<i>Sambro</i>	1909	888	223	31	20	274	99	11.2
<i>North Shore</i>	1896	880	99	—	15	114	45	5.1
<i>Glen Tanar</i>	1920	876	166	102	5	273	98	11.2
<i>A. K. Fernström</i>	1902	868	204	—	—	204	73	8.4
<i>Broomfleet</i>	1915	854	166	103	31	300	108	12.6
<i>H. J. Kyvig</i>	1921	849	140	—	22	162	58	6.8
<i>Ardglass</i>	1919	845	220	60	49	329	118	14.0
<i>Tourmaline</i>	1898	835	186	26	—	212	76	9.1
<i>Carterside</i>	1917	824	166	49	28	243	87	10.6
<i>Kora</i>	1906	817	163	—	38	201	72	8.8
<i>Smerdis</i>	1920	815	171	55	6	232	84	10.3
<i>Dynamo</i>	1920	809	162	40	—	202	73	9.1
<i>Elvington</i>	1900	800	181	62	—	243	87	10.9
<i>Ornen</i>	1909	793	84	20	22	126	45	5.7
<i>Kowhai</i>	1910	792	158	39	9	206	74	9.3
<i>Ellen</i>	1907	786	237	39	26	302	109	13.9
<i>Clara</i>	1908	783	157	25	32	214	77	9.8
<i>Rennes</i>	1925	771	13	9	19	41	15	1.9
<i>Patdoris</i>	1913	770	169	30	5	204	73	9.5
<i>Alfriston</i>	1919	763	136	37	—	173	62	8.1
<i>Cumberland Coast</i>	1922	758	193	28	4	225	81	10.7
<i>Alburn</i>	1904	758	190	23	19	232	84	11.1
<i>Berouw</i>	1919	756	72	43	4	119	43	5.7
<i>El Amin</i>	1926	746	152	40	16	208	75	10.0
<i>Zagreb</i>	1902	732	95	—	—	95	34	4.6
<i>Wilhelminapolder</i>	1917	731	138	59	5	202	73	10.0
<i>New Pioneer</i>	1905	722	164	35	28	227	82	11.4
<i>Kong Frode</i>	1916	713	147	63	6	216	78	10.9
<i>Blus Galleon</i>	1924	712	149	55	31	235	85	11.9
<i>Lesrix</i>	1924	703	142	55	28	225	81	11.5
<i>Patria</i>	1923	696	146	63	7	216	78	11.2
<i>Kenrix</i>	1921	692	140	27	—	167	60	8.7
<i>Sambre</i>	1917	683	170	42	48	260	94	13.8
<i>Alterwerder</i>	1918	674	151	25	30	206	74	11.0
<i>Trentino</i>	1883	671	225	—	—	225	81	12.1
<i>Delphinus</i>	1919	663	106	32	42	180	65	9.8
<i>Rosafred</i>	1908	651	187	—	—	187	67	10.3
<i>Cantenac</i>	1890	645	66	26	18	110	40	6.2
<i>Varild</i>	1889	636	30	10	10	50	18	2.8
<i>Rossmore</i>	1907	627	150	53	12	215	77	12.3
<i>The Princess</i>	1902	623	139	59	9	207	75	12.1
<i>Khalifa</i>	1903	609	101	19	—	120	43	7.0
<i>Mandrake</i>	1919	606	20	12	—	32	12	2.0
<i>Marrawah</i>	1910	600	37	46	15	98	35	5.8
<i>Skelwith Force</i>	1908	592	120	38	—	158	57	9.6
<i>Galacum</i>	1915	585	123	38	—	160	58	9.9
<i>Topas</i>	1920	577	125	44	19	188	68	11.8
<i>Plas Dinarn</i>	1919	573	152	30	20	202	73	12.7
<i>Kilsey</i>	1904	565	151	39	36	226	81	14.3
<i>Odense</i>	1924	555	68	28	5	101	36	6.5
<i>Amir</i>	1919	549	136	43	7	186	67	12.2
<i>Jolly Kate</i>	1918	538	104	30	4	138	50	9.3
<i>Lady Gertr. Cochrane</i>	1904	530	126	40	10	176	63	11.9
<i>Wheatplain</i>	1924	523	99	33	22	154	55	10.5
<i>Alfred Harrison</i>	1920	518	52	70	—	122	44	8.6
<i>Ache</i>	1903	506	88	18	20	126	45	8.9
<i>Wheatshaf</i>	1915	500	102	34	30	166	60	12.0
							average %	9.6

Ships built in 1927.

Name of Ship	Gross Tonnage	Water Ballast in Eng. Tons				Water Ballast in Reg. Tons	Water Ballast in Percentage of Gross Tons
		Double Bottom	Fore-peak Tank	Aft-peak Tank	Total		
15,000-10,000 tons:							
<i>Avelona</i>	12,857	1,770	97	86	1,953	703	5.5
<i>Arandora</i>	12,838	1,821	117	84	2,022	728	5.7
<i>Cheshire</i>	10,560	1,724	54	113	1,891	681	6.4
						average	% 5.9
10,000-7,000 tons:							
<i>Christian</i>	9,119	310	250	165	725	261	2.9
<i>Benjamin Franklin</i>	8,513	1,421	123	101	1,645	592	7.0
<i>Port Huon</i>	8,243	1,569	—	104	1,673	602	7.3
<i>Port Gisborne</i>	8,228	1,569	—	104	1,673	602	7.3
<i>Kota Radja</i>	7,166	1,342	54	87	1,483	534	7.5
<i>Rialto</i>	7,098	1,245	121	40	1,406	506	7.1
<i>Fulva</i>	7,057	1,245	121	40	1,406	506	7.2
						average	% 6.6
7,000-5,000 tons:							
<i>Taronga</i>	6,732	1,192	133	160	1,485	535	7.9
<i>Pacific Reliance</i>	6,717	1,480	154	147	1,781	641	9.5
<i>Shawnee</i>	6,210	769	50	80	899	324	5.2
<i>Iroquois</i>	6,210	769	50	80	899	324	5.2
<i>Op ten Noort</i>	6,076	986	80	133	1,199	432	7.1
<i>Aleksandar I</i>	5,948	1,241	—	32	1,273	458	7.7
<i>Benvenuto</i>	5,920	1,148	—	32	1,180	425	7.2
<i>Planter</i>	5,887	1,170	63	26	1,259	453	7.6
<i>Olympia Maru</i>	5,612	1,215	126	33	1,374	495	8.8
<i>Columbia Maru</i>	5,612	1,215	126	33	1,274	495	8.8
<i>Baarn</i>	5,529	1,175	106	66	1,347	485	8.8
<i>Boskoop</i>	5,475	1,175	106	66	1,347	485	8.9
<i>City of Worcester</i>	5,469	1,073	116	96	1,285	463	8.5
<i>Anglo Australian</i>	5,456	1,340	89	185	1,614	581	10.6
<i>Silverkazel</i>	5,302	1,416	244	328	1,988	716	13.5
<i>Silverguava</i>	5,294	1,416	244	328	1,988	716	13.5
<i>Arabistan</i>	5,236	1,210	122	33	1,365	491	9.4
<i>Iddesleigh</i>	5,205	1,422	210	147	1,779	640	12.3
<i>Dalveen</i>	5,193	1,009	85	166	1,260	454	8.7
<i>City of Hereford</i>	5,101	976	92	—	1,068	384	7.5
<i>Winhleigh</i>	5,100	1,213	135	185	1,533	552	10.8
						average	% 8.9
5,000-4,000 tons:							
<i>Itapé</i>	4,978	752	71	61	884	318	6.4
<i>Umberleigh</i>	4,950	1,131	220	215	1,566	564	11.4
<i>Romanby</i>	4,887	1,041	180	179	1,400	504	10.3
<i>Troutpool</i>	4,886	1,041	180	179	1,400	504	10.3
<i>Kensington Court</i>	4,863	1,220	108	181	1,509	543	11.2
<i>Grantleyhall</i>	4,761	1,440	91	126	1,657	597	12.5
<i>Trelawny</i>	4,689	1,199	110	166	1,475	531	11.3
<i>Myson</i>	4,602	1,001	108	155	1,264	455	9.9
<i>Oriton</i>	4,601	1,001	108	155	1,264	455	9.9
<i>Ramillies</i>	4,553	1,051	—	129	1,180	425	9.3
<i>Benwell Tower</i>	4,414	1,072	126	209	1,407	507	11.5
<i>Royal Crown</i>	4,364	1,188	120	198	1,506	542	12.4
<i>Caduceus</i>	4,364	1,188	120	198	1,506	542	12.4
<i>Tunisia</i>	4,337	1,075	135	115	1,325	477	11.0
<i>Tahao Maru</i>	4,282	711	37	18	766	276	6.4
<i>Koshun Maru</i>	4,271	706	39	16	761	274	6.4
<i>Frances Massey</i>	4,212	994	125	247	1,366	492	11.7
<i>Irene S. Embiricos</i>	4,164	1,347	171	318	1,836	661	15.8
<i>Bahia</i>	4,117	1,046	89	101	1,230	443	10.7
<i>Tela</i>	4,083	401	81	32	514	185	4.5
						average	% 10.3

Ships built in 1927 (continued).

Name of Ship	Gross Tonnage	Water Ballast in Eng. Tons				Water Ballast in Reg. Tons	Water Ballast in Percentage of Gross Tons
		Double Bottom	Fore-peak Tank	Aft-peak Tank	Total		
4,000-3,000 tons:							
<i>Highcliffe</i>	3,847	987	59	170	1,216	438	11.4
<i>Cottica</i>	3,800	587	35	24	646	233	6.1
<i>Dunkwa</i>	3,789	778	97	100	975	351	9.2
<i>Hazelwood</i>	3,744	900	80	135	1,115	401	10.7
<i>Alca</i>	3,712	581	71	129	781	281	7.6
<i>Jalabala</i>	3,610	850	85	30	965	347	9.6
<i>Baron Tweedmouth</i>	3,357	1,001	123	160	1,284	462	13.8
<i>Bradesh</i>	3,352	973	83	140	1,196	431	12.9
						average %	10.2
3,000-2,000 tons:							
<i>Maharaja</i>	2,895	742	62	26	830	299	10.3
<i>Rondo</i>	2,750	747	164	100	1,011	364	13.2
<i>Malaven</i>	2,699	818	130	154	1,102	397	14.7
<i>Kheti</i>	2,650	702	52	16	770	277	10.4
<i>Choho Maru</i>	2,613	378	24	12	414	149	5.7
<i>Choan Maru</i>	2,607	464	24	14	502	181	7.0
<i>Telde</i>	2,519	444	—	59	503	181	7.2
<i>Argual</i>	2,496	467	21	42	530	191	7.7
<i>André Meyrand</i>	2,471	425	39	67	531	191	7.7
<i>Gregory Zinovieff</i>	2,418	525	43	91	659	237	9.8
<i>Tovaristch Stalin</i>	2,417	525	43	91	659	237	9.8
<i>Michael Tomshy</i>	2,414	525	43	91	659	237	9.8
<i>Tovaristch Krassin</i>	2,414	525	43	91	659	237	9.8
<i>Juna</i>	2,190	241	16	41	298	107	4.9
<i>Gouws</i>	2,119	542	62	54	660	238	11.2
<i>Pakud</i>	2,069	537	46	41	624	225	10.9
<i>Palras</i>	2,065	537	46	41	624	225	10.9
<i>Wellamo</i>	2,047	246	17	34	297	107	5.2
						average %	9.2
2,000-1,000 tons:							
<i>Koyasan Maru</i>	1,998	456	44	36	536	193	9.7
<i>Kuramasan Maru</i>	1,996	456	44	36	536	193	9.7
<i>Minnipa</i>	1,977	293	57	69	419	151	7.8
<i>Dronning Alexandrine</i>	1,854	277	49	10	336	121	6.5
<i>Siberoot</i>	1,799	369	52	17	438	158	8.8
<i>Sinabang</i>	1,799	369	52	47	468	168	9.3
<i>Hvoslef</i>	1,630	281	12	18	311	112	6.9
<i>Bruarfjess</i>	1,577	340	22	9	371	134	8.5
<i>Eddystone</i>	1,571	304	45	7	356	128	8.1
<i>Brixton</i>	1,551	347	84	68	499	180	11.6
<i>Almasora</i>	1,536	470	45	80	595	214	13.9
<i>Lissa</i>	1,518	390	—	130	520	187	12.3
<i>Aslaug</i>	1,509	405	29	29	463	167	11.1
<i>Disho</i>	1,496	116	26	9	151	54	3.6
<i>Rane</i>	1,322	351	—	48	399	144	10.9
<i>Rovuma</i>	1,289	240	46	31	317	114	8.9
<i>Sir David</i>	1,275	323	150	22	495	178	13.9
<i>Ring</i>	1,249	351	—	48	399	144	11.5
<i>Caledon</i>	1,063	232	70	53	355	128	12.0
						average %	9.7
1,000-500 tons:							
<i>Castle Galleon</i>	852	171	64	37	272	98	11.5
<i>The Baron</i>	820	177	58	30	265	95	11.6
<i>The Duke</i>	820	177	58	30	265	95	11.6
<i>Kidoel</i>	775	197	31	21	249	90	11.6
<i>Nasu Maru</i>	673	108	17	8	133	48	7.1
<i>Moyalla</i>	642	165	26	20	211	76	11.8
<i>Southland</i>	525	54	30	33	117	42	8.0
						average %	10.5

Annex IX.

WATER-BALLAST SPACES IN GERMAN CARGO VESSELS.

German Cargo Ships	Fore- and After-peak Tanks	Water-Ballast Spaces in Double Bottom	All Water-Ballast Spaces
Gross Tonnage	Percentage of Gross Tonnage	Percentage of Gross Tonnage	Percentage of Gross Tonnage
REGISTERED TONS:			
> 6.000	0,64	5,90	6,54
4.000 — 6.000	0,81	6,14	6,95
3.000 — 4.000	1,04	6,95	7,99
1.000 — 3.000	1,78	8,47	10,25
< 1.000	1,94	9,76	11,70

> 6.000 REGISTERED TONS GROSS (= + 17.000 cubic metres).

No.	Name of Vessel	Gross Tonnage. Cub. m.	Peak Tanks. Cub. m.	Percentage of Gross Tonnage	Water-Ballast in Double Bottom. Cub. m.	Percentage of Gross Tons
1	Lahn	24.074,4	106,5	0,44	1.298	5,39
2	Höchst	19.415,8	95,5	0,49	1.139	5,87
3	Hindenburg	22.323,2	180,0	0,81	1.342	6,01
4	Havenstein	22.588,2	153,1	0,68	1.505	6,66
5	Oliva	22.336,8	180,2	0,81	1.310	5,86
6	General Mitre	28.041,0	201,3	0,72	1.341	4,78
7	Oldenburg	24.185,8	143,0	0,93	1.120	4,63
8	Ludendorff	22.355,7	180,0	0,81	1.342	6,00
9	Lippe	22.236,3	70,5	0,32	1.316	5,92
10	Main	21.598,4	136,0	0,63	1.545	7,15
11	Aller	21.605,7	136,1	0,63	1.545	7,15
12	Oder	24.124,8	107,0	0,44	1.298	5,38
				0,64		5,90

4.000-6.000 REGISTERED TONS GROSS (= ± 11.300-17.000 cubic metres).

No.	Name of Vessel	Gross Tonnage. Cub. m.	Peak Tanks. Cub. m.	Percentage of Gross Tonnage	Water-Ballast in Double Bottom. Cub. m.	Percentage of Gross Tons
1	Gerwin	11.809,0	45,0	0,38	769	6,51
2	Heddernheim	13.998,5	233,8	1,67	773	5,52
3	Ilmar	15.496,7	93,2	0,60	966	6,23
4	German	13.261,0	98,2	0,74	903	6,81
5	Claus Richmers	14.632,8	79,2	0,54	1.083	7,40
6	Sesostris	11.374,5	54,0	0,47	464	4,08
7	Wittkind	11.413,3	94,0	0,82	846	7,41
8	Vorwärts	11.925,8	108,0	0,91	498	4,18
9	Uruguay	16.562,1	263,4	1,59	899	5,43
10	Berengar	13.726,1	59,3	0,43	780	5,68
11	Göllingen	15.576,4	112,0	0,72	1.004	6,45
12	Gerfrid	13.434,5	125,0	0,93	963	7,17
13	Bertram Richmers	11.865,1	77,4	0,65	917	7,73
14	Anagir	16.628,2	263,4	1,58	751	4,52
15	Alrich	14.100,3	231,8	1,64	748	5,31
16	Poseidon	16.494,8	45,3	0,27	1.056	6,40
17	R. O. Richmers	14.726,0	79,0	0,54	1.160	7,87
18	Olympos	11.393,1	166,0	1,45	843	7,40
19	Muansa	15.501,5	133,4	0,86	688	4,43
20	Bilbao	13.591,1	56,8	0,42	640	4,71
21	Aagir	12.746,8	142,0	1,11	838	6,57
22	Eisenach	11.780,9	42,0	0,36	766	6,50
23	Nienburg	11.767,6	42,0	0,36	766	6,50
24	Minden	11.799,3	42,1	0,36	766	6,50
25	Denderah	12.020,9	74,4	0,62	766	6,37
26	Rapot	16.835,0	144,0	0,86	1.031	6,12
27	Wido	16.806,5	144,0	0,86	1.031	6,13
28	Ludwigshafen	16.765,9	143,9	0,86	984	5,87
				0,81		6,14

3.000-4.000 REGISTERED TONS GROSS (= ± 8.500-11.300 cubic metres).

No.	Name of Vessel	Gross Tonnage. Cub. m.	Peak Tanks. Cub. m.	Percentage of Gross Tonnage	Water-Ballast in Double Bottom. Cub. m.	Percentage of Gross Tons
1						
2	<i>Mim</i>	11.235,4	126,0	1,12	815	7,25
3	<i>Eschersheim</i>	9.356,4	82,3	0,88	640	6,84
4	<i>Dasi</i>	9.610,4	49,0	0,51	720	7,49
5	<i>Claus Horn</i>	9.540,4	92,5	0,97	475	4,98
6	<i>Nord Schleswig</i>	9.543,2	92,0	0,97	475	4,98
7	<i>Truda</i>	10.671,6	47,0	0,44	866	8,11
	<i>Winfried</i>	10.625,6	102,0	0,96	890	8,38
8	<i>Wigbert</i>	10.333,9	93,0	0,90	896	8,67
9	<i>Olga Siemers</i>	9.482,1	172,0	1,81	696	7,34
10	<i>Ursula Siemers</i>	9.482,1	171,0	1,80	696	7,34
11	<i>Ilona Siemers</i>	9.187,4	170,0	1,85	696	7,58
12	<i>Santa Theresia</i>	10.995,3	80,0	0,73	706	6,42
13	<i>Nordsee</i>	10.807,4	125,0	1,15	931	8,61
14	<i>Maria Horn</i>	9.086,5	75,0	0,83	553	6,09
15	<i>Arucas</i>	9.515,8	61,7	0,65	398	4,18
				1,04		6,05

1.000-3.000 REGISTERED TONS GROSS (= ± 2.900-8.500 cubic metres).

No.	Name of Vessel	Gross Tonnage. Cub. m.	Peak Tanks. Cub. m.	Percentage of Gross Tonnage	Water-Ballast in Double Bottom. Cub. m.	Percentage of Gross Tons
1	<i>Theresia L. M. Russ</i>	4.799,7	93,7	1,95	448	9,33
2	<i>Tilly L. M. Russ</i>	4.532,3	93,7	2,06	480	10,59
3	<i>Walter L. M. Russ</i>	4.356,9	93,9	2,15	407	9,34
4	<i>Ilse L. M. Russ</i>	4.532,3	93,7	2,06	462	10,19
5	<i>Helga L. M. Russ</i>	4.840,0	94,7	1,96	435	8,99
6	<i>Clara L.M. Russ</i>	4.531,9	107,7	2,37	510	11,04
7	<i>Helene Hugo Stinnes 14</i>	4.916,0	126,0	2,56	391	7,95
8	<i>Vege sack</i>	4.436,3	38,4	0,87	299	6,74
9	<i>Abessinia</i>	4.434,9	38,4	0,86	298	6,72
10	<i>Alexandria</i>	4.463,9	38,4	0,86	298	6,68
11	<i>Artur Kunstmann</i>	8.496,7	167,0	1,96	617	7,26
12	<i>Arta</i>	6.947,1	100,0	1,44	609	8,77
13	<i>Arcadia</i>	3.917,6	23,0	0,59	314	8,02
14	<i>Amsel</i>	3.017,3	37,0	1,23	281	9,31
15	<i>Ambria</i>	3.910,8	23,0	0,59	314	8,03
16	<i>Alt-Heidelberg</i>	3.313,4	95,0	2,87	306	9,24
17	<i>August Thyssen</i>	6.633,9	191,0	2,88	524	7,90
18	<i>Asgard</i>	6.767,4	123,0	1,81	442	6,53
19	<i>Eva</i>	4.259,9	62,0	1,46	411	9,65
20	<i>Emma Sauber</i>	7.217,2	186,0	2,58	506	7,01
21	<i>Edmund Hugo Stinnes 4</i>	6.202,4	106,0	1,71	415	6,69
22	<i>Edmund Halm</i>	3.706,0	71,0	1,92	327	8,82
23	<i>Dions</i>	3.136,8	72,0	2,30	285	9,09
24	<i>Deicke Richmers</i>	4.395,9	46,0	1,05	393	8,94
25	<i>Dieter Hugo Stinnes 12</i>	7.210,0	174,0	2,41	647	8,97
				1,78		8,47

< 1.000 REGISTERED TONS GROSS (= ± 2.900 cubic metres).

No.	Name of Vessel	Gross Tonnage. Cub. m.	Peak Tanks. Cub. m.	Percentage of Gross Tonnage	Water-Ballast in Double Bottom. Cub. m.	Percentage of Gross Tons
1	<i>Alwina Russ</i>	2.798,9	66,0	2,36	312,6	11,17
2	<i>Nürnberg</i>	2.780,4	66,0	2,37	312,0	11,22
3	<i>Christian Russ</i>	2.761,9	50,0	1,81	313,0	11,33
4	<i>Argus</i>	2.730,3	25,0	0,92	270,0	9,89
5	<i>Astarte</i>	1.792,7	10,0	0,56	132,0	7,36
6	<i>Arnold Koepke</i>	2.126,5	33,0	1,55	188,0	8,84
7	<i>Angeln</i>	1.445,2	23,0	1,59	148,0	10,24
8	<i>Fehmarn</i>	2.716,8	82,0	3,02	200,0	7,36
9	<i>Gisela Schröder</i>	2.716,8	82,0	3,02	200,0	7,36
10	<i>Albatross</i>	2.789,9	61,0	2,19	313,0	11,22
11	<i>Carsten Russ</i>	2.816,3	69,0	2,45	303,0	10,76
12	<i>Carl Cords</i>	2.554,8	75,0	2,94	270,0	10,57
13	<i>Bürgermeister Eschenburg</i>	2.072,5	14,0	0,68	217,0	10,47
14	<i>Margarete</i>	2.796,3	56,0	2,00	286,0	10,23
15	<i>Bussard</i>	2.793,5	56,0	2,00	286,0	10,23
16	<i>Braks</i>	1.748,0	53,0	3,03	142,0	8,12
17	<i>Cremon</i>	2.648,5	45,0	1,70	284,0	10,72
18	<i>Consul Cords</i>	2.693,9	37,0	1,37	248,0	9,21
19	<i>Minna Cords</i>	2.693,7	37,0	1,37	248,0	9,21
20	<i>Schleswig</i>	2.450,9	83,0	3,39	219,0	8,94
21	<i>Otto Cords</i>	2.566,1	75,0	2,92	360,0	14,03
22	<i>Dollari</i>	1.514,5	67,0	4,42	147,0	9,71
23	<i>Stella Wega</i>	2.450,4	32,0	1,31	212,5	8,67
24	<i>Prima</i>	2.450,7	32,0	1,31	212,5	8,67
25	<i>Erna</i>	2.450,7	32,0	1,31	212,5	8,67
26	<i>Elisabet</i>	1.657,6	25,0	1,51	134,0	8,08
27	<i>Eduard</i>	2.824,2	19,0	0,67	193,0	6,83
28	<i>Gotland</i>	2.805,0	70,0	2,50	286,0	10,20
29	<i>Schwan</i>	2.785,6	20,0	0,72	287,0	10,30
30	<i>Halmstad</i>	2.305,6	28,0	1,21	303,0	13,14
				1,94		9,76

Annex X.

LAWS AND REGULATIONS IN FORCE IN FRANCE CONCERNING THE RATIONS
CARRIED ON BOARD SHIP.

(a) ARTICLE 31 OF THE LAW OF APRIL 17TH, 1907.

Rationing of Ships' Crews.

A shipowner is prohibited from contracting with the master or any of the ship's officers for the rationing of the crew for a fixed sum.

The food carried for the crew must be sound, of good quality, sufficient in quantity, and suitable to the conditions of the voyage.

The ingredients of the rations issued must be equivalent to those laid down for seamen of the Navy. To enable this regulation to be complied with and its execution to be checked, a schedule of equivalents will be published in a ministerial decree; this schedule will also lay down the maximum rations of alcoholic liquor which may be carried and distributed.

The aforesaid schedule of equivalents and the ingredients of the rations must be permanently posted up in the quarters of the crew. Whenever rations are issued the deck hands and the engine-room hands will alternately select one of their number to check the amounts.

Whenever a reduction of the rations is ordered by the master — except in case of *force majeure* or of the liquor ration being cut as a punishment, under the Decree of March 4th, 1852 — the crew will be entitled to compensation proportionate to the amount of the reduction.

The circumstances constituting *force majeure* must be recorded in a minute to be signed by the master, the ship's doctor if any, and two representatives of the crew, as indicated above.

(b) EXTRACT FROM THE REGULATIONS OF MAY 17TH, 1909, ARTICLE 71.

Rations and Supplies.

It is the duty of the Inspector of Maritime Shipping to satisfy himself as to the condition of food carried on board and of its packing.

He must see that articles made of dried flour, and biscuits, are kept in hermetically sealed tins or water-tight barrels, that wine is kept in the tuns in which it was shipped, and that the latter are put in well-ventilated storerooms, in as cool a place as possible.

If he has any doubts regarding the quality of any articles of diet — meat, tinned foods or liquor — he may order samples to be taken and analyses or other tests to be carried out, as he thinks fit.

Live cattle carried as food must be inspected before embarkation and must fulfil all the conditions necessary to enable them to yield good meat. The supplies of fresh vegetables must be made up, or renewed if necessary, whenever the ship touches at a port; the inspector must satisfy himself as often as possible that this regulation is being complied with.

The inspector must see that the schedule of equivalents, as laid down in the decree concerning rations, and the ingredients of the rations are permanently posted up in the quarters of the crew as laid down in paragraph 4 of Article 31 of the law.

When proceeding to satisfy himself that the supplies carried are sufficient for the passage, the inspector must bear in mind that the circumstances and contingencies of navigation may always lead to a voyage or passage (the word "passage" being understood to mean the voyage from one port of call to another, or to the final destination) being prolonged far beyond the normal period. He must therefore require that, apart from the amounts necessary to comply with Article 31 of the law for the normal duration of the passage, the ship should also carry a reserve of supplies which should be, speaking generally, on the following scale:

In the case of a steamship the additional reserves should be equal to:

For passages of less than 5 days, the amount of the normal rations;

For passages of 5-15 days, one-half of the normal amount, with a minimum of 5 days' rations;

For passages of more than 15 days, one-half of the normal amount, with a minimum of 8 days' rations.

In the case of a sailing vessel the additional reserves must be equal to:

For passages of less than 10 days, the normal amount of rations;

For passages of 10-30 days, one-half the normal amount, with a minimum of 10 days' rations;

For passages of 30 days and upwards, one-third of the normal amount, with 15 days' rations as a minimum.

When the ship's course will lie through waters north of Latitude 50° N. or south of Latitude 50° S. sufficient reserve of food must be carried to enable the normal rations to be increased in the proportion laid down by the Decree concerning Rations issued under Article 31 of the above-mentioned law.

In calculating the amounts of food carried, provision must also be made for the extra rations allowed to firemen and stokers for every watch in the stokehold.

In passenger ships the crew must receive bread rations on the same scale as the passengers.

The daily ration of sailors carried as passengers must be exactly on the same scale as that of the crew.

The inspector must also satisfy himself as to the condition of the mess utensils and that measures are taken to ensure that in the daily issue of rations, which must be made in the presence of one of the ship's officers, the correct quantities are delivered.

The inspector must also make sure that the various receptacles used for drinking-water are thoroughly cleaned at least every three months, as laid down by paragraph 10 of Article 31 of the Regulations, that they have not suffered any damage or deterioration which would make them unsuitable for the purpose, and that the water tanks, butts, barrels, etc., are kept in good order and perfectly clean.

In the case of outward-bound vessels he must see that the drinking-water tanks contain a supply of 5 litres per head per day, and that the water has been obtained from a satisfactory source.

He will have the plant for distilling sea-water — which has to be carried under Article 32 of the Regulations in vessels making long voyages, equipped with a boiler and carrying a crew of more than 30 men — periodically taken down and inspected.

If he is satisfied that it is in good working order he may authorise the supply of fresh water carried to be reduced to a scale of $3\frac{1}{2}$ litres per head per day.

Finally, he must satisfy himself that arrangements are made to allow of 10 litres of fresh water being issued at every watch to all engine-room hands for personal cleanliness, and the same amount once a week to all men of the crew for washing clothes (as provided for in paragraphs 5 and 6 of Article 17 of the Regulations).

Annex XI.

**RESULTS OF COMPARATIVE CALCULATIONS ON THE BASIS OF
THE EXISTING RULES AND OF THE PROPOSED RULES.**

- A. FOR FORTY-THREE BRITISH VESSELS.**
- B. FOR TEN NETHERLANDS VESSELS.**
- C. FOR FOUR GERMAN VESSELS.**
- D. FOR FIVE NORWEGIAN VESSELS.**

Explanation of Abbreviations:

- E = According to existing rules.**
 - P = According to proposed rules.**
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	Type	Rule	Items of Gross Tonnage							
			Under-deck	'Tween decks	Fore-castle	Bridge	Poop or break	Houses, etc.	Hatch-ways	Light and air spaces
1	Cargo steam	E	2,432.63	—	4.14	—	49.90	92.33	149.94	—
		P	2,432.63	—	4.14	—	49.90	92.33	149.94	—
2	Passenger and cargo steam	E	962.26	—	29.46	—	—	148.69	6.68	23.19
		P	962.26	—	29.46	—	—	148.69	6.68	23.19
3	Passenger steam	E	13,829.30	24,204.05	420.30	9,088.20	—	7,185.34	—	1,823.89
		P	13,829.30	24,204.05	420.30	9,088.20	—	7,185.34	—	1,823.89
4	Passenger steam	E	17,996.64	10,411.25	4,655.41	6,642.35	79.66	4,368.48	—	1,493.20
		P	17,996.64	10,411.25	4,897.29	6,642.35	79.66	4,368.48	—	1,493.20
5	Passenger steam	E	1,164.59	—	362.43	353.56	111.00	130.13	—	169.17
		P	1,164.59	—	366.14	353.56	111.00	130.13	—	169.17
6	Passenger steam	E	219.02	—	—	—	5.20	61.81	—	30.32
		P	219.02	—	—	—	5.20	61.81	—	30.32
7	Cargo (oil in bulk) steam	E	15,664.79	—	54.38	89.51	—	469.45	—	158.25
		P	15,664.79	—	54.38	89.51	—	469.45	—	125.02
8	Cargo (oil in bulk) steam	E	6,760.65	—	127.88	109.08	203.73	202.61	—	—
		P	6,760.65	—	127.88	109.08	203.73	202.61	—	—
9	Cargo sail	E	174.73	—	—	—	—	.44	14.58	—
		P	174.73	—	—	—	—	.44	14.58	—
10	Cargo (oil in bulk) steam	E	5,772.35	—	57.78	79.26	256.67	61.15	9.14	—
		P	5,772.35	—	57.78	79.26	256.67	61.15	9.14	—
11	Cargo (oil in bulk) steam	E	6,343.62	—	92.03	169.37	73.59	102.30	—	168.80
		P	6,343.62	—	92.03	169.37	73.59	102.30	—	138.51
12	Passenger steam	E	12,119.75	—	2,366.83	3,227.14	168.95	2,058.83	—	—
		P	12,119.75	—	2,463.67	3,227.14	168.95	2,058.83	—	—
13	Passenger steam	E	7,667.69	5,700.22	198.25	1,492.15	—	1,142.25	83.15	316.81
		P	7,667.69	5,700.22	198.25	1,492.15	—	1,142.25	83.15	316.81
14	Passenger steam	E	8,362.12	6,096.97	2,184.01	1,239.13	—	2,240.84	—	—
		P	8,362.12	6,096.97	2,444.34	1,237.89	—	2,240.84	—	—
15	Passenger and cargo steam	E	6,306.32	—	129.13	611.16	191.17	209.62	35.54	103.66
		P	6,306.32	—	131.79	611.16	191.17	209.62	35.54	94.56
16	Cargo steam	E	4,831.19	—	83.20	—	29.61	158.67	23.50	—
		P	4,831.19	—	83.20	—	29.61	158.67	23.50	—
17	Cargo steam	E	4,465.76	—	60.12	3.78	97.71	141.40	56.10	35.45
		P	4,465.76	—	60.12	3.78	97.71	141.40	56.10	29.61
18	Cargo steam	E	4,036.84	1,358.59	—	—	—	130.69	39.55	50.09
		P	4,036.84	1,358.59	—	—	—	130.69	39.55	50.09
19	Cargo (oil in bulk) steam	E	6,190.21	—	52.71	—	—	663.61	—	—
		P	6,190.21	—	52.71	—	—	663.61	—	—
20	Cargo (oil in bulk) steam	E	380.73	—	23.30	—	50.36	29.56	14.80	23.66
		P	380.73	—	23.30	—	25.03	29.56	14.80	46.36
21	Cargo (oil in bulk) steam	E	4,715.74	—	16.69	107.03	158.05	602.04	5.46	—
		P	4,715.74	—	16.69	107.03	158.05	602.04	5.46	—
22	Passenger motor	E	6,155.66	5,881.67	2,173.23	3,787.77	—	767.90	—	320.18
		P	6,155.66	5,881.67	2,295.07	3,787.77	—	767.90	—	320.18

BRITISH VESSELS.

Gross Tonnage	Percentage increase or decrease	Net tonnage	Percentage increase or decrease	Deductions from Gross Tonnage			Remarks
				Allowance for propelling power	Crew space	Master's accom. Charts, Bos. stores. Chain locker, etc. Water ballast, etc.	
2.728,94 2.728,94	0	1.685,58 1.678,24	- 0,43	873,26 873,26	110,65 110,65	59,45 66,79	
1.170,28 1.170,28	0	653,52 645,26	- 1,26	443,29 443,29	64,17 64,17	9,30 17,56	Est. chain locker. P. P. allowance 1 1/4 times Engine Room.
56.551,08 56.551,08	0	26.369,57 26.148,62	- 0,84	26,093,88 26,093,88	3.548,65 3.548,65	538,98 759,93	P. P. allowance 1 1/4 times E. R. Large chain locker.
45.646,99 45.888,87	+ 0,53	20.800,35 20.888,26	+ 0,42	21.318,48 21.373,15	3.152,12 3.152,12	376,04 475,34	P. P. allowance 1 1/4 times E. R. Long forecastle. Large chain locker.
2.290,88 2.294,59	+ 0,16	916,63 921,80	+ 0,56	1.115,56 1.107,10	149,81 149,81	108,88 115,88	P. P. allowance 1 1/4 times E. R.
316,35 316,35	0	133,64 133,39	- 0,18	154,95 152,22	18,20 18,20	9,56 12,54	P. P. allowance 1 1/4 times E. R.
16.436,38 16.403,15	- 0,22	9,642,90 9.565,83	- 0,80	5.259,64 5.279,—	511,75 511,75	1.022,09 1.076,57	
7.403,95 7.403,95	0	4.282,82 4.270,76	- 0,39	2.369,26 2.369,26	367,00 367,00	384,87 401,79	
189,75 189,75	0	157,51 155,93	- 1,00	— —	22,15 22,15	10,09 11,67	
6.236,35 6.236,35	0	3.951,46 3.939,91	- 0,28	1.995,63 1.995,63	150,57 150,57	138,69 150,24	
6.949,71 6.919,42	- 0,43	4.183,57 4.138,90	- 1,06	2.223,91 2.214,21	278,81 278,81	263,42 287,50	
19.941,50 20.038,34	+ 0,48	12.027,50 12.053,23	+ 0,21	6.381,28 6.412,27	1.309,81 1.309,81	222,91 263,03	Long forecastle. Est. chain locker.
16.600,52 16.600,52	0	9.278,88 9.175,25	- 1,11	6.034,79 6.107,78	1.046,89 1.046,89	239,96 269,60	Engineer's store-room restricted. Est. chain locker. P. P. allowance 1 1/4 times E. R.
20.123,07 20.382,16	+ 1,28	11.881,44 12.014,43	+ 1,12	6.439,38 6.522,29	1.456,36 1.456,36	345,89 389,08	Long forecastle.
7.586,60 7.580,16	- 0,08	4.794,87 4.756,92	- 0,84	2.427,71 2.425,60	294,86 294,86	69,16 102,78	Hipped tank and large chain locker.
5.126,17 5.126,17	0	3.144,14 3.132,38	- 0,37	1.640,37 1.640,37	195,09 195,09	146,57 158,33	
4.860,32 4.860,32	0	2.996,14 2.977,67	- 0,61	1.555,30 1.555,30	149,54 149,54	159,34 177,81	
5.615,76 5.615,76	0	4.277,29 4.273,78	- 0,08	1.057,89 1.050,88	157,15 157,15	123,43 133,95	P. P. allowance 1 1/4 times actual E. R.
6.906,53 6.906,53	0	4.238,65 4.212,44	- 0,61	2.210,09 2.210,09	295,86 295,86	161,93 188,14	
522,41 519,78	- 0,5	183,39 176,45	- 3,79	223,72 218,77	41,84 41,84	73,46 82,72	P. P. allowance restricted as per M.S.A. 1907.
5.605,01 5.605,01	0	3.444,06 3.428,84	- 0,44	1.793,60 1.793,60	232,05 232,05	135,30 150,52	
19.086,41 19.208,25	+ 0,64	11.281,19 11.320,50	+ 0,35	6.107,65 6.146,64	1.437,18 1.437,18	260,39 303,93	Long forecastle.

	Type	Rule	Items of Gross Tonnage							
			Under-deck	'Tween decks	Fore-castle	Bridge	Poop or break	Houses, etc.	Hatchways	Light and air spaces
23	Cargo motor	E	4,163.79	—	29.96	—	73.55	268.81	—	—
		P	4,163.79	—	29.96	—	73.55	268.81	—	—
24	Passenger and cargo steam	E	9,093.89	3,062.06	1,874.55	1,562.30	—	825.20	—	—
		P	9,093.89	3,062.06	2,062.42	1,562.30	—	825.20	—	—
25	Cargo steam	E	5,440.53	—	89.43	26.13	—	215.13	80.07	—
		P	5,440.53	—	89.43	26.13	—	215.13	80.07	—
26	Cargo (oil in bulk) steam	E	2,298.29	—	25.14	52.84	173.60	557.61	—	55.81
		P	2,298.29	—	25.14	52.84	173.60	557.61	—	55.81
27	Cargo steam	E	4,207.87	—	23.98	—	104.37	182.22	—	89.11
		P	4,207.87	—	23.98	—	104.37	182.22	—	89.11
28	Passenger and cargo steam	E	6,768.82	2,192.55	65.76	707.67	345.13	488.45	15.07	—
		P	6,768.82	2,192.55	65.76	707.67	344.53	488.45	15.07	—
29	Cargo steam	E	4,827.94	—	106.50	—	—	364.78	—	—
		P	4,827.94	—	106.50	—	—	364.78	—	—
30	Cargo (oil) steam	E	6,400.11	—	93.75	170.73	131.62	104.31	—	42.39
		P	6,400.11	—	93.75	170.73	131.25	104.31	—	42.39
31	Passenger steam	E	5,498.53	2,072.73	1,281.53	982.96	469.25	680.38	—	532.70
		P	5,498.53	2,072.73	1,393.90	982.96	469.25	680.38	—	532.70
32	Cargo steam	E	4,285.34	—	63.57	13.72	—	144.50	17.19	—
		P	4,285.34	—	63.57	13.72	—	144.50	17.19	—
33	Cargo steam	E	4,636.65	—	67.13	5.06	17.73	103.76	36.35	—
		P	4,636.65	—	67.13	5.06	17.73	103.76	36.35	—
34	Cargo steam	E	1,390.61	—	4.57	2.65	38.70	49.71	31.96	—
		P	1,390.61	—	4.57	2.65	38.70	49.71	31.96	—
35	Cargo steam	E	5,664.84	1,818.98	—	1,108.70	—	358.84	27.87	—
		P	5,664.84	1,818.98	—	1,108.70	—	358.84	—	—
36	Trawler steam	E	308.96	—	1.54	—	17.44	7.48	—	13.98
		P	308.96	—	1.54	—	11.84	7.48	—	19.58
37	Cargo steam	E	570.38	—	27.17	19.81	94.59	—	37.33	32.99
		P	570.38	—	27.17	19.81	62.94	—	37.33	64.64
38	Cargo steam	E	2,135.55	—	56.08	—	—	260.45	8.42	21.56
		P	2,135.55	—	56.08	—	—	260.45	8.42	21.56
39	Cargo steam	E	3,403.77	—	7.64	—	271.02	94.54	138.26	—
		P	3,403.77	—	7.64	—	271.02	94.54	138.26	—
40	Cargo steam	E	1,723.12	—	75.37	—	83.68	563.89	—	—
		P	1,723.12	—	75.37	—	83.68	563.89	—	—
41	Cargo steam	E	1,742.83	—	5.60	—	53.94	526.39	—	65.58
		P	1,742.83	—	5.60	—	53.94	526.39	—	65.69
42	Cargo steam	E	1,638.04	—	43.92	—	151.46	82.28	10.37	—
		P	1,638.04	—	43.92	—	114.35	82.28	10.37	41.25
43	Passenger and cargo steam	E	7,887.91	2,307.96	143.99	838.21	141.75	999.99	13.23	—
		P	7,887.91	2,307.96	143.99	838.21	41.75	999.99	13.23	—

Gross Tonnage	Percentage increase or decrease	Net tonnage	Percentage increase or decrease	Deductions from Gross Tonnage			Remarks
				Allowance for propelling power	Crew space	Master's accom. Charts, Boatswain's stores, Chain locker, etc. Water ballast, etc.	
4.536,11 4.536,11	o	2.694,20 2.672,29	- 0,81	1.451,56 1.451,56	236,37 236,37	153,98 175,89	
16.418,00 16.605,87	+ 1,14	9.789,45 9.884,49	+ 0,97	5.253,76 5.313,88	1.118,57 1.118,57	256,22 288,93	Long forecastle.
5.851,29 5.851,29	o	3.645,76 3.623,94	- 0,60	1.872,41 1.872,41	238,20 238,20	94,92 116,74	
3.163,29 3.163,29	o	1.671,45 1.575,31	- 5,75	1.012,25 1.012,25	199,06 199,06	280,53 376,67	Special type excessive water-ballast arrangements.
4.607,55 4.607,55	o	2.810,04 2.797,80	- 0,44	1.474,42 1.474,42	191,64 191,64	131,45 143,69	
10.583,45 10.582,85	- 0,57	6.527,24 6.510,22	- 0,25	3.386,70 3.386,41	494,91 494,91	174,60 191,91	
5.299,22 5.299,22	o	3.091,44 3.070,19	- 0,68	1.695,75 1.695,75	279,00 279,00	233,03 257,97	
6.942,91 6.942,54	- 0,005	4.100,20 4.068,75	- 0,78	2.221,73 2.221,73	277,53 277,53	343,45 374,90	
11.518,08 11.630,45	+ 0,96	6.013,76 6.059,15	+ 0,75	4.604,72 4.648,70	760,10 760,10	139,50 162,50	Long forecastle. P. P. allowance 1 3/4 times E. R.
4.524,32 4.524,32	o	2.808,04 2.786,16	- 0,78	1.447,78 1.447,78	167,23 167,23	101,27 123,15	
4.866,68 4.866,68	o	2.999,26 2.990,97	- 0,27	1.557,34 1.557,34	139,58 139,58	170,50 178,79	
1.518,20 1.518,20	o +	893,00 885,75	- 0,81	485,82 485,82	77,11 77,11	62,27 69,52	
8.979,23 8.979,23	o	5.603,93 5.591,98	- 0,21	2.873,35 2.873,35	408,58 408,58	93,37 105,32	
349,40 349,40	o	145,91 142,30	- 2,47	172,25 170,64	16,35 16,35	14,89 20,11	Propelling power allowance 1 3/4 times E. R.
782,27 782,27	o	391,98 388,34	- 0,93	331,15 313,15	49,53 49,53	27,61 31,25	P. P. allowance 1 3/4 times E. R.
2.482,06 2.482,06	o +	1.813,45 1.688,77	- 6,87	485,66 481,29	23,14 23,14	159,81 288,86	Special type — self-discharging collier with excessive water-ballast arrangements. Service on Canadian Lakes. P. P. allowance 1 3/4 times E. R.
3.915,23 3.915,23	o	1.969,59 2.399,46	+ 21,82	1.252,87 1.252,87	218,36 218,36	474,39 44,52	Special type with wing water-ballast arrangements. The water-ballast allowance is restricted by extent of cellular double bottom.
2.446,06 2.446,06	o	1.246,48 1.158,83	- 7,00	782,74 782,74	153,87 153,87	262,97 350,59	Special type — oil-carrying with excessive water-ballast arrangements at sides. Service on Gulf of Maracaibo.
2.394,34 2.394,45	o -	1.243,33 1.185,57	- 4,50	766,19 766,21	129,05 129,05	255,77 313,52	do.
1.926,07 1.930,17	+ 0,21	1.149,38 1.200,12	+ 4,41	616,34 617,65	91,29 91,29	69,06 15,43	Water ballast limited by extent of cellular double bottom. No Boatswain's store.
12.333,04 12.333,04	o +	7.304,32 7.290,69	- 0,18	3.946,57 3.946,57	737,05 737,05	345,10 358,73	

B. TEN DUTCH VESSELS.

1. PASSENGER AND CARGO STEAMER FOR INDIAN SERVICE.

Registered dimensions: 70,13 X 11,64 X 3,18 metres.

Gross Tonnage (registered tons).

	Under-deck	'Tween-decks	Fore-castle	Bridge	Poop or break	Houses etc.	Hatch-ways	Light and air space	Total
E	711,95	—	37,45	—	112,73	160,59	7,08	102,43	1.132,23
P	711,95	—	37,45	—	111,30	160,59	7,09	102,43	1.130,81

- Special notes:*
- Under-deck tonnage measured in one part.
 - Capacity double-bottom tanks fitted for cargo or stores: 33,89 tons.
 - Capacity double-bottom tanks fitted for water ballast: 78,37 tons.
 - Extended poop with openings in side-plating: 210,38 tons.

Deductions (Registered tons).

	Machinery space	Navigation spaces	Master's & crew spaces	Total	Net tonnage
E	473,60	31,00	192,42	697,02	435,21
P	467,51	46,90	191,44	705,85	424,96

Details machinery space.

	Under upper-deck	Above upper-deck	Shaft tunnels	Escape ladder way from shaft tunnel	Total capacity	Deduction allowed
E	127,64	102,43	40,48	0,08	270,63	473,60
P	124,16	102,43	40,48	0,08	267,15	467,51

Actual machinery space.

		Engineers' stores	Dynamos	Bilge pumps	Tanks for lubricating oil	Ballast pumps
E	Included	—	—	0,35	—	0,43
	Excluded	5,53	1,27	—	0,23	—
P	Included	2,83	—	—	—	—
	Excluded	2,70	1,27	0,35	0,23	0,43

Details navigation spaces.

	Chain locker	Chart-room	Signal locker	Boatswain's stores	Pumping installation	W.B. outside D.B. peaks
E	—	5,01	—	10,30	—	15,69
P	9,53	5,01	3,51	12,38	0,78	15,69

Details Master's and crew spaces.

1. Master's space:

	Sleeping- and living-room	Bathroom
E	9,71	1,62
P	9,71	1,62

2. Crew space:

	Ch. Engineer's & liv.-room	Ch. Off. sleeping-room	Ch. Off. living-room	Other officers spaces	Crew spaces	Mess-room Off. & Eng.	Bath-rooms	Wash-places	Pantry
E	5,92	5,92	3,26	21,70	117,92	18,63	4,82	2,92	—
P	5,92	5,92	—	21,70	117,92	18,63	4,82	2,92	2,38

3. CARGO STEAMER.

Registered dimensions: 70,10 × 10,45 × 4,03 metres.

Gross Tonnage (Registered tons).

	Under-deck	'Tween-decks	Fore-castle	Raised deck	Houses, etc.	Hatch-ways	Light & air space	Total
E	878,44	—	29,05	101,12	47,83	65,62	33,59	1.155,65
P	878,44	—	29,05	99,81	47,83	65,60	39,80	1.160,63

Special notes: 1. Under-deck tonnage measured in one part.
 2. Capacity of double-bottom cargo and stores: 26,47 tons.
 3. Capacity of double-bottom water ballast 85,43 tons.

Deductions

	Machinery space	Navigation spaces	Master's and crew spaces	Access to deducted spaces	Total	Net tonnage
E	369,81	55,59	71,79	5,20	502,39	653,26
P	371,37	68,78	75,91	2,12	518,18	642,45

Details machinery space.

	Under upper-deck	Above upper-deck	Total capacity	Deduction allowed
E	116,79	33,59	150,38	369,81
P	11,14	39,80	151,04	371,37

Actual machinery space.

		Engineers' stores	Dynamoes	Bilge pumps	Ballast pumps
E	Included	—	—	0,80	0,75
	Excluded	2,20	1,15	—	—
P	Included	2,20	—	—	—
	Excluded	—	1,15	0,80	0,75

Details navigation spaces.

	Chain locker	Chart-room	Signal locker	Boatswain's stores	Pumps	W.B. outside D.B. peaks
E	—	3,69	—	5,56	—	46,34
P	7,00	3,69	1,64	8,56 (paint-room)	1,55	46,34

Details Master's and crew spaces.

1. Master's space:

	Sleeping and living-room	Bathroom
E	4,00	1,61
P	4,00	1,61

2. Crew space:

	Ch. Engineer's sl. & liv.-room	Ch. Off. sl. & liv.-room	2nd Engin.	2nd Off.	Crew space	Mess-room (Officers)	Mess-room (Engin.)	Bath-rooms (Off. & Eng.)	Wash-places (crew)	Pantry
E	2,87	3,48	2,87	3,61	33,74	6,20	5,80	5,20	2,41	—
P	2,87	3,48	2,87	3,61	33,74	6,20	5,80	5,20	2,41	4,12

3. SAILING SHIP.

Registered dimensions: 80,78 × 12,23 × 7,18 metres.

Gross Tonnage (registered tons).

	Under-deck	Fore-castle	Poop	Round-houses	Side-houses	Hatch-ways	Total
E	1.840,67	12,53	77,09	50,13	3,20	—	1.983,62
P	1.840,67	12,53	71,94	51,24 (panelling)	3,20	—	1.979,58

Special notes: Forecastle exempted: 36,89 tons.

Deductions

	Sailroom	Navigation spaces	Master's & crew spaces	Access to deducted space	Total	Net tonnage
E	11,49	25,25	97,04	1,25	135,03	1.848,59
P	11,49	39,24	99,62	1,25	151,60	1.827,98

Details navigation spaces.

	Chain locker	Chart-room	Signal locker	Boatswain's stores	Water ballast
E	—	5,41	—	19,84	—
P	10,00	5,41	3,83	20,00	—

Details Master's and crew spaces.

1. Master's space:

	Sleeping-room	Living-room	Bath-room
E	8,16	6,15	3,13
P	8,16	6,15	3,13

2. Crew space:

	Ch. Off. sl. & liv.-room	2nd Off.	3rd Off.	Crew space	Messroom for Officers	Bath-rooms	Wash-places	Pantries	Hospital
E	3,97	3,81	3,76	46,01	13,02	2,75	3,12	—	3,16
P	3,97	3,81	3,76	46,01	13,02	2,75	3,12	2,58	3,16

4. SHALLOW-DRAUGHT STEAM TANK-VESSEL.
Registered dimensions: 93.04 x 15.33 x 4.59 metres.
Gross Tonnage (registered tons).

	Under-deck	Fore-castle	Bridge	Raised deck	Trunks	Round-houses	Hatch-ways	Total
E	1,809,82	55,62	104,86	104,79	384,96	33,26	—	2,493,31
P	1,809,82	55,62	149,32 (tonnage opening)	102,79	384,96	33,26	—	2,535,67

Special notes: 1. Under-deck tonnage measured in one part.
2. No double bottom.
3. No exemptions.

Deductions.

	Machinery space	Navigation spaces	Master's & crew space	Access to deducted space	Total	Net tonnage
E	797,86	361,96	155,57	2,51	1,317,90	1,175,41
P	811,41	506,50	160,74	43,71 (tonnage opening)	1,522,36	1,013,31

Details machinery space.

	Under upper-deck	Above upper-deck	Total capacity	Deduction allowed
E	337,85	—	337,85	797,86
P	332,74 (round of beam)	—	332,74	811,41

Actual machinery space.

		Dynamos	Tanks for lubricating oil	Bilge Pumps
E	Included	—	—	0,15
	Excluded	1,00	0,25	—
P	Included	—	—	—
	Excluded	1,00	0,25	0,15

Details navigation spaces.

	Chain locker	Chart-room	Signal locker	Boatswain's stores	Wireless installation	Pumps	Water ballast
E	—	6,17	—	24,93	4,23	24,36	302,27
P	11,47	6,17	2,71	25,36	4,23	16,56	440,00

Details water ballast.

	Peaks	Cofferdams	Wing-tank	Wing-tank	Wing-tank	Total
E	30,82	35,56	94,14	94,14	47,61	302,27
P			Maximum, 440 tons.			

Details Master's and crew spaces.

1. Master's space:

	Sleep. & liv.-room	Bath-room
E	10,27	3,13
P	10,27	3,13

2. Crew space:

	Ch. Eng. sl. & liv.-room	Ch. Off. sl. & liv.-room	Other Off. spaces	Crew space	Messroom for Off. & Eng.	Bath-rooms	Wash-places	Pantries
E	8,36	8,99	51,08	48,21	9,69	8,02	7,82	—
P	8,36	8,99	51,08	48,21	9,69	8,02	7,82	5,17

5. PASSENGER AND CARGO MOTOR VESSEL

Registered dimensions: 154,44 × 19,16 × 10,73 metres.

Gross Tonnage (registered tons).

	Under-deck	'Tween-deck	Fore-castle	Poop	Round-houses	Side-houses	Hatch-ways	Total
E	6.207,61	2.394,07	144,61	514,32	2.740,35	38,72	—	12.039,68
P	6.207,61	2.397,58	144,61	511,91	2.740,35	38,72	—	12.040,78

- Special notes:*
- Under-deck tonnage measured in one part.
 - Capacity double-bottom fuel, cargo, stores: 317,70 tons.
 - Capacity double-bottom water ballast: 183,91 tons.
 - Exempted forecastle: 56,35 tons.

Deductions.

	Machinery space	Navigation spaces	Master's & crew space	Access to deduct. space	Total	Net tonnage
E	3.852,70	279,39	765,70	55,31	4.953,10	7.086,58
P	3.853,05	337,27	741,16	40,30	4.973,78	7.067,00

Details machinery space.

	Under upper-deck	Shaft tunnels	Escape ladders from shaft tunnels	Total capacity	Deduction allowed
E	1.533,42	172,33	2,22	1.707,97	3.852,70
P	1.486,44 (round of beam)	172,33	2,22	1.660,99	3.853,05

Actual machinery space.

		Engin. stores	Eng. work-shops	Settling tanks for fuel oil	Dynamos	Pumps lubricating oil	Tanks lubricating oil	Sanitary pumps	Bilge pumps	Ballast pumps
E	Included	—	10,59	15,60	—	1,25	—	—	—	—
	Excluded	56,25	—	—	21,31	—	16,24	1,20	1,51	1,80
P	Included	30,10	—	—	—	1,25	—	—	—	—
	Excluded	26,15	10,59	15,60	21,31	—	16,24	1,20	1,51	1,80

Details navigation spaces.

	Steering gear	Chain lockers	Chart-room	Signal lockers	Boats-wain's stores	Wireless	Pumps	Water ballast
E	42,12	—	9,03	—	48,80	5,92	—	173,52
P	42,12	51,73	9,03	2,42	51,22	5,92	3,31	173,52

Details Master's and crew spaces.

1. Master's space:

	Sleeping-room	Living-room	Bath-room
E			
P			

2. Crew space:

	Ch. Eng. al., liv.- & bath-rooms	Ch. Off. cabins	Other Off. spaces	Crew space	Mess-room Off. & Eng.	Mess-rooms servants, seamen, oilers	Bath-room crew	Wash-places	Oilskins & overall rooms or lockers	Pantries	Purser's Office	Doctor's consulting room
E	17,57	10,41	86,44	468,75	24,74	66,43	7,78	17,76	0,37	7,52	16,21	11,51
P	17,57	10,41	86,44	468,75	24,74	66,43	7,78	17,76	0,37	10,70	—	—

6. CARGO STEAMSHIP.

Registered dimensions: 85.73 x 13.02 x 5.88 metres.

Gross Tonnage (registered tons).

	Under-deck	Fore-castle	Bridge house	Poop	Round-houses	Light & air space	Hatch-ways	Total
E	1,892.47	2,90	—	66,79	86,08	—	68,02	2,116,26
P	1,892.47	28,10 (tonnage opening)	114,90 (tonnage opening)	60,09	93,06 (trunks on the open bridge)	11,61	68,54	2,268,56

- Special notes:*
- Under-deck tonnage measured in one part.
 - Capacity double-bottom cargo stores: 31,06 tons.
 - Capacity double-bottom water ballast: 137,41 tons.
 - Under present rules exempted fore-castle: 25,20 tons.
 - Under present rules exempted bridge-house: 114,90 tons.
 - Difference in gross tonnage due to minor modifications as to tonnage openings.

Deductions.

	Machinery space	Navigation space	Master's & crew spaces	Access to deducted spaces	Total	Net tonnage
E	680,20	60,56	114,44	3,67	858,87	1,257,39
P	725,94	80,75	116,76	1,85	925,30	1,343,26

Details machinery space.

	Under upper-deck	Above upper-deck	Shaft tunnel	Total capacity	Deduction allowed
E	245,87	—	38,40	284,27	680,20
P	245,34	11,61	38,40	295,35	725,94

Actual machinery space.

		Engineers' stores	Dynamos	Tanks for lubricating oil	Biige pumps	Ballast pumps
E	Included	—	—	—	1,15	0,95
	Excluded	5,10	0,61	0,20	—	—
P	Included	5,10	—	—	—	—
	Excluded	—	0,61	0,20	1,15	0,95

Details navigation spaces.

	Chain locker	Chart-room	Signal-locker	Boatswain's stores	Wireless installation	Pumps	Ballast pumps
E	—	5,07	—	21,16	2,66	—	31,67
P	13,98	5,07	2,58	22,69	2,66	2,10	31,67

Details Master's and crew spaces.

1. Master's space:

	Sl. & liv.-room	Bath-room
E	6,15	2,88
P	6,15	2,88

2. Crew space:

	Ch. Eng.	Ch. Off.	Other Officer's spaces	Donkey-man, steward, cook, wireless op., boatswain	Mess-rooms (Engineers & Officers)	Bath-rooms	Wash-places	Overall lockers	Crew space	Pantries	Hospital
E	5,78	4,53	11,70	14,34	16,19	2,10	2,26	0,31	45,05	—	3,15
P	5,78	4,53	11,70	14,34	16,19	2,10	2,26	0,31	45,05	2,32	3,15

7. CARGO STEAMSHIP.

Registered dimensions: 129,50 X 16,46 X 10,69 metres.

Gross Tonnage (registered tons).

	Under-deck	'Tween-deck	Round-houses	Hatch-ways	Light & air space	Total
E	4.823,66	1.609,20	210,64	24,99	64,34	6.732,63
P	4.823,66	1.598,27	215,84	25,02	64,34	6.727,13

Special notes: 1. Under-deck tonnage measured in one part.
 2. Capacity double-bottom fuel, cargo, stores
 3. Capacity double-bottom water ballast . . . } 405,40 tons.

Deductions.

	Machinery space	Navigation spaces	Master's & crew spaces	Access to deducted spaces	Total	Net tonnage
E	1.436,33	78,06	175,34	54,23	1.743,96	4.988,87
P	1.430,06	101,89	178,46	40,41	1.750,82	4.976,31

Details machinery spaces.

	Under upper-deck	Above upper-deck	Shaft tunnels	Escape-ladder from shaft tunnel	Total capacity	Deduction allowed
E	681,05	64,34	73,77	1,60	820,76	1.436,33
P	677,47 (round of beam)	64,34	73,77	1,60	817,18	1.430,06

Note: Machinery space (13 per cent of gross tonnage. The vessel has a closed shelter-deck, formerly open).

Actual machinery spaces.

		Dynamos	Bilge pumps	Ballast pumps
E	Included	—	1,25	1,30
	Excluded	1,42	—	—
P	Included	—	—	—
	Excluded	1,42	1,25	1,30

Details navigation spaces.

	Chain locker	Chart-room	Signal locker	Boatswain's stores	Wireless	Pumps
E	—	4,92	—	67,33	5,81	—
P	17,16	4,92	4,18	67,27	5,81	2,55

Details Master's and crew spaces.

1. Master's space:

	Sleeping-room	Living-room	Bath-room
E	5,32	5,67	2,09
P	5,32	5,67	2,09

2. Crew space:

	Ch. Eng.	Ch. Off.	Other Officers' spaces	Crew spaces	Messrooms (officers & engin. & petty off.)	Bath-rooms	Pantries	Hospital
E	9,48	5,49	31,93	72,44	25,97	12,66	—	4,29
P	9,48	5,49	30,83	72,44	25,97	12,66	4,22	4,29

8. CARGO MOTOR-SHIP.

Registered dimensions: 137.04 x 18.54 x 9.04 metres.

Gross Tonnage (registered tons).

	Under-deck	Tween-deck	Fore-castle	Bridge house	Poop	Round houses	Side houses	Hatch-ways	Light & air space	Total
E	4.707.41	1.817.37	79.56	112.08	84.78	247.60	128.74	13.34	—	7.190.88
P	4.707.41	1.826.27	79.56	473.83	84.78	247.60	128.74	14.28	48.31	7.611.78

Special notes: 1. Capacity double-bottom fuel, cargo, stores: 309.27 tons.
 2. Capacity double-bottom water ballast: 249.62 tons.
 3. Under present rules part of bridge-house exempted 361.75 tons.
 This explains difference in bridge-house capacity under gross tonnage.
 Difference is due to minor modifications in rules as to tonnage openings.

Deductions.

	Machinery space	Navigation spaces	Master's & crew spaces	Access to deducted spaces	Total	Net tonnage
E	2.301.08	83.97	248.61	7.73	2.641.39	4.549.49
P	2.435.75	117.75	251.85	7.73	2.813.08	4.798.64

Details machinery space.

	Under upper-deck	Above upper-deck	Shaft tunnel	Escape-ladder from shaft tunnel	Total capacity	Deduction allowed
E	824.74	—	114.61	0.72	940.07	2.301.08
P	826.69	48.31	114.61	0.72	990.33	2.435.75

Actual machinery space.

		Eng. stores	Settling tanks for fuel oil	Dynamos	Tanks for lubricating oil	Sanitary pumps	Bilge pumps	Ballast pumps
E	Included	—	9.92	—	—	—	—	—
	Excluded	16.87	—	2.54	1.39	0.28	0.42	4.59
P	Included	16.87	—	—	—	—	—	—
	Excluded	—	9.92	2.54	1.39	0.28	0.42	4.59

Details navigation spaces.

	Chain locker	Chartroom	Signal locker	Boat-wain's stores	Wireless	Pumps	Water ballast in peaks
E	—	7.11	—	54.22	7.94	—	14.70
P	14.09	7.11	7.48	61.51 (paint-room)	7.94	5.01	14.70

Details Master's and crew spaces.

1. Master's space:

	Sleeping-room	Living-room
E	8.04	12.29
P	8.04	12.29

2. Crew space:

	Ch. Eng. sl. & liv.-room	Ch. Off.	Other Officers' spaces	Crew spaces	Mess-room (Off. & Engin.)	Mess-room crew	Bath-rooms	Wash-places	Overall locker	Pantries	Doctor's room
E	15.83	10.54	57.95	94.63	16.74	7.40	11.68	4.55	0.24	—	8.72
P	15.83	10.54	57.95	94.63	16.74	7.40	11.68	4.55	0.24	3.24	8.72

9. MOTOR TANK-VESSEL.
Registered dimensions: 143,20 X 19,29 X 10,76 metres.

Gross Tonnage (registered tons).

	Under-deck	Fore-castle	Bridge-house	Round-houses	Light and air space	Total
E	8.476,63	42,61	55,82	313,45	73,04	* 8.961,55
P	8.476,63	42,61	55,82	313,45	98,33	8.986,84

Special notes: 1. Under-deck tonnage measured in two parts.
2. Capacity double-bottom fuel, cargo stores
3. Capacity double-bottom water ballast } 71,74 tons.

Deductions.

	Machinery space	Navigation spaces	Master's and crew space	Access to deducted spaces	Total	Net tonnage
E	2.867,70	434,52	405,25	46,44	3.753,91	5.207,64
P	2.875,79	367,25	417,54	36,20	3.696,78	5.290,06

Details machinery space.

	Under upper-deck	Above upper-deck	Total capacity	Deduction allowed
E	1.092,89	73,04	1.165,93	2.867,70
P	1.070,90	98,33	1.169,23	2.875,79

Actual machinery space.

		Engineer's stores	Engineer's workshops	Donkey boiler	Oil refiners and oil coolers	Bilge pumps
E	Included	—	4,49	63,14	26,65	0,28
	Excluded	31,90	—	—	—	—
P	Included	22,47	—	63,14	26,65	—
	Excluded	9,43	4,49	—	—	0,28

Details navigation spaces.

	Nautical instrument	Steering-gear pumps	Steering gear	Chain locker	Chart-room	Signal locker	Boats-wain's stores	Wire-less	Pumps	W.B. peaks aft	W.B. coffer-dam aft
E	1,90	12,28	57,74	—	10,94	2,78	75,00	5,24	155,80	66,43	46,41
P	1,90	12,28	57,74	28,53	10,94	2,78	75,00	5,24	60,00	66,43	46,41

Details Master's and crew space.

1. Master's space:

	Sleeping-room	Living-room	Bath-room
E	8,84	8,94	3,33
P	8,84	8,94	3,33

2. Crew space:

	Chief Engineer's room and bathroom	Chief Officer's room	Other Officers' spaces	Crew spaces	Messrooms (Officers' and Engineers)	Messrooms (petty officers)	Bath-rooms	Wash-places	Pantries	Hospital
E	23,08	7,79	56,07	220,95	2,03	11,80	30,84	13,20	—	8,83
P	23,08	7,79	56,07	220,95	22,03	11,80	30,84	13,20	12,29	8,83

10. ORE-CARRYING VESSEL.

Registered dimensions: 138.65 × 18.33 × 8.46 metres.

Gross Tonnage (registered tons).

	Under-deck	'Tween-deck	Round-houses	Hatchways	Light and air space	Total
E	5,835.50	373.30	151.43	59.18	—	6,419.41
P	5,876.15	1,641.95 (shelter-deck)	151.43	182.89 (shelter-deck)	152.09	8,004.51

- Special notes:*
- Under-deck tonnage, measured in one part.
 - Difference in gross tonnage due to modification of rules for open spaces.
 - Capacity double-bottom — fuel, cargo, stores: 59.58 tons.
 - Capacity double-bottom — water-ballast: 619.51 tons.
 - Exempted shelter-deck space. E.R. 1,292.54 tons.
P.R. 32.20 tons.

Deductions.

	Machinery space	Navigation spaces	Master's and crew space	Access to deducted space	Total	Net tonnage
E	2,054.21	640.14 (water ballast)	206.40	19.72	2,920.47	3,498.94
P	2,561.44	224.85	211.95	19.72	3,017.96	4,986.55

Details machinery space.

	Under upper-deck	Above upper-deck	Shaft tunnels	Escape-ladder from shaft tunnel	Total capacity	Deduction allowed
E	802.54	—	89.62	0.47	892.63	2,054.21
P	799.36	152.09	89.62	0.47	1,041.54	2,561.44

Actual machinery space.

		Engineer's stores	Dynamoes	Bilge pumps	Ballast pumps
E	Included	—	—	0.35	0.55
	Excluded	10.15	1.84	—	—
P	Included	10.15	—	—	—
	Excluded	—	1.84	0.35	0.55

Details navigation spaces. Note: Prop. rules max. allowance, W.B. 750 tons, including double-bottom (619.51 tons).

	Chain locker	Chart-room	Signal locker	Boatswain's stores	Wireless	Pumps	W. B. in peaks	W. B. other tanks
E	—	9.52	1.98	55.36	6.08	—	86.18	481.02
P	15.34	9.52	1.98	60.54 (paint-room)	6.08	0.90	130.49 (see note)	—

Details Master's and crew spaces.

1. Master's space:

	Sleeping and living-room	Bathroom
E	10.12	2.53
P	10.12	2.53

2. Crew space:

	Chief Engin. room	Chief Officer's room	Other Officers' spaces	Crew spaces	Messrooms (Officers & engineers)	Messrooms (seamen & firemen)	Bath-rooms	Wash-places	Pantries	Hospital
E	8.09	7.64	60.59	55.87	19.45	25.95	4.65	6.30	—	5.21
P	8.09	7.64	60.59	55.87	19.45	25.95	4.65	6.30	5.55	5.21

C. FOUR GERMAN VESSELS.

1. PASSENGER AND CARGO MOTOR VESSEL.

Registered Dimensions: 139,76 × 18,57 × 10,40 metres.

Gross Tonnage (cubic metres).

	Under-deck	'Tween-decks	Forecastle	Houses, etc.	Hatchways	Total
E	16.099,116	5.471,202	215,699	5.561,187	17,630	27.364,83
P	16.099,116	5.471,202	215,699	6.075,300	15,100	27.876,41

Special note: Difference in capacity of superstructures due to modification in rule req to top of deck beams.

Deductions (cubic metres).

	Machinery space	Navigation spaces	Master's and crew spaces, incl. access to deducted space	Total	Net tonnage
E	8.756,747	580,109	2.510,430	11.847,286	15.517,548
P	8.920,453	614,358	2.232,057	11.766,867	16.109,550

Special note: Difference in deduction allowed for Master's and crew spaces due to new rule deducted spaces which allows for passage-ways only in case they serve excl Master's and crew spaces, deduction of parts of passage-ways not being pe

Details navigation spaces (cubic metres).

	Helmhouse, chartroom, etc.	Boatswain's stores	Water ballast
E	223,751	137,205	279,153
P	258,000	137,205	219,153

Details Master's and crew spaces (cubic metres).

	Master's space	Officers' spaces	Crew spaces
E	67,085	882,375	1.560,970
P	67,085	729,555	1.435,416

3. STEAMER.

Registered dimensions: 149.58 x 18.97 x 9.84 metres.

Gross Tonnage (cubic metres).

	Under-deck	Fore-castle	Bridge-house	Poop	Round houses	Hatch-ways	Total	Gross tonnage (registered tons)
E	22.013,8	146,5	242,3	266,7	1.070,2	198,0	23.957,5	8.457,00
P	22.013,8	146,5	242,3	266,7	1.070,2	198,0	23.957,5	8.457,00

- Special notes:*
- Under-deck tonnage measured in seven parts, on account of difference in level of double bottom.
 - Capacity double-bottom—fuel, cargo, stores: 144 cubic metres.
 - Capacity double-bottom—water-ballast: 1.342,5 cubic metres.
 - Exempted bridge-house: 3.108,7 cubic metres.
 - Closed-in spaces in exempted bridge-house: 242,3 cubic metres.
 - Exempted fore-part of poop: 454,9 cubic metres.

Deductions (cubic metres).

	Machinery space	Navigation space	Master's and crew space	Access to deducted space	Total	Net tonnage	Net tonnage (registered tons)
E	7.666,5	466,3	1.001,1	111,3	9.245,2	14.712,3	5.193,44
P	7.666,5	507,3	1.001,1	57,3	9.232,2	14.715,3	5.198,09

Details machinery space (cubic metres).

	Machinery upper-deck	Shaft tunnels	Escape-ladders from shaft tunnel	Total capacity	Deduction allowed
E	3.527,1	317,5	2,9	3.847,5	7.666,5
P	3.587,0	317,5	2,9	3.907,4	7.666,5

Actual machinery space (cubic metres).

		Engineer's stores	Dynamos
E	Included	—	—
	Excluded	73,3	36,0
P	Included	59,9 ¹	—
	Excluded	13,4	36,0

¹ Included up to 1/4 per cent of gross tonnage. According to rule finally proposed, the Engineer's stores may be included in the machinery space up to 1/4 per cent of gross tonnage.

Details navigation spaces (cubic metres).

	Chain locker	Chart-room	Electric search-lights	Awnings-room	Signal lockers	Boatswain's store	Wireless	W. B. in peaks
E	—	27,3	19,0	7,6	14,8	180,9	14,6	202,1
P	41,0	27,3	19,0	7,6	14,8	180,9	14,6	202,1

Details Master's and crew spaces.

1. Master's space:

	Sleeping-room	Living-room	Bath-room
E	13,9	24,0	10,2
P	13,9	24,0	10,2

2. Crew spaces:

	Chief Eng. sleep-room and bath-room	Chief Officer's sleep-room	Other Officers' spaces	Crew spaces	Officers' mess-room	Officers' bath-room	Officers' wash places	Bath-rooms and wash-places	Over-all-rooms or lockers	Pantries	Hospital
E	47,6	24,7	211,0	459,0	43,1	29,0	20,3	53,5	2,3	23,8	197,7
P	47,6	24,7	211,0	459,0	43,1	29,0	20,3	53,5	2,3	23,8	197,7

3. MOTOR-VESSEL.

Registered dimensions: 93,43 × 14,58 × 7,16 metres.

Gross Tonnage (cubic metres).

	Under-deck	Fore-castle	Bridge house	Poop	Round-houses	Hatch-ways	Total	Gross tonnage (registered tons)
E	7.734,4	83,5	449,1	172,8	571,0	92,7	9.113,5	3.217,08
P	7.734,4	83,5	449,1	172,8	571,0	92,7	9.113,5	3.217,08

- Special notes:*
- Under-deck tonnage is measured in seven parts, on account of difference in level of double bottom.
 - Capacity double-bottom — fuel, cargo, stores: 51,6 cubic metres.
 - Capacity double-bottom — water-ballast: 623,2 cubic metres.
 - Exempted part bridge-house: 373,5 cubic metres.

Deductions (cubic metres).

	Machinery space	Navigation space	Master's and crew space	Access to deducted sp.	Total	Net tonnage	Net tonnage (registered tons)
E	2.916,3	237,3	398,6	96,3	3.648,5	5.465,0	1.929,16
P	2.916,3	261,1	398,6	25,3	3.591,3	5.522,2	1.949,34

Details machinery space (cubic metres).

	Under upper-deck	Above upper-deck	Shaft tunnels	Escape-ladders from shaft tunnel	Total capacity	Deduction allowed
E	1.181,2	—	93,5	2,0	1.277,2	2.916,3
P	1.196,8	22,8 ¹	93,5	2,0	1.315,1	2.916,3

¹ 1/4 per cent of gross tonnage for workshop.

Actual machinery space (cubic metres).

		Engineers' stores ¹	Engineers' workshop ¹	Dynamos	Pumps (lubricating oil)	Tanks (lubricating oil)	Steam and electrical compressors	Ballast pumps
E	Included	—	—	140,4	3,4	—	46,8	16,2
	Excluded	86,9	26,9	—	—	16,9	—	—
P	Included	—	22,8	140,4	3,4	—	46,8	—
	Excluded	86,9	4,1	—	—	16,9	—	16,2

¹ Calculated for proposed rules with deduction for stores and workshops up to 1/4 per cent of gross tonnage

Details navigation spaces.

	Steering gear	Chain lockers	Chart-room	Signal lockers	Boatswain's store	Wireless	W.B. in peaks
E	35,4	—	20,5	7,4	78,5	9,0	86,5
P	35,4	13,8	20,5	7,4	78,5	9,0	86,5

Details Master's and crew spaces (cubic metres).

1. Master's space:

	Sleeping-room	Living-room
E	10,6	23,4
P	10,6	23,4

2. Crew space:

	Ch. Engineer sleep.-room	Ch. Officer's sleep.-room	Other Off. & Eng. spac.	Crew spaces	Engineer's Messroom	Bathrooms & washplaces	Pantries
E	19,7	18,9	91,7	181,8	18,0	26,0	8,5
P	19,7	18,9	91,7	181,8	18,0	26,0	8,5

4. SMALL CARGO STEAMER.

Registered dimensions : 225.7 X 35.1 X 12.9 feet.

Gross Tonnage.

	Under-deck	Forecastle	Bridge-house	Raised deck	Round-houses	Hatchways	Total
E	847.90	10.84	102.06 ¹	78.44	34.27	36.19	1,109.67
P	847.90	10.84	101.59 ²	78.88	34.27	36.19	1,100.67

¹ Less light and air spaces.

² Less light and air spaces and part of steering gear.

Special notes: 1. Under-deck tonnage measured in *one* part. Space beneath the base-line is measured separately.

2. Capacity double-bottom — fuel, cargo, stores (iced water): 7.74 tons.

3. Capacity double-bottom — water-ballast: 77.34 tons.

4. Exempted part forecastle: 17.84 tons.

Deductions.

	Machinery space	Navigation space	Master's and crew space	Access to ducted spaces	Total	Net tonnage
E	355.09	37.90	95.54	2.24	490.87	618.80
P	355.09	42.59	99.91	2.24	499.83	609.84

Details machinery space.

	Under upper-deck	Shaft tunnels	Total capacity	Deduction allowed
E	131.39	26.03	157.42	355.09
P	128.68	26.03	154.71	355.09

Actual machinery space.

		Engineers' stores	Dynamoes	Tanks for lubricating oil	Ballast pumps
E	Included	—	—	1.00	0.50
	Excluded	1.18	0.40	—	—
P	Included	1.18	—	—	—
	Excluded	—	0.40	1.00	0.50

Details navigation spaces.

	Steering-engine	Chain lockers	Chartroom	Signal lockers	Boatswain's stores	Pumps	W. B. in peaks
E	0.47	—	1.65	1.63	16.65	—	17.60
P	0 (exempted)	4.48	1.65	1.63	16.73	0.50	17.60

Details Master's and crew spaces.

1. Master's space:

	Sleeping-room	Living-room	Bathroom and W. C.
E	5.67	8.53	3.48
P	5.67	8.53	3.48

3. Crew space:

	Chief Engin. sl.-room	Chief Officer's sl.-room	Other Officers' spaces	Crew spaces	Mess-room (Officers)	Messrooms (firemen and seamen)	Wash-places	Pantries	Hospital
E	4.46	4.46	12.39	29.66	5.50	14.88	2.74	—	3.77
P	4.46	4.46	12.39	29.66	5.50	14.88	2.74	4.37	3.77

D. FIVE NORWEGIAN VESSELS.

1. LINER.

Registered dimensions: 532,2 x 64,2 x 29,5 feet.

Gross Tonnage (registered tons).

	Under-deck	'Tween-deck	Fore-castle	Bridge-house	Round-houses	Side-houses	Hatchways	Total
E	7.531,05	2.299,89	1.383,05	135,63	1.797,68	8,82	—	13.156,12
P	7.531,05	2.272,60	1.427,34	135,63	1.783,50	8,82	—	13.158,94

Special notes: 1. In the existing certificate all engine casings have been exempted. This explains differences in forecastle space.

Deductions.

	Machinery space	Navigation spaces	Master's and crew spaces	Access to deducted spaces	Total	Net tonnage
E	4.209,96	269,07	940,68	39,29	5.463,00	7.693,12
P	4.210,86	307,99	891,69	39,29	5.449,83	7.709,11

Details machinery space.

	Under upper-deck	Shaft tunnels	Escape-ladder from shaft tunnel	Total capacity	Deduction allowed
E	1.849,05	172,25	0,64	2.021,94	4.209,92
P	1.857,74	172,25	0,64	2.030,63	4.210,86

Actual machinery space.

	Eng. stores	Eng. workshops	Dyna-mos	Ash ejectors	Auxiliary condensing plant	Fire-extinguishing plant	Refrigerating engines, etc.	Pumps (lubricating oil)	Sanitary pumps	Bilge pumps	Ballast pumps
E	Included —	—	—	2,49	1,28	—	—	1,65	1,20	1,20	1,68
	Excluded 36,80	25,07	11,88	—	—	3,36	9,28	—	—	—	—
P	Included 32,97	—	—	2,49	—	—	—	—	—	—	—
	Excluded 3,83	25,07	11,88	—	1,28	3,36	9,28	1,65	1,20	1,20	1,68

Details navigation spaces.

	Steam steering-gear	Chain lockers	Chart-room	Signal lockers	Boatswain's stores	Wireless	Water ballast
E	51,51	—	9,06	4,41	62,23	4,96	136,90
P	51,51	26,78	9,06	4,41	74,37	4,96	136,90

Details Master's and crew spaces.

1. Master's space:

	Sleeping-room	Living-room	Bath-room
E	8,01	11,78	2,87
P	8,01	11,78	2,87

2. Crew space:

	Ch. Eng. sleep-room and living room	Chief Officer sleep-room	Ch. Of. living-room (office)	Other Officers' spaces	Messroom (Officers, engineers, petty officers)	Mess-room (crew)	Crew space	W.C's, urinals, etc.	Bath-rooms	Wash-places	Pantries	Hospital
E	13,36	8,05	3,44	148,17	26,84	57,89	511,86	73,16	31,33	32,16	—	11,76
P	13,36	8,05	—	148,17	26,84	57,89	511,86	16,41	31,33	32,16	11,20	—

2. MOTOR OIL-TANKER.

Registered dimensions: 411.2 × 56.2 × 32.4 feet.

Gross Tonnage.

	Under-deck	Fore-castle	Bridge-house	Poop	Trunk	Round-houses	Light and air space	Total
E	5.695,66	12,70	76,38	417,98 ¹	272,85	196,92	—	6.672,49
P	5.695,66	12,70	76,38	249,60	272,85	196,92	66,31	6.570,42

¹ According to existing Norwegian rule, light and air spaces are included.

Special notes: 1. Under-deck tonnage measured in one part. Double-bottom above base-line measured separately.

2. Capacity double-bottom — fuel, cargo, stores (feed water): 83,38 tons.

3. Exempted fore-castle: 40,37 tons.

4. Exempted bridge-house: 46,46 tons.

Deductions.

	Machinery space	Navigation spaces	Master's and crew space	Access to deducted space	Total	Net tonnage
E	2.135,20	359,39	255,83	15,25	2.765,67	3.906,82
P	2.102,53	331,04	256,54	0,02	2.691,03	3.882,20

Details machinery space.

	Under upper-deck	Above upper-deck	Total capacity	Deduction allowed
E	786,58	95,49	882,07	2.135,20
P	789,76	66,31	856,07	2.102,53

Actual machinery space.

		Engineers' stores	Engineers' workshop	Settling tanks for fuel oil	Dynamos	Donkey boiler	Refrigerating engines; ventilating, heating, etc.	Tanks for lubricating oil
E	Included	—	—	—	—	included	—	—
	Excluded	25,09	20,64	8,94 ²	1,50	—	1,62	2,00
P	Included	16,29 ¹	—	—	—	one included	—	—
	Excluded	29,44	—	6,77	1,50	2,50	1,62	2,00

¹ Up to 1/4 per cent of gross tonnage. ² One in poop.

Details navigation spaces

	Spaces for working of helm, etc.	Chain lockers	Chart-room	Signal lockers	Boat-swain's stores	Wireless	Donkey boiler	Pumping installation	W. H. in peaks	W. B. in coffer-dams
E	44,20	—	9,63	9,55	66,72	4,41	—	48,48	29,07	147,33
P	(exempted)	10,04	9,63	9,55	65,84	4,41	2,50	52,67	29,07	147,33

Details Master's and crew spaces.

1. Master's space: Sleeping-room, Living-room, Bathroom.

2. Crew space:

	Ch. Eng. sl.-room, liv.-room and office	Ch. Officer's sl.-room	Ch. Officer's office	Other Officers' spaces	Crew spaces	Mess-rooms (Officers and engineers)	Mess-rooms (motor-men and assistants)	Mess-room (seamen)	W.C's	Bath-rooms	Wash places	Over-all-rooms or lockers	Pantries	Hospital
E	12,45	9,55	4,07	27,13	101,42	24,42	9,11	10,26	6,49	9,22	7,45	7,73	—	5,10
P	12,45	9,55	—	27,13	101,42	24,42	9,11	10,26	0 ¹	9,22	7,45	7,73	11,27	5,10

¹ Now exempted.

3. CARGO AND PASSENGER MOTOR-SHIP.

Registered dimensions: 435.9 × 56.2 × 27.6 feet.

Gross Tonnage.

	Under-deck	'Tween-deck	Forecastle	Poop	Round-houses	Total
E	5,223.98	158.47	32.33	132.03	298.55	5,845.36
P	5,223.98	119.31	32.33	122.68	298.55	5,796.85

- Special notes:*
1. Under-deck tonnage measured in *one* part.
 2. Capacity double-bottom — fuel, cargo, stores :
 3. Capacity double-bottom — water-ballast :
 4. Exempted shelter-deck space : 1,287.86 tons.
 5. Exempted well : 19.03 tons.
 6. Exempted part forecastle : 48.24 tons.
- } 479.33 tons.

Deductions.

	Machinery space	Navigation space	Master's and crew space	Access to deducted space	Total	Net tonnage
E	1,870.52	159.81	216.38	15.71	2,262.42	3,582.94
P	1,854.99	148.71	211.60	15.71	2,231.01	3,565.84

Details machinery space.

	Under upper-deck	Shaft tunnels	Total capacity	Deduction allowed
E	778.06	131.60	909.66	1,870.52
P	778.16	131.60	909.76	1,854.99

Actual machinery space.

		Engineers' stores	Settling tank fuel oil	Dynamos	Refrigerating engines, ventilation, heating, etc.	Tanks for lubricating oil	Sanitary, bilge and ballast pumps
E	Included	—	—	—	—	4.00	2.00
	Excluded	27.96	4.68	0.30	0.55	—	—
P	Included	14.54	—	—	—	—	—
	Excluded	13.42	4.68	0.20	0.55	4.00	2.00

Details navigation spaces.

	Spaces for working of helm, etc.	Chain locker	Chart-room	Signal locker	Boat-swain's stores	Wireless	Pumps	W.B. in peaks
E	27.39	—	9.68	3.64	44.75	4.14	—	70.21
P	(exempted)	6.85	9.68	3.64	52.69	4.14	1.50	70.21

Details Master's and crew spaces.

1. Master's space:

	Sleeping-room	Living-room	Bathroom and W.C.
E	8.48	7.35	3.47
P	8.48	7.35	3.47

2. Crew space:

	Chief Eng. sleep-room	Chief Officer's sleep-room	Chief Officer's office	Other Officers' spaces	Crew spaces	Mess-room (Officers and Eng.)	Mess-rooms (seamen & motor-men)	W. C.'s	Bath-rooms	Wash-places	Overall rooms or lockers	Pantries	Hospital
E	10.11	10.00	4.71	27.33	98.29	9.18	15.39	2.18	3.11	6.95	3.10	—	6.73
P	10.11	10.00	—	27.33	98.29	9.18	15.39	0.1	3.11	6.95	3.10	2.11	6.73

1 Exempted.

4. SCREW STEAMER.

Registered dimensions: 103.24 × 14.45 × 7.98 metres.

Gross Tonnage (cubic metres).

	Under-deck	Fore-castle	Bridge-house	Poop	Round-houses	Hatch-ways	Total	Gross tonnage (registered tons)
E	9.455.5	245.6	313.6	218.2	800.1	228.7	11.261.6	3.975.34
P	9.455.5	245.6	313.6	235.0 (by plain-meter)	800.1	228.7	11.278.5	3.981.31

- Special notes:*
- Under-deck tonnage measured in seven parts, on account of difference in level of double-bottom.
 - Capacity double-bottom—fuel, cargo, stores: 186 cubic metres.
 - Capacity double-bottom—water-ballast: 535 cubic metres.
 - Exempted part bridge-house: 559 cubic metres.

Deductions (cubic metres).

	Machinery space	Navigation space	Master's and crew space	Access to deducted space	Total	Net tonnage	Net tonnage (registered tons)
E	3.603.7	1.279.9	551.2	100.6	5.538.4	5.723.2	2.020.28
P	3.609.1	846.6	551.2	35.8	5.042.7	6.235.8	2.201.24

Note: Difference in deduction for navigation spaces mainly due to modification in rule concerning deduction for water-ballast spaces.

Details machinery space (cubic metres).

	Under upper-deck	Shaft tunnels	Total capacity	Deduction allowed
E	1.615.6	198.1	1.813.7	3.603.7
P	1.643.8	198.1	1.841	3.609.1

Actual machinery space (cubic metres).

		Engineer's stores
E	Included	—
	Excluded	44.9
P	Included	28.2 ¹
	Excluded	16.7

¹ Included up to 1/4 per cent of gross tonnage.

Details navigation spaces (cubic metres).

	Chain lockers	Chartroom	Boatswain's store	Wireless	W. B. in peaks	W. B. other tanks	W. B. two tanks below T. D.
E	—	22.4	87.8	9.5	229.8	313.6	619.8
P	15.4	22.4	87.8	9.5	Maximum 711.5 (440 registered tons)		

Details Master's and crew spaces.

1. Master's space (cubic metres):

	Sleeping-room	Living-room	Bath-room
E	10.4	16.5	8.8
P	10.4	16.5	8.8

2. Crew space (cubic metres):

	Chief Engin. st.-room	Chief Officer's st.-room	Other Officers' and Eng. spaces	Crew spaces	Mess-room (Officers)	Bath-rooms (Officers)	Bath-rooms and wash-places	Pantries	Hospital
E	22.9	23.5	131.4	240.4	30.2	15.2	27.0	8.9	16.0
P	22.9	23.5	131.4	240.4	30.2	15.2	27.0	8.9	16.0

5. ISLAND CARGO MOTOR-SHIP.

Registered dimensions: 368,5 × 53,7 × 24,9 feet.

Gross Tonnage.

	Under-deck	Fore-castle	Bridge-house	Poop	Round-houses	Hatch-ways	Light and air space	Total
E	3,989,78	20,21	30,90	115,87	192,92	34,15	52,10	4,435,93
P	3,989,78	20,21	30,90	87,60	192,92	34,15	49,89	4,405,45

- Special notes:*
- Under-deck tonnage measured in *one* part.
 - Capacity double-bottom — fuel, cargo, stores : } 378,38 tons.
 - Capacity double-bottom — water-ballast: }
 - Exempted part fore-castle: 71,22 tons.
 - Exempted part bridge-house: 500,89 tons.

Deductions.

	Machinery space	Navigation spaces	Master's and crew spaces	Access to deducted spaces	Total	Net tonnage
E	1,419,50	160,38	171,85	20,05	1,771,78	2,664,15
P	1,409,74	146,97	176,61	11,86	1,745,18	2,660,27

Details machinery space.

	Under upper-deck	Above upper-deck	Shaft tunnels	Total capacity	Deduction allowed
E	463,35	52,10	64,03	579,58	1,419,50
P	461,70	49,89	64,03	575,62	1,409,74

Actual machinery space.

		Engineers' stores	Dynamos	Refrigerating eng., ventilation, heating, etc.	Pumps for lubricating oil	Sanitary, bilge and ballast pumps
E	Included	—	—	—	—	2,00
	Excluded	6,99	3,29	1,21	—	—
P	Included	6,99	—	—	—	—
	Excluded	—	3,29	1,21	2,00	2,00

Details navigation spaces.

	Spaces for working of helm, etc.	Chain locker	Chart-room	Signal lockers	Boatswain's stores	Wireless	W.B. in peaks
E	29,31	—	4,13	4,53	21,17	3,72	97,52
P	1,04 (exempted)	11,68	4,13	4,53	24,35	3,72	97,52

Details Master's and crew spaces.

1. Master's space:

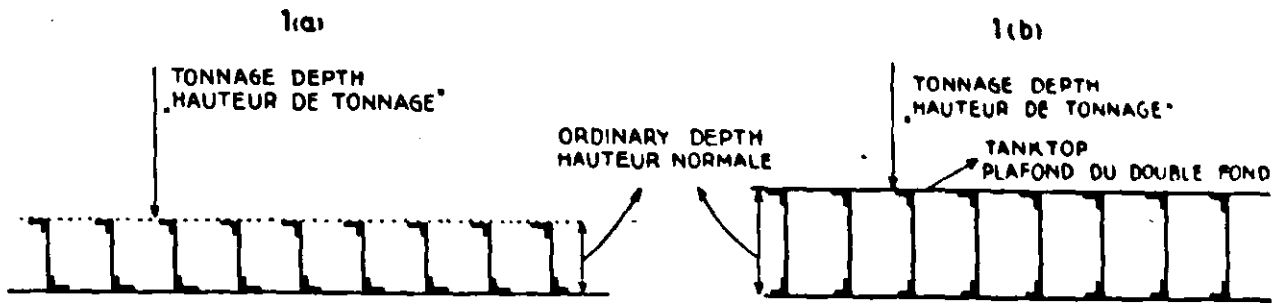
	Sleeping-room	Living-room	Bath-room
E	3,53	6,73	2,64
P	3,53	6,73	2,64

2. Crew space:

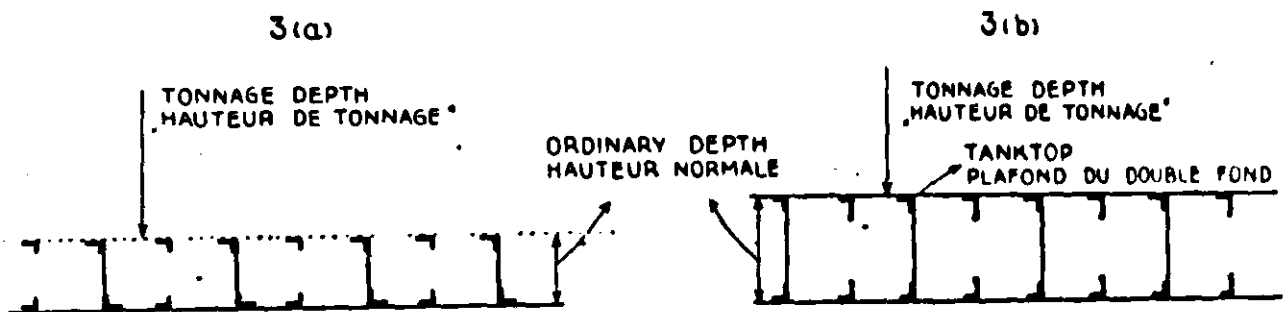
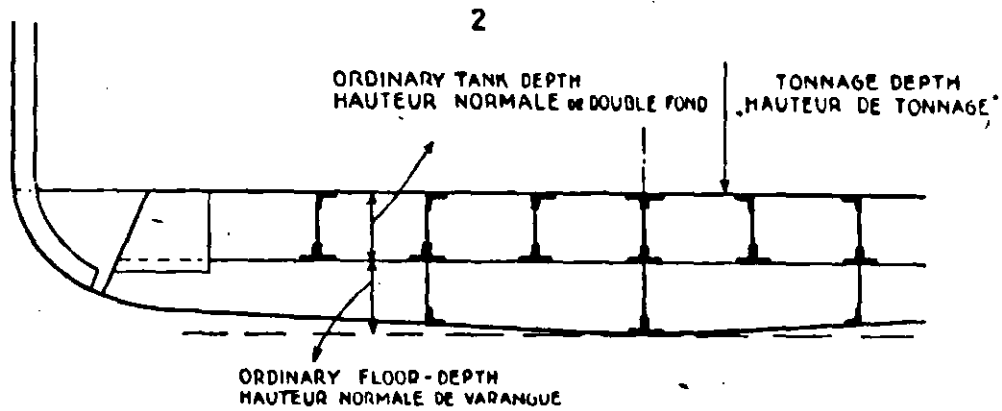
	Chief Eng. sleep-room	Chief Off. sleep-room	Chief Off. office	Other Off. space	Crew space	Mess-rooms (Off. & eng.)	Mess-rooms (seamen and motormen)	Bath-rooms	Wash places	Overall rooms or lockers	Pantries	Hospital
E	6,25	6,18	2,85	20,87	70,29	23,33	14,78	2,93	4,58	2,09	—	4,80
P	6,25	6,18	—	20,87	70,29	23,33	14,78	2,93	4,58	2,09	7,61	4,80

Diagram I
Tableau I

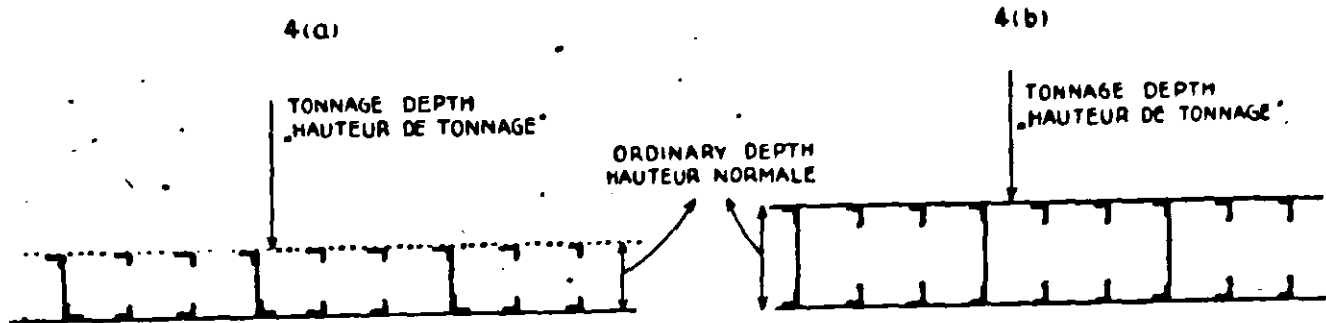
MEASUREMENT OF TONNAGE DEPTH MESURAGE DE LA HAUTEUR DU VOLUME PRINCIPAL (HAUTEUR DE TONNAGE)



SOLID FLOORS ON EVERY FRAME.
VARANGUES PLEINES A CHAQUE MEMBRURE.



SOLID FLOORS ON EVERY SECOND FRAME, SKELETON FLOORS ON INTERMEDIATE FRAMES.
VARANGUES PLEINES A CHAQUE DEUXIEME MEMBRURE, VARANGUES CADRES AUX MEMBRURES INTERMÉDIAIRES.



SOLID FLOORS ON EVERY THIRD FRAME, SKELETON FLOORS ON INTERMEDIATE FRAMES.
VARANGUES PLEINES A CHAQUE TROISIEME MEMBRURE, VARANGUES CADRES AUX MEMBRURES INTERMÉDIAIRES.

Diagram
Tableau II

**METHOD OF MEASUREMENT IN CASE OF DIFFERENT DEPTH OF FLOOR
MÉTHODE DE MESURAGE DANS LE CAS DE VARANGUES DE HAUTEUR DIFFÉRENTE**

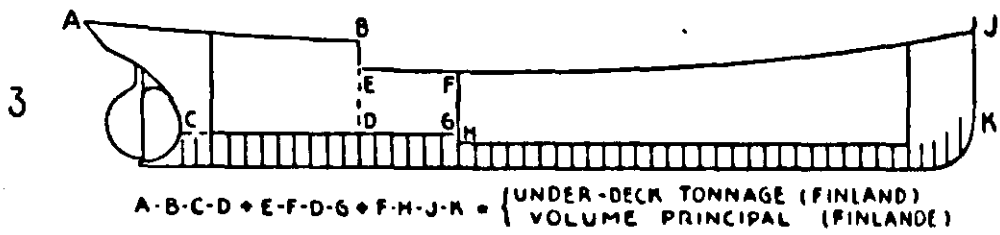
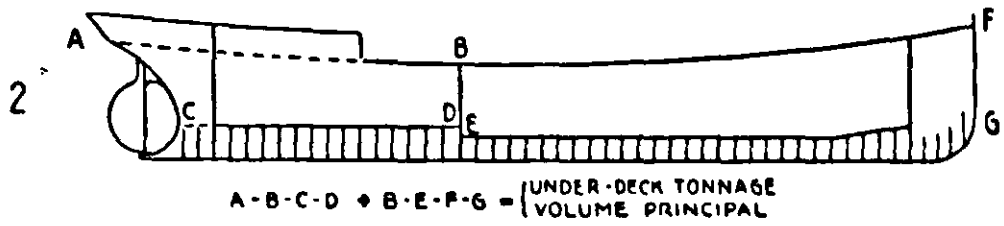
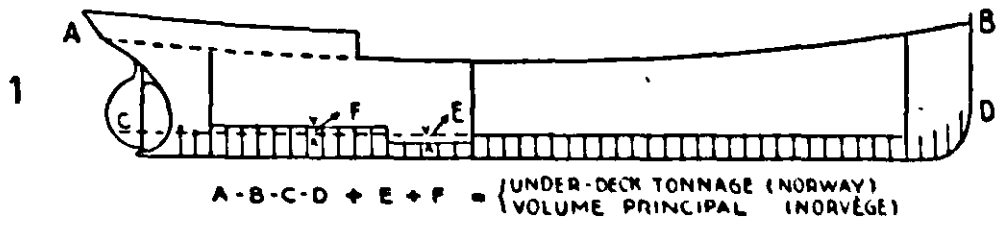


Diagram
Tableau III

**TONNAGE DEPTH IN CASE OF NON-HORIZONTAL DOUBLE BOTTOM
HAUTEUR DE TONNAGE DANS LE CAS D'UN DOUBLE FOND NON-HORIZONTAL**

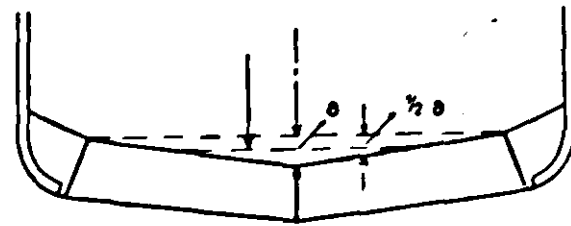
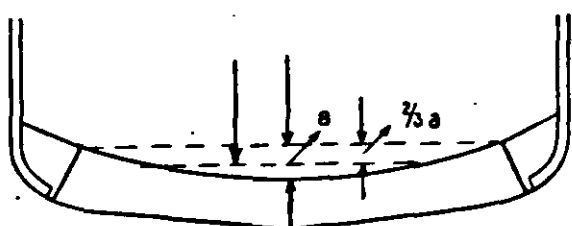
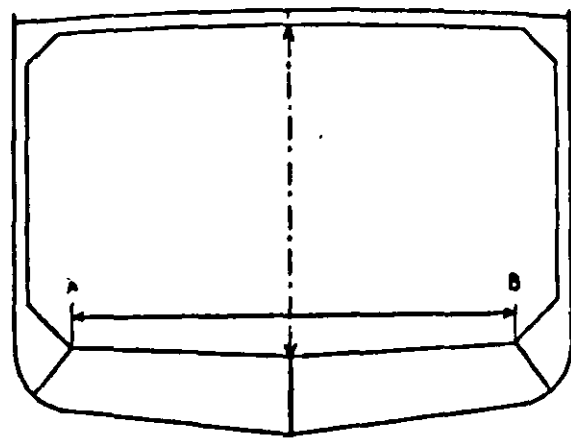
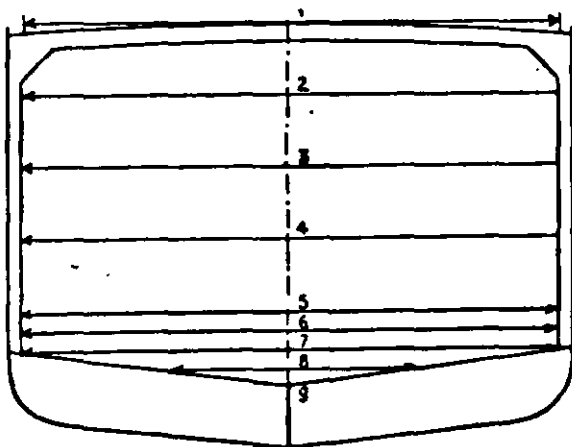
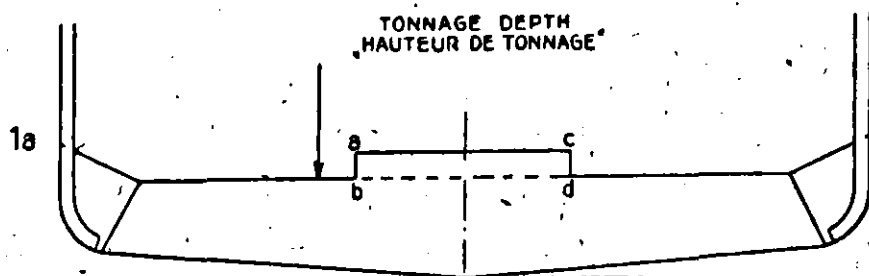
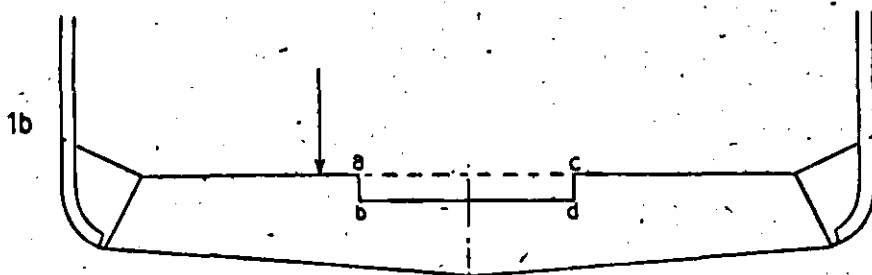


Diagram
Tableau IV

DIFFERENCE IN DEPTH OF DOUBLE BOTTOM IN THE TRANSVERSE DIRECTION
DIFFERENCE DE HAUTEUR DU DOUBLE FOND DANS LE SENS TRANSVERSAL



AS THE CASE MAY BE PART a, b, c, d, IS TO BE ADDED TO OR DEDUCTED FROM THE UNDER-DECK TONNAGE CALCULATED ACCORDING TO THE ORDINARY METHOD.



LE VOLUME a, b, c, d, DOIT ÊTRE SELON LE CAS AJOUTÉE AU OU DEDUIT DU VOLUME PRINCIPAL, CALCULÉ D'APRÈS LA MÉTHODE HABITUELLE.

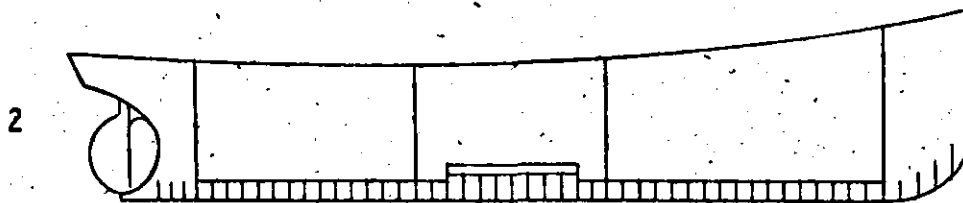
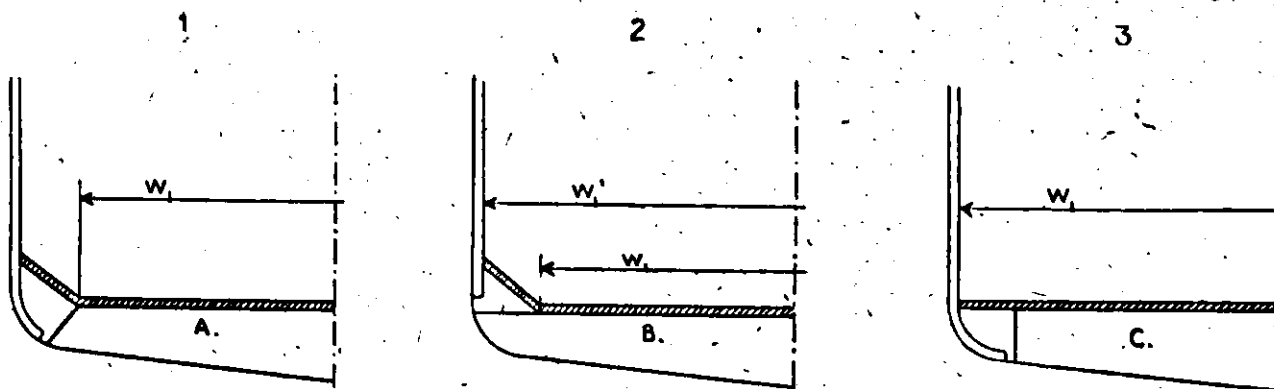


Diagram
Tableau V

LOWEST BREADTH
LARGEUR DU FOND



w_1' { IN CASE THERE IS NO CEILING OVER THE FRAME BRACKETS
DANS LE CAS OÙ IL N'EXISTE PAS DE VAIGRAGE SUR LES GOUSSETS DE MEMBRURE

Diagram
Tableau VI

SPAR - CEILING VAIGRAGE À CLAIRE-VOIE

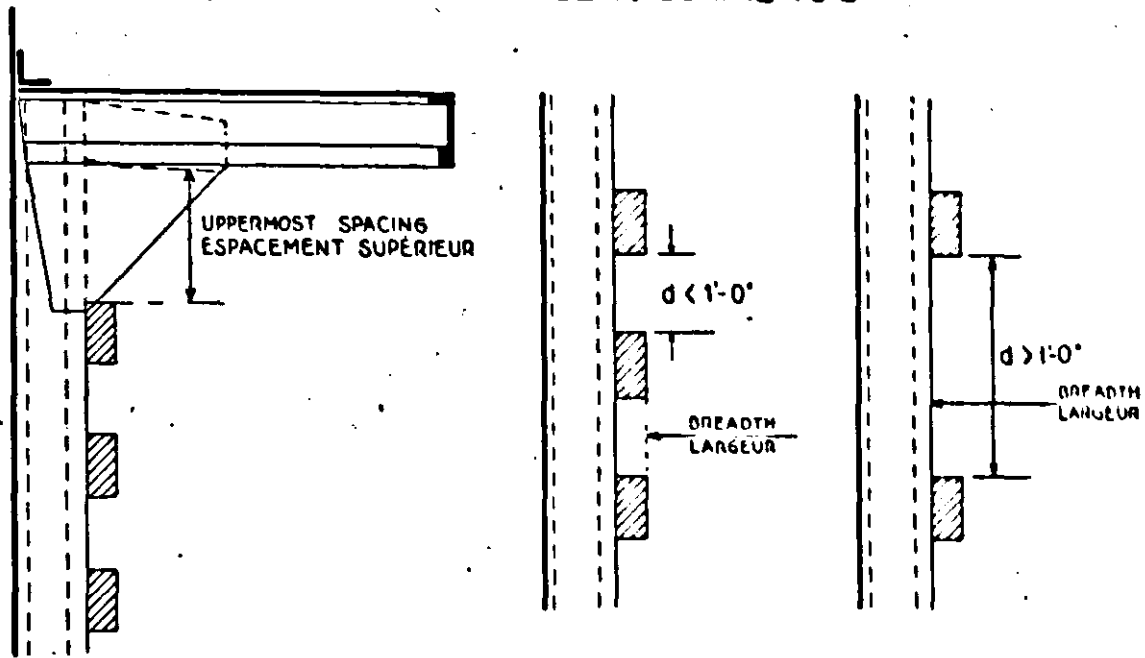


Diagram
Tableau VII

FRAMES OF DIFFERENT HEIGHT MEMBRURES DE HAUTEUR DIFFÉRENTE

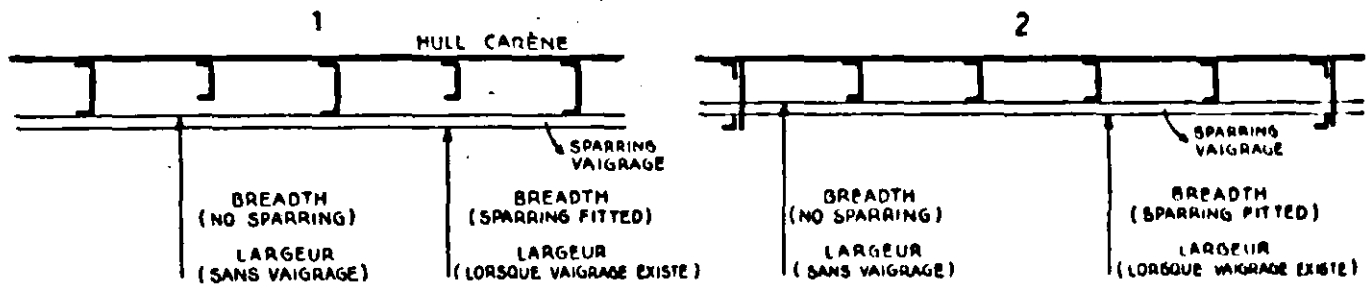


Diagram
Tableau VIII

LONGITUDINAL FRAMING MEMBRURES LONGITUDINALES

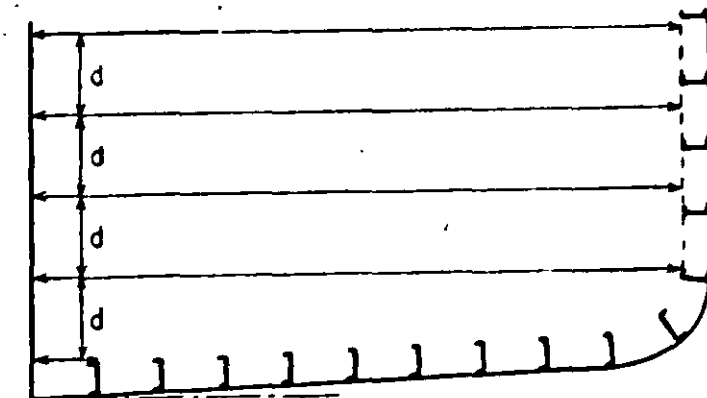
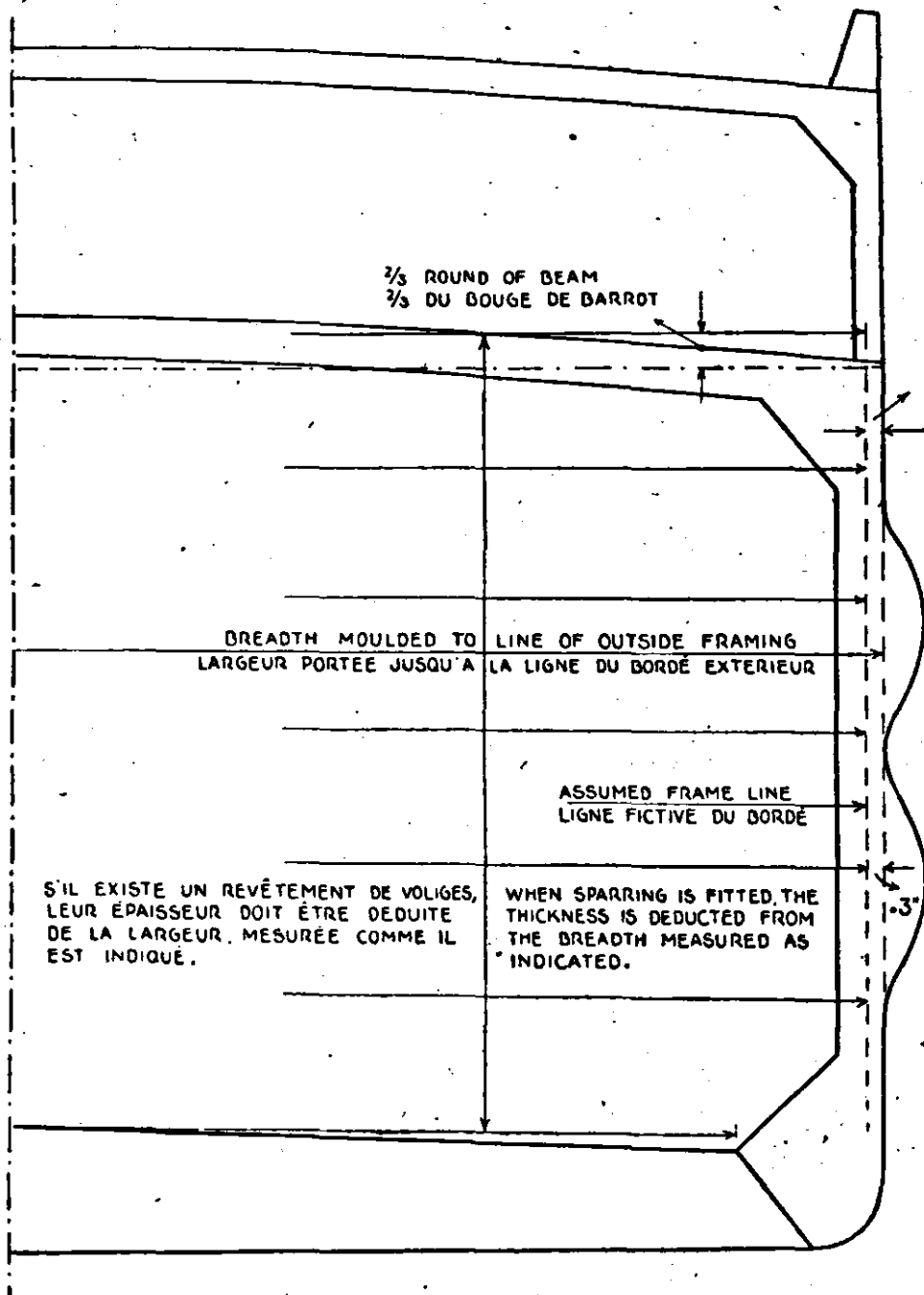


Diagram IX
Tableau IX

MEASUREMENT OF THE UNDER-DECK TONNAGE OF A CORRUGATED SHIP (MONITORIA)
MESURAGE DU VOLUME PRINCIPAL D'UN NAVIRE À CARÈNE ONDULÉE (MONITORIA)



S'IL EXISTE UN REVÊTEMENT DE VOLIGES,
LEUR ÉPAISSEUR DOIT ÊTRE DEDUITE
DE LA LARGEUR MESURÉE COMME IL
EST INDIQUÉ.

WHEN SPARRING IS FITTED, THE
THICKNESS IS DEDUCTED FROM
THE BREADTH MEASURED AS
INDICATED.

Diagram
Tableau X

TWEEN-DECK SPACE. MEASUREMENT OF HEIGHT.
ESPACE D'ENTREPONT. MESURAGE DE LA HAUTEUR.

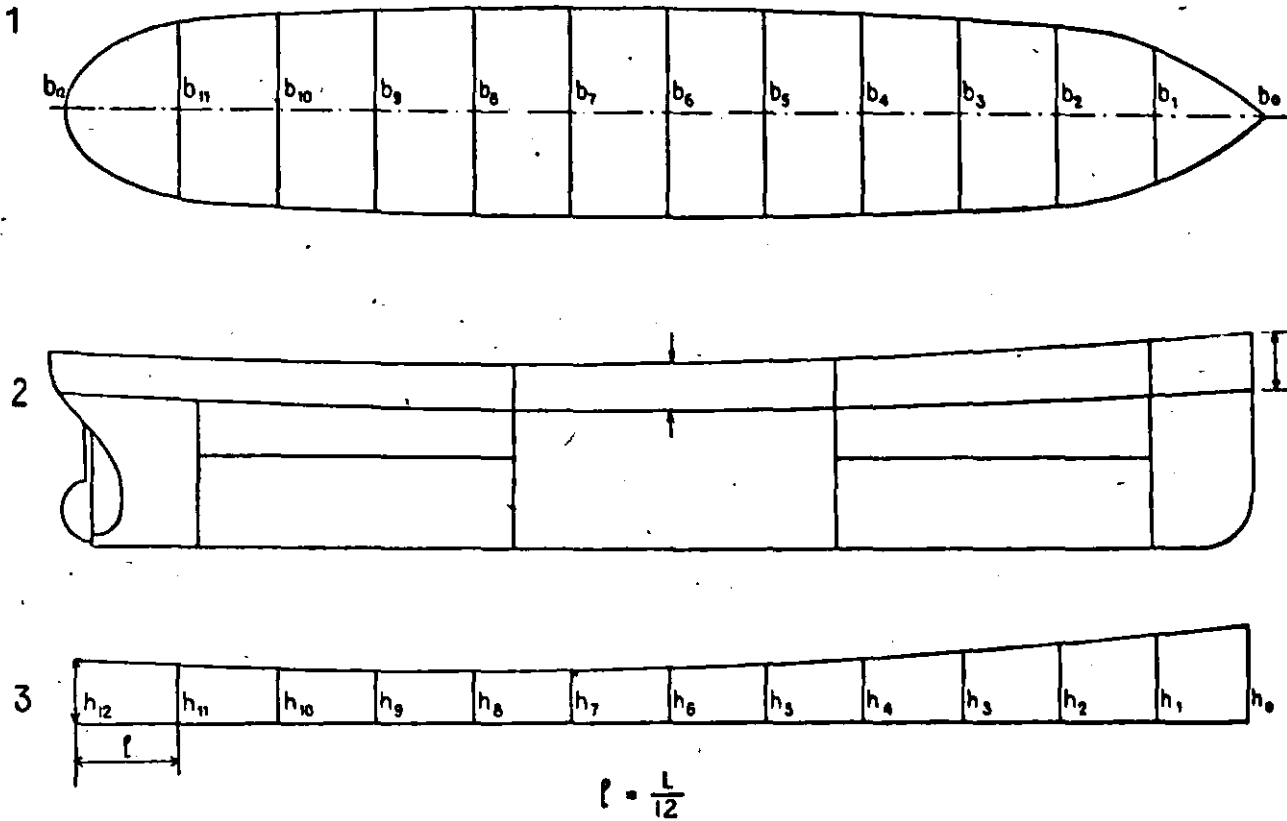
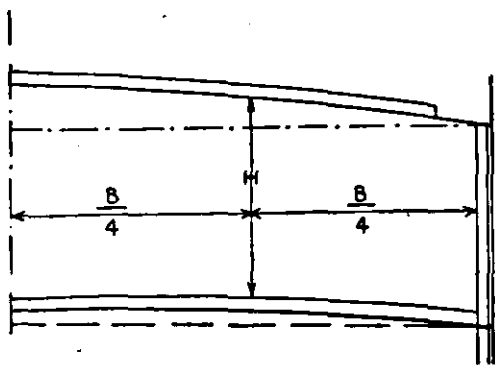


Diagram
Tableau XI

TWEEN-DECK SPACE
ESPACE D'ENTREPONT



PLACE WHERE TO MEASURE THE HEIGHTS
IN CASE OF DIFFERENCE IN THE ROUND OF DECK OF
THE TWO DECKS.

ENDROIT AUQUEL LA HAUTEUR DOIT
ÊTRE MESURÉE DANS LE CAS D'UNE
DIFFÉRENCE DANS LE BOUGE DE BARROT
DES DEUX PONTS.

Diagram
Tableau XII

TWEEN-DECK SPACE. AFTERMOST BREADTH
ESPACE D'ENTREPONT. LARGEUR À L'EXTRÊME
ARRIÈRE.

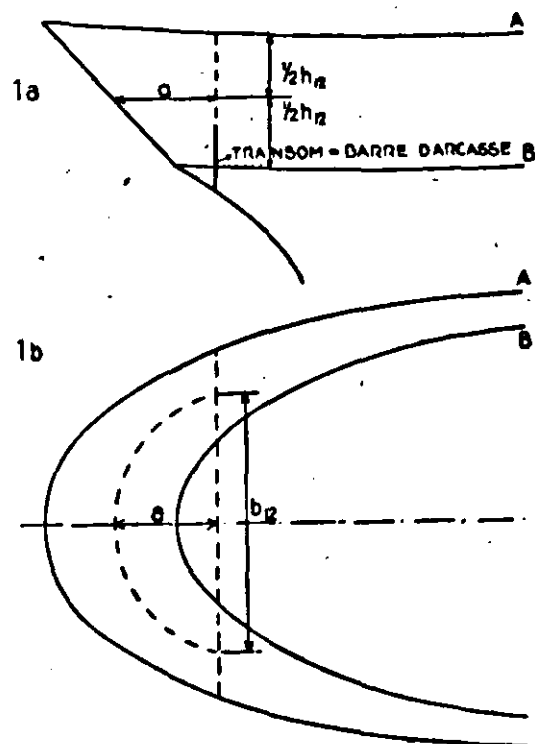
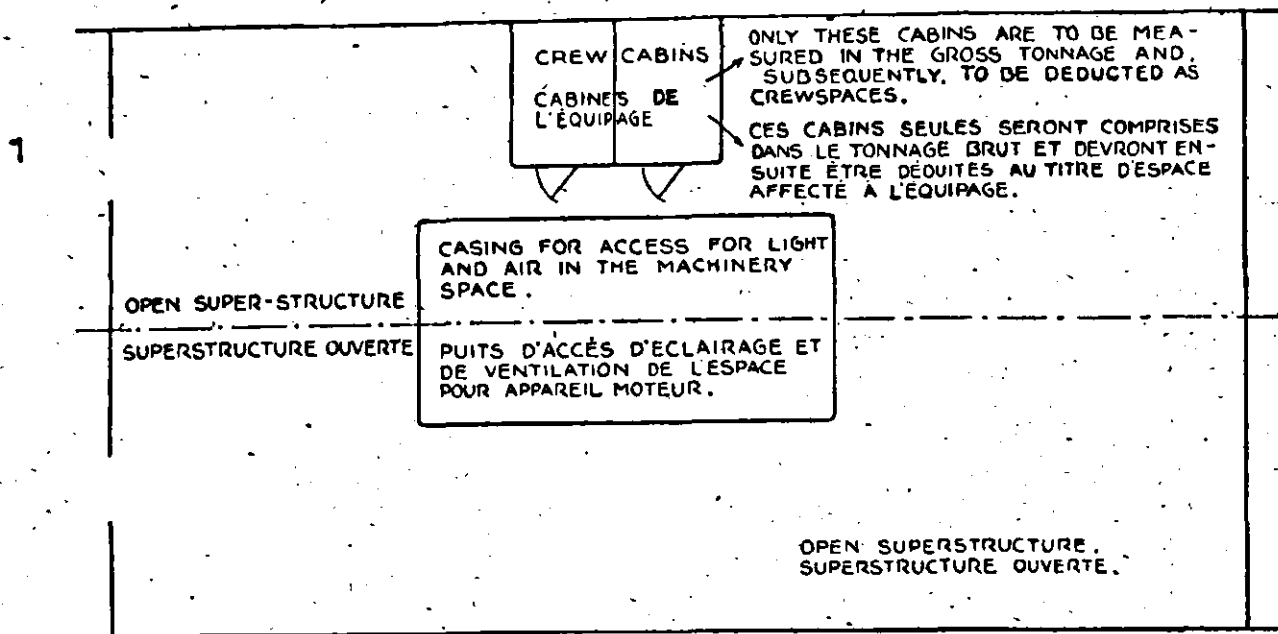


Diagram **XIII**
Tableau

CREW-SPACE IN OPEN SPACE ESPACE AFFECTÉ À L'ÉQUIPAGE DANS UN ESPACE OUVERT



IN THIS CASE THE GANGWAYS AND CREW-SPACES ARE MEASURED IN THE GROSS TONNAGE AND SUBSEQUENTLY DEDUCTED.
DANS CE CAS LES COULOIRS ET LES ESPACES AFFECTÉS À L'ÉQUIPAGE SONT MESURES DANS LE TONNAGE BRUT ET DÉDUITS ENSUITE.

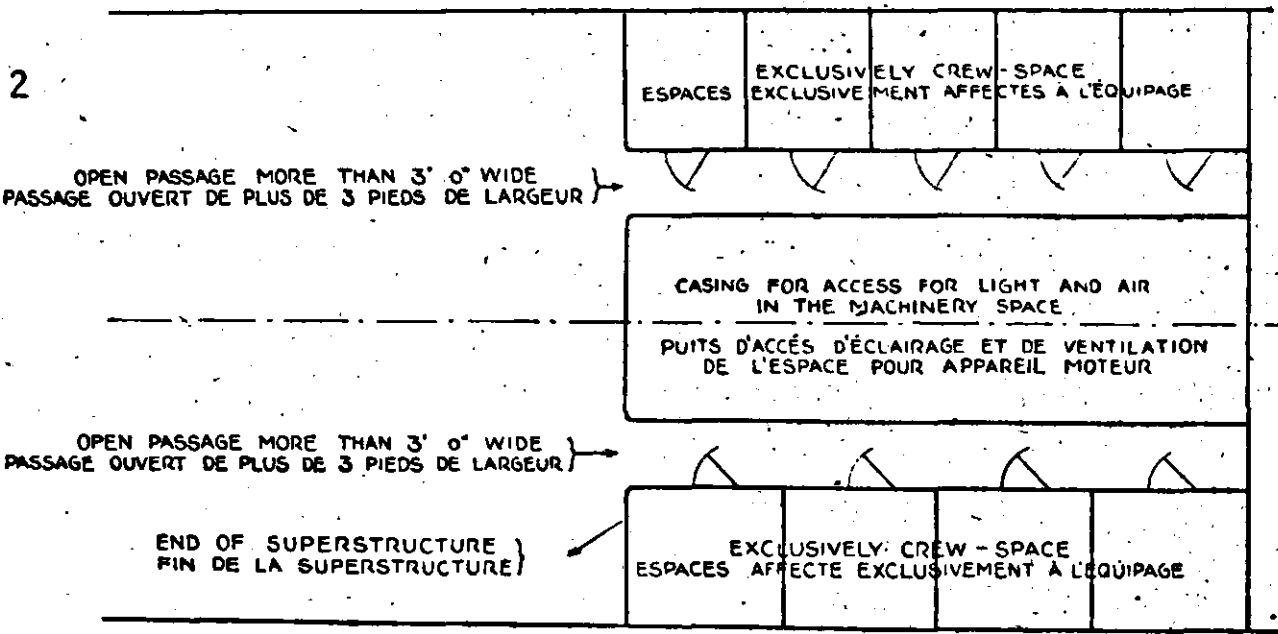


Diagram **XIV**
Tableau

OPEN SPACES ESPACES OUVERTS

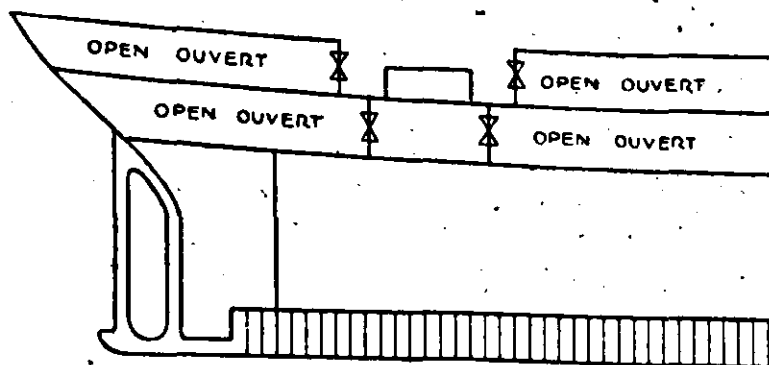
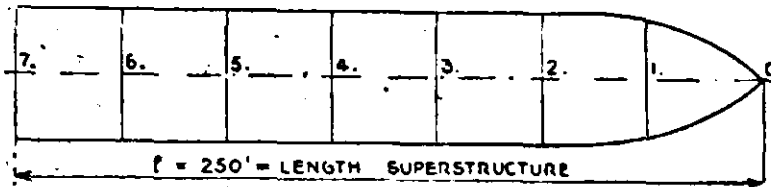


Diagram
Tableau **XV**

LONG FORECASTLE LONG GAILLARD



EXAMPLE OF U.S. PRACTICE: } L=480' P=40' P=250'
 EXEMPLE DE LA PRATIQUE SUIVIE AUX ETATS-UNIS: } 7 > $\frac{250}{40}$ > 6 TAKE
 PRENDRE 7 SECTIONS.

Diagram
Tableau **XVI**

POOP DUNETTE

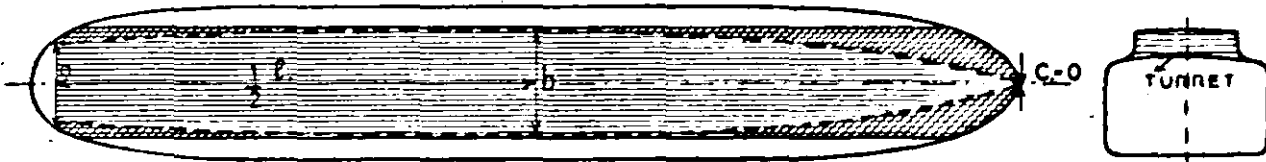


ONE OF THE PROPOSALS MADE AS TO THE MEASUREMENT OF BREADTHS IN A POOP.
 UNE DES PROPOSITIONS FAITES RELATIVEMENT AU MESURAGE DES LARGEURS DANS UNE DUNETTE.

USUALLY AT THE TRANSOM.
 GÉNÉRALEMENT À LA BARRE D'ARCABÉE.

Diagram
Tableau **XVII**

TURRET-DECK VESSEL NAVIRE À "TURRET-DECK"



$$(a + b + c) \frac{1}{2} l$$



MEASURED
MESURE



NOT INCLUDED IN THE TONNAGE.
NON COMPRIS DANS LE TONNAGE.

MEASURED ACCORDING TO METHOD
NOW IN USE IN MOST COUNTRIES

MESURÉ CONFORMEMENT A LA METHODE
EN VIGUEUR DANS LA PLUPART DES PAYS

Diagram
Tableau XVIII

HATCHWAYS CONSTRUCTED ON TRUNK
ECOUTILLES CONSTRUITES SUR UN "TRUNK"

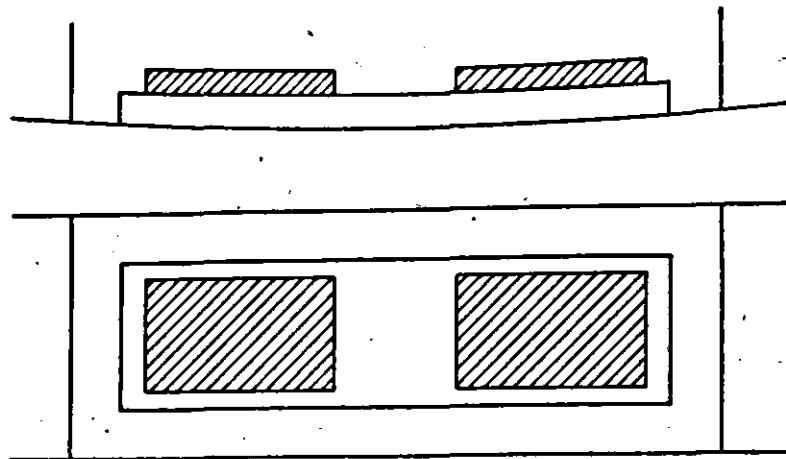


Diagram
Tableau XIX

CORRUGATED HATCH-COVER
PANNEAUX D'ECOUTILLES EN TÔLE ONDULÉE



Diagram
Tableau XX

SECTION OF A PART OF THE MACHINERY SPACE
COUPE D'UNE PARTIE DE L'ESPACE POUR APPAREIL MOTEUR

IS MEASURED IN PRACTICE IN 3 PARTS
EST MESURÉ DANS LA PRATIQUE EN 3 SECTIONS

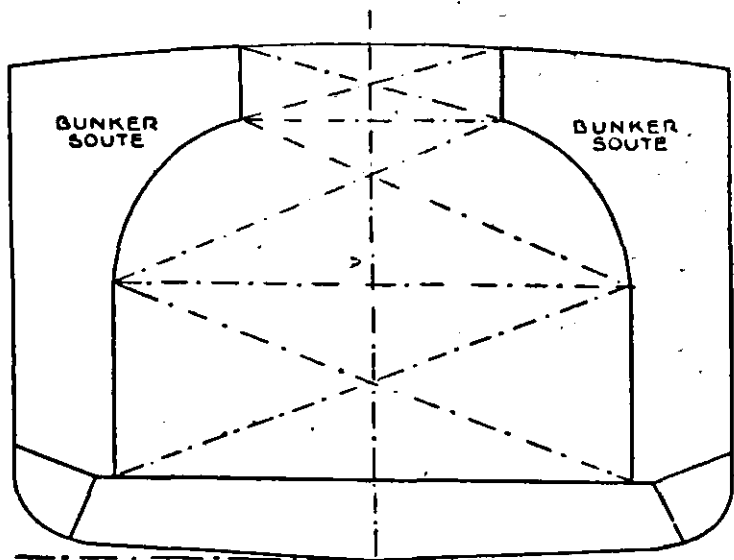
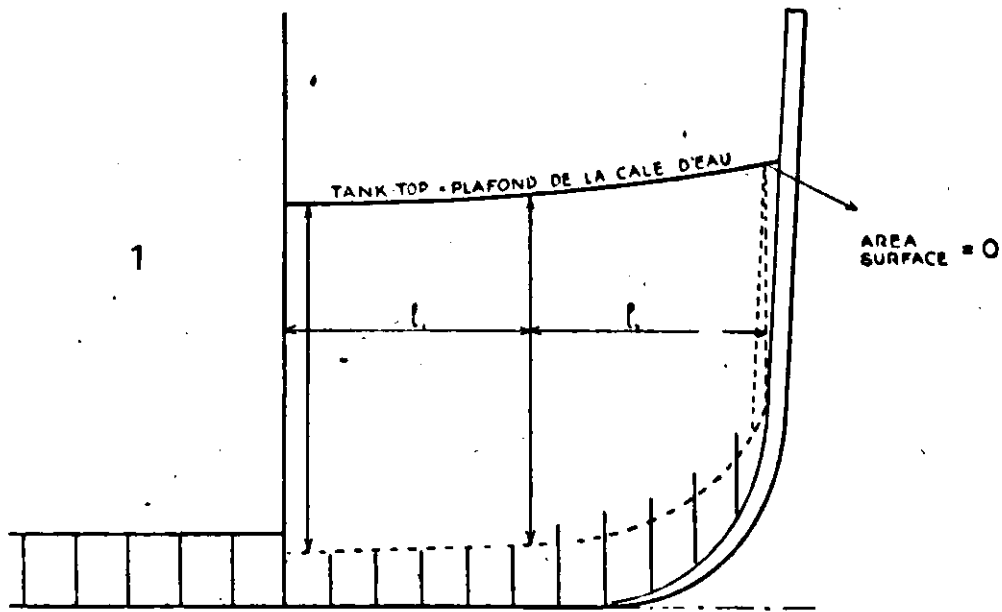


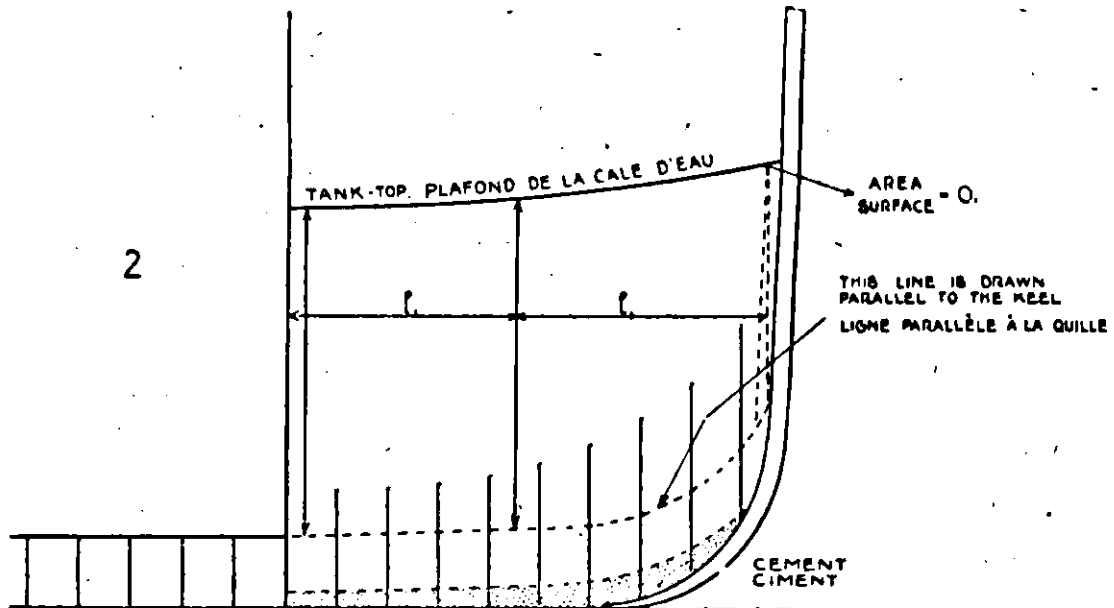
Diagram
Tableau **XXI**

MEASUREMENT OF DEPTH IN PEAKTANKS
MESURAGE DE LA HAUTEUR DANS DES CALES D'EAU DE COQUERON



IN THIS EXCEPTIONAL CASE THE FOREPEAK IS MEASURED AS A SEPARATE SHIP WHEN MEASURING THE UNDERDECK TONNAGE. FOR MEASURING THE FOREPEAK-TANK AS A WATERBALLAST-TANK THE DEPTHS ARE MEASURED AS SHOWN IN THE DIAGRAM.

DANS CE CAS EXCEPTIONNEL LE COQUERON D'AVANT EST MESURÉ COMME UN NAVIRE DISTINCT LORS DU MESURAGE DU VOLUME PRINCIPAL. POUR LE MESURAGE DE LA CALE D'EAU DE COQUERON COMME CITERNE DE LEST D'EAU, LES HAUTEURS SONT MESURÉES TEL QU'IL EST INDICÉ DANS LE TABLEAU.

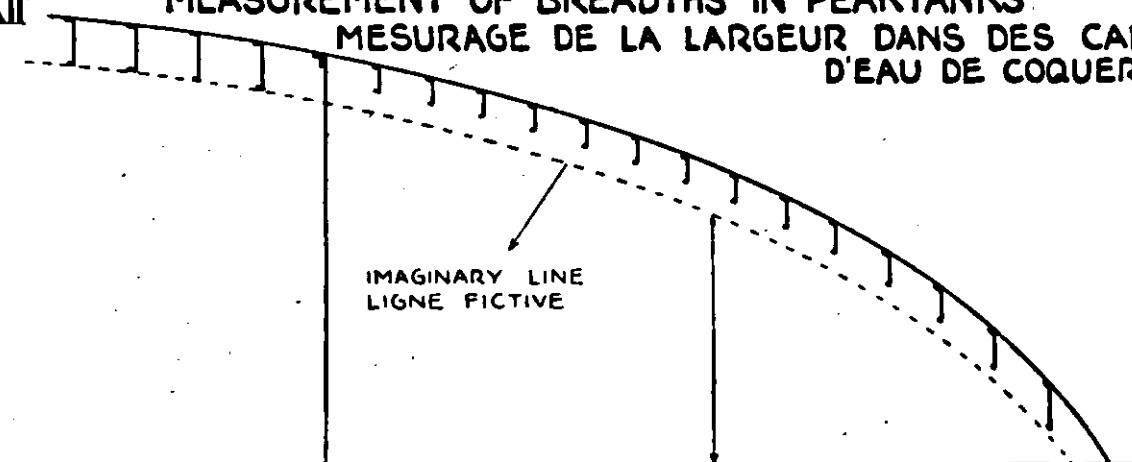


IN THIS CASE THE FOREPEAK IS MEASURED TOGETHER WITH THE REST OF THE VESSEL IN ONE LENGTH WHEN MEASURING THE UNDER-DECK TONNAGE. FOR MEASURING THE FOREPEAK-TANK AS A WATERBALLAST-TANK THE DEPTHS ARE MEASURED AS SHOWN IN THE DIAGRAM.

DANS CE CAS LE COQUERON D'AVANT EST MESURÉ ENSEMBLE AVEC LE RESTANT DU NAVIRE EN UNE SEULE FOIS EN VUE DE LA DÉTERMINATION DU VOLUME PRINCIPAL. POUR LE MESURAGE DE LA CALE D'EAU DE COQUERON COMME CITERNE DE LEST D'EAU LES HAUTEURS SONT MESURÉES TEL QU'IL EST INDICÉ DANS LE TABLEAU.

Diagram
Tableau **XXII**

MEASUREMENT OF BREADTHS IN PEAKTANKS
MESURAGE DE LA LARGEUR DANS DES CALES D'EAU DE COQUERON.



C.138. M.31. 1928. VIII. ¹
Erratum

SOCIETE DES NATIONS

Genève, le 10 février 1929.

COMMISSION CONSULTATIVE ET TECHNIQUE DES
COMMUNICATIONS ET DU TRANSIT.

Erratum au document C.138. M.31. 1928. VIII.

Les tableaux figurant aux pages 75 et 79 ont été
intervenés par erreur, le tableau "4. Petit cargo à vapeur"
devant figurer à la page 79 et le tableau "4. Vapeur à deux
hélices", à la page 75.

LEAGUE OF NATIONS

Geneva, February 10th, 1929.

ADVISORY AND TECHNICAL COMMITTEE FOR
COMMUNICATIONS AND TRANSIT.

Erratum to document C.138. M.31. 1928. VIII.

The tables shown on pages 75 and 79 have been reversed
in error. Table "4. Small Cargo Steamer" should appear on
page 79 and the table "4. Screw Steamer" on page 75.

Geneva, August 8th, 1928.

LEAGUE OF NATIONS

**Radio-Telegraphic Station for the Purpose of ensuring
Independent Communications
for the League of Nations at Times of Emergency.**

**SUPPLEMENTARY REPORT OF THE ADVISORY
AND TECHNICAL COMMITTEE FOR COMMUNICATIONS
AND TRANSIT.**

The Chairman of the Advisory and Technical Committee for Communications and Transit has the honour to forward herewith to the Secretary-General of the League, for transmission to the Assembly in conformity with the Council resolution dated June 8th, 1928, the supplementary report adopted by the Committee of Experts, which met for the purpose of considering certain aspects of the problem of the establishment of a radio-telegraphic station capable of meeting the requirements of the League of Nations, particularly in times of emergency. With a view to facilitating the task of the Assembly, which has already received the general report of the Advisory and Technical Committee on this subject (document C.141.M.32.1928.VIII), the Chairman of the Committee feels that he should draw attention to the conditions under which the Committee of Experts met, and should explain broadly the situation with which the Assembly has to deal, taking account both of the general report and of the supplementary report.

When the Advisory and Technical Committee for Communications and Transit drew up its general report, it had only considered, either at its own meetings or at those of the organisations dependent on it, one solution of the problem of providing independent means of wireless communication for the League of Nations at times of emergency, which problem had been submitted to it for technical examination. The terms of the Council resolution on which its work was based suggested that the League of Nations should have a "radio-telegraphic station of its own sufficiently powerful to enable it to communicate independently with the greatest possible number of States Members of the League". The Advisory and Technical Committee accordingly confined itself to an examination of the means by which practical effect might be given to the idea of a radio-telegraphic station established by the League of Nations, belonging to it and permanently operated by it. The general report of the Advisory Committee describes such a station on the lines indicated in the unanimous report of a committee of technical experts in wireless telegraphy¹, and explains the manner in which such a station would work in normal times and in times of emergency. In order to ascertain the manner in which the station would work, certain experts in questions of telegraphic operation were consulted individually, but since one of these experts expressed doubts as to whether the efficiency of the station in normal times would be such as to guarantee satisfactory results in times of emergency, the Advisory and Technical Committee, while forwarding its general report, decided to convene a Committee of Experts in questions of telegraphic operation which would be requested to clear up this point, and thus supplement or, if necessary, modify the part of its report relating to the conditions under which a League of Nations radio-telegraphic station would be operated.

Furthermore, the Council, having been informed at its last session of the meeting of this Committee of Experts by the Advisory and Technical Committee's report, not only emphasised

¹ The Committee consisted of the following:

General FERRIÉ, Member of the Paris Academy of Sciences, President of the International Union of Scientific Radio-telegraphy, *Chairman*.

Dr. P. JÄGER, Adviser to the German Ministry of Posts.

Dr. KOOMANS, Chief Engineer of Posts and Telegraphs, Head of the Radio Laboratory at The Hague.

Lt.-Colonel A. G. LEE, O.B.E., M.C., of the British General Post Office.

Professor VALLAURI, of the Royal Naval Academy at Leghorn, General President of the Italian Electro-technical Association.

the desirability of definitely elucidating this part of the problem of establishing a League radio-telegraphic station, but also requested that the Committee of Experts in telegraphic operation should consider whether other solutions than that of the creation by the League of a radio-telegraphic station owned and permanently operated by it should be taken into account so long as such solutions also guaranteed the absolute independence of the League's means of telegraphic communication at times of emergency — the utilisation, for instance, at times of emergency of a station which would not normally be operated by the League. In the interval between the meeting of the Council and that of the Committee of Experts, the Secretary-General of the League was informed that the Swiss Government intended to propose an arrangement of this character.

The task before the Committee of Experts¹ was thus extended. It was thenceforward its duty, not only to re-examine the general characteristics of the operation, in normal times and in times of emergency, of a radio-telegraphic station permanently owned by the League of Nations, but also to consider whether possibly other solutions, such as that provided by an offer from the Swiss Government, would ensure the absolute independence of the League's wireless communications at times of emergency.

After consideration, the Committee of Experts was unanimously of opinion that both solutions — that of a station permanently owned by the League of Nations and that of a station only passing under the exclusive authority of the League at times of emergency — were conceivable and practicable.

As regards a station permanently owned by the League, all the members of the Committee, with one exception, agreed merely to refer to the general report of the Advisory and Technical Committee for Communications and Transit, since they were of opinion that the working of the station in normal times provided for in that report would make it possible for it to be operated at times of emergency under the conditions laid down therein. The Committee only suggested certain alterations in the details of the programme of operation and in the estimates of revenue.

As regards the alternative proposal of a station not permanently owned by the League of Nations, but coming under the exclusive authority of the League at times of emergency, the Committee, after studying this question with experts appointed by the Swiss Government, explained in detail how, in their unanimous opinion, an agreement might be contemplated which would take account of the requirements laid down by the organs of the League as regards the complete independence of the means of communication of the League at times of emergency and of the views of the Swiss experts.

The Advisory and Technical Committee thus lays before the Assembly two solutions, both of which have been considered to be practical from a technical point of view, and both of which meet the requirements as to the independence of the League's communications at times of emergency. The choice between these two solutions is governed by considerations either of a political or of a financial character with which the Advisory and Technical Committee is not called upon to deal. The solution consisting of a station only coming under the authority of the League of Nations at times of emergency presupposes in normal times a complex form of co-operation and a community of interest under conditions to be defined by agreement between the Swiss authorities and the League of Nations. This solution can only be properly appreciated when the proposals which the Swiss Government has expressed its intention of making are known, and when those proposals can be examined by the Assembly in conjunction with the observations submitted and the plan drawn up by the Committee of Experts. The solution provided by the establishment of a station operated at all times by the League of Nations does not entail such complicated co-operation. On the other hand, particularly since it would not deal with commercial traffic and would only receive revenue from official traffic, it would undoubtedly be more costly.

Both solutions place at the disposal of the League of Nations at times of emergency a wireless station enabling the League by its own resources to ensure, as far as is technically possible, independent communication with the largest possible number of Members of the League in Europe and outside Europe. The plan providing for a station permanently owned by the League includes a short-wave post capable of communicating with all parts of the world, and which, should it not be found adequate for certain short-distance European communications, could be supplemented by a medium-wave post to communicate with European countries only. The plan providing for a station established by agreement with the Swiss Government and coming under the authority of the League of Nations at times of emergency includes a medium-wave post providing, in general,

¹ The Committee of Experts on questions of telegraphic operation consisted of the following: M. ARENDT, Ministerial Director in the Postal Ministry of the Reich; M. BOULANGER, Director of Telegraphic Operation in the French Ministry of Posts, Telegraphs and Telephones; M. GNEME, Director and Head of Division in the Italian Ministry of Posts and Telegraphs; Mr. PHILLIPS, Assistant Secretary of the General Post Office of Great Britain; and M. STALINGER, Head of Division in the Polish Ministry of Posts, Engineer.

for European communications and a short-wave post for extra-European communications, and for such European communications as might, in exceptional cases, not be possible by means of the medium-wave post.

Both solutions alike would give the League of Nations considerable facilities in normal times and in times of emergency. In normal times, apart altogether from the new direct traffic relations which would be established with certain countries outside Europe, particularly with Asia and South America in connection with the ordinary exchange of telegrams to and from the Secretariat, delegations and Governments, both alternatives would permit of the general transmission of news by wireless telegraphy, and eventually by broadcasting, not only in Europe but outside Europe as well, and would make it possible, at a very low cost, to transmit messages by radio-telegraphy to non-European countries desiring the text of important and urgent documents which at present have to be sent by post.

At times of emergency, both solutions would make it possible to establish continuous direct relations between the League of Nations or delegations at Geneva and the Governments of the States mainly concerned, without any distinction between an emergency affecting Europe and an emergency affecting other parts of the world, or between European and non-European Members of the League.

As the two proposed methods would make it possible in these cases to avoid the re-transmission at present necessary in the case of extra-European communications, they would ensure the independence of the League's communications at times of emergency not only in relation to the authorities of the country in which the League has its seat, but also in relation to private or public wireless or cable concerns and, in case of mobilisation, in relation to the national military authorities of the countries which would otherwise be called upon to provide for re-transmission.

These two solutions therefore meet the requirements of the Council, which had in view a wireless station "sufficiently powerful" to enable the League to communicate "independently with the greatest possible number of States Members of the League".

Since the meeting of the Committee of Experts, an additional suggestion has been made by one of the experts to the effect that, should the solution based on an agreement with the Swiss authorities be adopted, the League might consider only the establishment of a medium-wave post (for European communications), which is necessary in any case for the requirements of Swiss commercial traffic, and that provisions might not be made for a short-wave post (primarily intended for extra-European communications) so long as the requirements of Swiss commercial traffic do not lead the Swiss authorities to provide for the construction at Geneva of such a post.

It has not been possible to accept this suggestion. Even in the case of European communications, it would appear from the opinion of the technical experts that such a station, consisting only of a medium-wave post, could not be regarded as absolutely reliable. Moreover, in the case of extra-European communications, the information received is to the effect that it is highly improbable that the requirements of Swiss commercial traffic would warrant the construction by the Swiss authorities at their own expense of a post at Geneva for extra-European communications, and the station which would under these conditions be placed under the authority of the League of Nations at times of emergency would not be in a position to provide directly for any extra-European communications and would therefore not give the facilities referred to above, or satisfy the conditions laid down in the above-mentioned programme of study resulting from the Council resolutions, as approved by the Assembly.

The Advisory and Technical Committee, in submitting to the Assembly the two above-mentioned solutions of the problem laid before it, is glad to say that it has supplied the forthcoming Assembly, in accordance with the desire expressed by the Committee on Arbitration and Security¹, with all information calculated to make a final decision possible.

¹ "The Arbitration and Security Committee:

"Considering that, in case of emergency, rapidity and security in the matter of communications between the Secretary-General, the Members of the Council, the States concerned or the special missions of the Council are of particular importance with a view to ensuring efficacious action by the League;

"Noting that the importance of this was recognised by the last Assembly in Resolution No. III, adopted on September 26th, 1927, on the proposal of the Third Committee;

"While gratified at the results of the initial efforts of the Committee for Communications and Transit to make the best possible use of existing means of communication:

"Directs attention to the following passage in the report of the Committee for Communications and Transit dated March 1927, which was submitted to the Council and the Assembly:

"... That, at a time of general emergency — for example, immediately before mobilisation and, above all, during the actual period of mobilisation — the total or partial taking over by the State of the means of communication must inevitably mean that, in many cases, communications of importance to the League might be

The Secretary-General of the Committee has further been instructed to supply the Assembly, if necessary, with any additional information which may appear to be useful. He has already been requested to give details, in a note drawn up after consultation with the Chairman of the Committee of Radio-telegraphic Technical Experts, of the financial consequences of the proposed arrangement suggested by the Swiss experts. This note is attached to the report as an appendix.

rendered less rapid or less certain despite the successful application of the measures laid down in the report approved by the Council at its December session, unless some special means, independent of the general system of national communications;

" Considers that the systematic study of the means to be employed by the organs of the League to enable Members to carry out the obligations devolving upon them in virtue of the different articles of the Covenant requires that communications for the purposes of League action in case of emergency should have every guarantee of independence and should be as little affected as possible by the disturbance which a state of emergency will necessarily produce in the regular working of the communications controlled by the different Governments;

" Trusts that the supplementary technical studies undertaken by the Transit Committee at the request of the Council and in conjunction with all the authorities concerned, with a view to providing the League of Nations with independent air communications and a radio-telegraphic station enabling it to communicate direct with as many Members of the League as possible, may be rapidly completed;

" And emphasises the desirability of enabling the Assembly at its next session to take steps to put these schemes into effect, more particularly as regards the establishment of a radio-telegraphic station."

REPORT OF THE COMMITTEE OF EXPERTS ON TELEGRAPHIC OPERATION.

Geneva, July 8th, 1928.

As a result of the discussions of the Advisory and Technical Committee for Communications and Transit and of the Council, at its last session, the Committee of Experts was requested to re-examine the general characteristics of the operation, both in normal times and in times of emergency, of a radio-telegraphic station permanently owned by the League of Nations, and to see whether other solutions might not possibly ensure the absolute independence of the radio-telegraphic communications of the League in times of emergency. It submits the following conclusions on this subject.

The absolute independence of a radio-telegraphic station, so far as the radio-telegraphic communications of the League of Nations at times of emergency are concerned, may be provided either by a station permanently owned by the League of Nations or by a station owned, if situated in Switzerland, by a Swiss administration or company, and only coming under the control of the League at times of emergency. Both solutions are conceivable and practicable.

I. STATION PERMANENTLY OWNED BY THE LEAGUE OF NATIONS¹.

The working of the station in normal times would ensure its working at times of emergency under the conditions laid down in the report of the Advisory and Technical Committee for Communications and Transit.

It is neither possible nor desirable at this stage to consider in quite such a definite manner as is done in the text of Annex B to the Transit Committee's report (doc. C. 141.M.32.1928 VIII) the detailed programme of working, which could only be drawn up when account is taken of the agreements which would be concluded with the various administrations, and of the facilities obtained for the exchange of communications. The Government telegrams referred to in paragraph (c) of that Annex, would certainly not be exchanged in as many directions as is apparently expected. For this reason, the estimated revenue would very probably — at least in the early period — be less than that estimated.

2. STATION PASSING UNDER THE EXCLUSIVE AUTHORITY OF THE LEAGUE OF NATIONS IN TIMES OF EMERGENCY.

The Committee, having taken cognisance of an offer expected from the Swiss Government, has examined this alternative with the experts appointed by the Swiss Government, and it has been found that, without touching on political questions (which do not concern the Committee), an agreement taking account of the requirements insisted on by the organs of the League and the observations made by the Swiss experts might be contemplated on the following bases, which would involve the establishment and operation in normal times of a station by the Radio-Suisse S.A. under Swiss Government supervision, such station to pass at times of emergency under the authority and management of the League of Nations.

(a) *Technical Installations.*

The technical specifications of the proposed station should be fixed by agreement between the Swiss Administration and the Technical Committee of the League of Nations on the basis of the plan already prepared by the Technical Committee, subject to fresh examination of that plan by the Committee, with the assistance of a Swiss expert. In the final examination, regard should be had in particular, so far as the medium-wave post is concerned, to the undertakings which the Swiss Administration or the Radio-Suisse has already entered into, so far as the maintenance of these undertakings would not impair the efficiency of the station.

The measures taken for the supply of the material necessary for the posts should give the main engineering firms fair opportunities of securing orders, subject to what has already been said regarding the undertakings entered into by the Swiss Administration or the Radio-Suisse in respect of the medium-wave post. This would appear absolutely necessary, not merely by reason of the grant from the League of Nations referred to below, but also in order to secure the benefit of any fresh improvements on the most advantageous terms. The short-wave post which is intended specially to meet the requirements of the League of Nations would be acquired in accordance with the proposals of the Secretary-General of the League after the competent organ of the League and the Radio-Suisse had been consulted.

The station would be equipped with all the improvements which might be found to be practical and to be adaptable to its service, and would always be kept up to the highest technical standard.

¹ For reservation made by Mr. Phillips on this point, see Annex 1.

The competent organ of the League of Nations itself or the Commissioner provided for below would be able to verify the technical efficiency and working of the station on taking delivery and, thereafter, at any time.

(b) *Operation.*

In normal times the Radio-Suisse would own the station and be responsible for its operation. When naming the station, account should be taken of the fact that its operation is of international importance. The organisation of the services connected with the station would be planned in such a manner that it should have on the spot at Geneva, in case it should have to work independently of the other Radio-Suisse organs at times of emergency, all elements and services necessary for its satisfactory working. The central telegraphic operation office might be placed in premises in direct communication with those of the Swiss Central Telegraph Office in Geneva, but quite separate from that office. Furthermore, an auxiliary centre for use at times of emergency and in direct communication by wire with the station and with the Geneva Central Telegraph Office would be established, at the seat of the League or near it, whenever the League of Nations so decided.

The programme of working in normal times would be drawn up by agreement between the Radio-Suisse and the Secretary-General of the League of Nations. The station would be primarily intended for the despatch and receipt of official communications of the League¹ and for non-official communications connected with the League, such as Press messages, in so far as the transmission of such communications by wireless is practicable. It would also be open to commercial traffic so long as the despatch and receipt of official traffic was not interfered with thereby.

The Swiss Administration and the Radio-Suisse would take all necessary steps to ensure that the station should be operated with the maximum efficiency. They would endeavour to establish as many radio-telegraphic connections as possible by means of the station. Should undertakings of any nature which might restrict the number of radio-telegraphic connections have already been entered into, or be at present contemplated, such undertakings should be communicated to the Secretary-General of the League of Nations before the conclusion of the agreement, and such undertakings could only be entered into in future with the consent of the Secretary-General of the League.

The following measures in particular might be provided for in the programme of operation:

(1) The establishment, as an experiment, of direct radio-telegraphic connection on one occasion with each of the corresponding stations designated by the League of Nations, in so far as the Geneva station and the corresponding stations have suitable technical equipment and are capable of being used for that purpose;

(2) Weekly exchange of traffic, at an hour fixed beforehand, with the stations designated by the League (call and acknowledgment), in order to ensure that radio-telegraphic communication with the stations in question can be established from Geneva at any moment;

(3) Daily broadcasting of one or more League *communiqués* by means of suitable transmitting apparatus in order to establish contact daily with the stations intended to receive messages from Geneva;

(4) A "listening-in" programme. Every day, at a time agreed upon, the Geneva station would listen to the stations designated by the League and receive any messages intended for the latter.

It would be understood that, if necessary, special facilities might be granted, by agreement between the League of Nations and foreign Administrations, to League official telegraphic messages without such facilities being *ipso facto* extended to general commercial traffic. This would particularly apply to transmission of the texts of documents and circular letters between Governments and the League of Nations under conditions to be fixed later.

Government telegrams sent to and from the station might be allowed the reductions in rates granted to Government telegrams sent by other means.

The Secretary-General of the League would be represented in an advisory capacity on the Board of Directors of the Radio-Suisse. He could there raise any question the solution of which he might consider necessary with a view to safeguarding the interests of the League of Nations in the operation of the station. If so desired, arrangements would have to be made for summoning extraordinary meetings of the Board of Directors. Should he consider that a decision of the Board of Directors might prejudice such interests, the said decision would not be acted upon if he so requested, and the matter would be considered by the Swiss Government and the Secretary-General of the League of Nations. All questions of this character which come within the competence, not of the Radio-Suisse, but of the Swiss Federal Administration, and to which the attention of the Swiss Government had been drawn by the Secretary-General of the League, would also be examined jointly by the Secretary-General of the League and the Swiss Government.

¹ Messages from or to the Secretariat of the League of Nations, the International Labour Office and the delegations to the League of Nations will be regarded as official communications of the League of Nations. (Note by the Committee of Experts).

In order to facilitate the transition from conditions in normal times to those prevailing at times of emergency and to enable the Secretary-General of the League and the competent organs of the League to carry out the duties incumbent upon them in normal times, the Secretary-General would be represented by a commissioner. The latter would be a permanent official specially designated and accredited to the Director of the Radio-Suisse and to the head of the Geneva station. Every facility would be given to this commissioner to carry out his duties.

As soon as the Secretary-General of the League officially notified the Swiss Government that a period of emergency had commenced, the station would come under the exclusive authority and management of the Secretary-General of the League. The material of the station would be taken over by the League and regarded as League material. The staff of the station would be at the disposal of the Secretary-General of the League, and be regarded as League of Nations Secretariat personnel. This would apply even in case of mobilisation. The Secretary-General of the League would be authorised to take any measures relating to management and organisation which he might regard as desirable; in particular, he might make any change or increase in the staff which he considered necessary and appoint any person or persons he desired. The Secretary-General would be bound to compensate any member of the permanent staff of the station whose contract he found it necessary to suspend and for whom other employment could not be provided by the Radio-Suisse or the Swiss authorities. The station would continue to handle commercial traffic in so far as this did not interfere with the increase in the League's communications. During the time of emergency, the cost of the station, including the amortisation and interest charges on the capital invested, would be borne by the League, which would on its side collect the revenue from the station. The Swiss Administration, however, would receive the share of the receipts to which it was entitled in respect of commercial traffic (the terminal charge). The Secretary-General of the League of Nations would have no obligations to the Swiss authorities save those distinctly and explicitly provided for in the agreement to be concluded. The termination of the period of emergency would be notified in the same manner as its commencement. There would be an equitable settlement, if necessary after consulting experts or after arbitration, between the Radio-Suisse and the Secretary-General of the League, account being taken of losses sustained or advantages secured as a result of the period of emergency.

In order that at times of emergency the necessary additional or replacement staff might be available, and in order that such staff might in normal times be familiar with the working of the station, the Radio-Suisse would give reasonable facilities in respect of the admission, as temporary staff, for purposes of training or, preferably, as additional staff in times of heavy traffic, of the specialists whom foreign administrations might have placed beforehand at the disposal of the Secretary-General of the League of Nations in order that, if necessary, they might assist in the operation of the station at times of emergency. Any additional expenditure thereby incurred by the Radio-Suisse would be chargeable to the budget of the League of Nations.

The Swiss Government would give the station and the installations connected therewith, at all times, the same protection from the point of view of general security as the Swiss Government gives the buildings of the League. It would also be entitled, should it consider such a measure necessary to facilitate such protection, to ask the Secretary-General to bring into operation the measures provided for in respect of the station at times of emergency.

(c) *General Financial Agreement.*

The following financial agreement is suggested by the Swiss experts¹:

In view of the fact that, in the opinion of these experts, the medium-wave post is in any case necessary for Swiss commercial traffic, whereas the short-wave post is designed to meet the requirements of the League of Nations, the latter would be responsible for the amortisation and interest charges on the capital invested in this post together with the operating expenses.

An annual grant from the League of Nations to the Radio-Suisse would be calculated on this basis, taking into account, in addition, any special services that the League might think fit to require from the medium-wave post (extra "listening-in", for instance). The League of Nations would, however, only pay 90 per cent of the grant thus calculated. On the other hand, the revenue from the short-wave post would be divided as follows: For official traffic, the League of Nations would receive all the charges collected; as regards commercial traffic, the Swiss Administration would, in all cases, receive the terminal charge; the transit charge would be paid to the Radio-Suisse up to the 10 per cent referred to above. Over and above this 10 per cent, the transit charge would accrue to the League of Nations, minus a certain percentage sufficient, but not more than sufficient, to make it worth while for the Radio-Suisse to send commercial traffic through the post.

The Committee of Experts would prefer the following arrangement:

The League of Nations would be responsible for part of the interest and amortisation charges and the operation costs of the Geneva station as a whole, no distinction being made between the medium-wave post and the short-wave post. The League would receive a proportionate share of the revenue which the Radio-Suisse derived from the traffic of the Geneva station as a whole (revenue derived from transit charges, excluding the terminal charge, which would be payable to the Swiss Government even in the case of official messages). The League of Nations would furthermore provide a grant to meet supplementary unproductive outlay which the station was obliged to incur in view of its special requirements.

¹ The financial consequences of this arrangement are set forth in a note by the Secretary-General of the Advisory and Technical Committee, drawn up at the request of the Chairman of the Committee (see Appendix).

The Secretary-General of the Advisory and Technical Committee for Communications and Transit pointed out that this question was not within the sphere of telegraphic operation questions and that he could give no indication as to the system which the Assembly of the League of Nations might eventually prefer.

(d) *General Note.*

Provision should be made in the agreement for a method of settling any differences regarding the interpretation or application of the agreement which might arise between the various parties concerned, the Secretary-General of the League of Nations, the Swiss Government and the Radio-Suisse.

The agreement might advantageously be concluded for a period of ten years. Thereafter it could be renewed by tacit consent, but might be denounced by the Swiss Government or by the Secretary-General of the League of Nations under conditions which should be defined with due regard to the problems which would arise as a result of such denunciation.

• Annex 1.

RESERVATION BY MR. F. W. PHILLIPS, REGARDING SECTION I: STATION
PERMANENTLY OWNED BY THE LEAGUE OF NATIONS.

1. I find myself unable to agree with the view expressed in Section 1 of this report that a station owned by the League of Nations would be able to carry out the work contemplated for it in time of crisis.
2. The programme of working proposed in the report of the Advisory and Technical Committee for Communications and Transit (document C.141.M.32.1928.VIII) envisages the establishment during normal times of direct communications between the League wireless station and a large number of countries in all parts of the world, with which connection would be made one after another throughout the day in accordance with a pre-arranged time-table. Experience shows that it would be extremely difficult to carry out a programme of working of this character; and, even if it were practicable, the delay involved in holding messages over until the next scheduled period of working would be so great that the service would be unsuitable for most classes of telegrams. No commercial wireless station in the world conducts a service of this kind with a large number of distant countries and, if an attempt were made to carry out the scheme, it would probably be found necessary in practice to confine the service to a relatively small number of countries.
3. The station would deal with League traffic only and not with commercial traffic. The maintenance of a service with a large number of countries would necessitate the provision in those countries of transmitting and receiving stations for the League service during certain periods each day, an arrangement which might involve difficulty and expense. The amount of traffic available during normal times would be small; and it seems unlikely that the station would work well at a time of crisis, when there would doubtless be great pressure of traffic on all wireless routes, and the difficulty of establishing communication with one distant country after another would be exceptionally great.
4. For the reasons indicated in paragraph 2 above, the traffic receipts of the station during normal times would probably be much smaller than the amount estimated by the Advisory and Technical Committee. Moreover, the cost of working the station would probably be greater than the estimate; for example, the estimated cost of staff represents an average rate of remuneration per person which is stated by the Swiss Government to be much lower than the average rate at present applicable in the service of the Swiss Company. It seems clear that the cost of the scheme for the provision of an independent station would be considerably greater than the amount estimated by the Advisory and Technical Committee.
5. The Swiss Government's scheme described in Section 2 of this report, under which the League would take over in time of crisis complete control of a wireless station established at Geneva by the Swiss Radio Company, would involve much less expense to the League. During normal times such a station would deal with both League traffic and commercial traffic, and there is a better prospect that it would work well in time of crisis, although the difficulty at such a time of establishing direct communication on short waves with numerous distant countries would be very great.

Annex 2.

OPINION, COMMUNICATED BY M. ARENDT, ON THE RESERVATION MADE BY MR. PHILLIPS
ON SECTION I:
STATION PERMANENTLY OWNED BY THE LEAGUE OF NATIONS.

Should the League of Nations establish at Geneva a station of its own, I am of opinion that it will possess the independence which it desires to obtain to the same extent as any other administration belonging to the International Telegraphic Union or to the International Radio-telegraphic Union. The League would have to conclude special agreements with a view to the transmission of its messages, either by the establishment of direct connections with various places throughout the world or by the use of those already established by the Swiss Telegraph Administration, the Radio-Suisse, and other administrations or private undertakings. In theory, it makes absolutely no difference whether the Geneva station is the independent property of the League of Nations or whether it belongs to the Radio-Suisse and renders the League commercial services. I also think that League of Nations messages sent in normal times to a given personal

addressee in one part of the world or another will, at least at first, be sent by the best and most reliable route if entrusted to the Swiss Telegraph Administration and transmitted as telegrams entitled to priority on the world telegraph system, the organisation of which is perfect. But I can also imagine that the commercial work of the telegraph companies concerned, and particularly the Radio-Suisse, would result in the hampering of the establishment of service connections of great importance for the League of Nations and in their development being checked by commercial considerations. Should it be desired to use a short-wave station for commercial purposes, preference will be given to the use of aeri-als turned in a given direction, so that traffic may be carried on during the greatest possible number of hours and that transmission may be as speedy as possible. But, according to the programme before us, the object of the League station is to maintain direct service with the greatest possible number of countries. In many cases, this is only feasible if we regard the commercial interests of the station as secondary. Furthermore, we depend on the goodwill of foreign stations participating in traffic of this character. These two points arise whether it be the League of Nations station or the Radio-Suisse which operates at Geneva. I understand the establishment of direct communications from that town to mean that experiments should be made to ascertain which are the hours most favourable for operation in each of the directions contemplated and that, according to the results obtained, agreements will be made with the corresponding stations in respect of a time-table for transmission. I would imagine that the traffic would be regulated in such a way that, at the hours thus fixed, the Geneva station would send out call-signs. These calls would be picked up by all stations concerned at the hour agreed upon. On the other hand, only the station whose own call-sign had been sent out would reply — that is to say, the station to which the telegram had been addressed.

I regard this method of organisation as the best if we take account of the special duties of the station as laid down in the League of Nations memorandum (document C.141.M.32.1928.VIII), of March 14th, 1928. I think that, from an economic point of view, the question of the construction and the commencement of operations of such a station should be estimated on a different scale from that suitable for a commercial station; so far as this point is concerned, the reference made in the memorandum in question to the similar conditions in respect of police and military stations appears to be perfectly justified.

I am therefore convinced that a radio-telegraphic station owned by the League of Nations would be fully capable of carrying out the work expected from it by that organisation.

The same point of view was expressed during the deliberations of the Committee by M. Boulanger and M. Gnome.

Appendix.

NOTE ON THE FINANCIAL CONSEQUENCES OF THE ARRANGEMENT SUGGESTED BY THE SWISS EXPERTS.

The Secretary-General of the Advisory and Technical Committee for Communications and Transit has requested General FERRIÉ and M. JÄGER, representing the Technical Committee for the Establishment of a League of Nations Wireless Station, to consider to what extent the conditions regarding the establishment of the station provided for in the report of the Technical Committee would be affected, both from a technical and from a financial point of view, by the arrangement suggested by the Swiss experts.

The attached text gives the results of this consultation, and makes it clear what the nature of the financial liabilities of the League of Nations would be if the suggested arrangement were adopted:

“ At the request of the Secretary-General of the Advisory and Technical Committee for Communications and Transit, General FERRIÉ and M. JÄGER, representing the Technical Committee for the Establishment of a League of Nations Wireless Station, took cognisance of the fact that the Committee of Experts on Telegraphic Operation, which recently met at Geneva, not only considered the case of a station permanently owned by the League of Nations, and at first, at any rate, only involving a short-wave post, but also contemplated the possibility of the acceptance of a Swiss proposal that there should simultaneously be established a medium-wave post, necessary for Swiss commercial requirements and working at the cost and for the profit of the Swiss administration concerned, and also a short-wave post, in accordance with the programme previously prepared by the Technical Committee for the Establishment of a League Wireless Station, such station to be established at the cost of the League of Nations and the profits from it to go to the League. They have considered to what extent the conditions for the establishment of a short-wave post, as previously laid down in the report of the said Technical Committee, would be affected, both from a technical and a financial point of view, by such a scheme. During their work, they have had the advantage of the information kindly placed at their disposal by M. ANSELM, of the Radio-Suisse Company.

“ From the technical point of view, they were of opinion that the proposed scheme involved no alteration in the programme for the establishment of a short-wave post — provided for by the Committee — consisting of two transmitters, and they considered that to meet the requirements of the League of Nations, particularly at times of emergency, such a post would form the essential part of the proposed station, the post using medium-wave-lengths being by itself not absolutely reliable even for certain European communications.

“ From the financial point of view, the only alterations, so far as expenditure is concerned, which should be made in the information already given, would consist of the following:

“ (1) A slight decrease in expenditure on construction, from the fact that, in view of the existence of the medium-wave post and of the receivers which would in any case be necessary for the working of that post, the number of receivers chargeable to the short-wave post could be reduced;

" (2) A decrease of expenditure resulting from the fact that no money would be required for the establishment of a central telegraphic operation office, since there would be a joint centre for the medium-wave and short-wave posts, and therefore there would not be any additional financial burden to be borne by the short-wave post;

" (3) A considerable decrease in the expenditure on staff, since part of the personnel previously provided for, particularly the directing personnel, would be on the strength of both the medium-wave and short-wave posts, and would under any circumstances be required for the medium-wave post and therefore not be chargeable to the short-wave post.

" The expenditure for the short-wave post, also taking into account the fact that the Swiss authorities would be responsible for expenditure on land and buildings, could be estimated approximately as follows:

" *Expenditure on Construction of the Station (Capital):*

	Francs
Transmission: High-frequency apparatus	500,000
Generators	200,000
Accessory apparatus	50,000
Expense of construction	30,000
Wireless masts	20,000
2 short-wave aerials	1,500
Receiving: 5 or 6 receivers	150,000
Accessories	60,000
	1,011,500
Unforeseen:	88,500
Total	1,100,000

Yearly payments on a basis of 13 per cent of the capital (amortisation in ten years and 6 per cent interest) 140,000

" *Expenses of Upkeep and Operation:*

	Francs
Additional staff over and above the staff necessary for the medium-wave post	65,000
Electric power	20,000
Renewable material	25,000
Annual expenditure on connecting lines between transmitting and receiving stations and the telegraph operating centre.	12,000
Unforeseen	8,000
Total	130,000

" The cost of electric power and renewable material have been calculated on a basis of three hours per day of actual expenditure of electric power, a figure which would appear to be absolutely adequate, account being taken of the traffic on which calculations of receipts are based. Should that traffic increase to any considerable extent, the expenditure on electric power and renewable material would increase, although in a proportion much less than the increase in revenue.

" The general total of approximately 270,000 francs would be reduced by 10 per cent on the basis of the expected Swiss offer, as indicated in the report of the Committee of Experts, so that the nominal yearly payment by the League of Nations would be about 240,000 francs¹.

" In order to arrive at the actual yearly payment to be made, the receipts should be deducted from this sum."

Receipts credited to the League of Nations would, under the proposed arrangement, if we take as our basis traffic in two or three main directions towards the Far East and South America, and even if at first we only reckon one-third of the transmission and one-fifth of the receiving traffic, and without taking account of other categories of revenue, amount to approximately 200,000 francs. This figure has been arrived at after consideration of the statistics of traffic in these directions in 1927, which the Swiss Administration has very kindly communicated. It is possible that it might be exceeded. It is possible that it might not be reached. It is extremely probable that it would not be less than about 125,000 francs².

¹ The budget of the League of Nations should also include about 20,000 francs for the salary of the League representative attached to the station, and for payments made in respect of the staff undergoing training or the supernumerary staff provided for in the proposed arrangement.

² We calculate according to the same method: that is to say, basing our calculations on the payment of capital by means of a yearly payment for amortisation and interest at 6 per cent, that a station permanently owned by the League of Nations without there being any arrangement with the Swiss Government and consisting solely of a short-wave post would involve about the following expenditure:

Amortisation and interest charges on a capital of 1,250,000 francs	Francs 170,000
Operating expenses	230,000
(An increase of 30,000 francs being made in the figures previously contained in the report of the Committee of Technical Experts, which after fresh consideration have been found to be insufficient.)	

Total 400,000

In accordance with the report of the Committee of Experts on Telegraphic Operation, it will be prudent at first only to estimate a revenue definitely less than that provided for in the first report of the Advisory and Technical Committee, namely, about 50,000 francs.

Geneva, March 14th, 1928.

LEAGUE OF NATIONS

**ESTABLISHMENT OF A LEAGUE OF NATIONS
RADIO-TELEGRAPHIC STATION**

At the request of the Chairman of the Advisory and Technical Committee for Communications and Transit, the Secretary-General has the honour to forward to the Council the following report adopted by the Advisory and Technical Committee on March 2nd, 1928.

**REPORT BY THE ADVISORY AND TECHNICAL COMMITTEE
FOR COMMUNICATIONS AND TRANSIT**

At its session of December 1926, the Council requested the Advisory and Technical Committee for Communications and Transit "to institute immediately, . . . with a view to submitting a report to the Council at the earliest possible date, the necessary enquiries in order that the League may have at its disposal a radio-telegraphic station of its own, sufficiently powerful to enable it to communicate independently with the greatest possible number of States Members of the League".

This resolution was referred to the Advisory and Technical Committee, which, in March 1927, requested its Secretary-General, with the assistance of experts appointed by the Chairman of the Committee, to undertake a preliminary study of the question. These experts could be consulted either individually or collectively. The first consultations related mainly to the conditions governing the erection of the proposed station and its characteristic features, with a view mainly to ascertaining whether a station of sufficient power could be established at a cost which would not be altogether prohibitive. After having noted the result of these consultations, the Committee submitted to the Council a preliminary report — which the Council forwarded to the last Assembly — indicating very generally what the characteristic features of the station would be, the main programme of operation and preliminary estimates of the cost of construction and of annual upkeep. The Committee also stated in this report that it proposed to convene a Committee of the various experts consulted to draw up the specifications for the construction of the station and to give an approximate estimate of the cost; it proposed also to complete the study of the questions of operation which would have to be examined.

The Council, having received this preliminary report, together with the report on certain questions similar in some respects relating to air navigation, requested the Committee "to hasten . . . the examination of the questions relating to communications independent of the general system of national communications, in order that the Council may acquaint itself in sufficient time (before the next Assembly) with all the Advisory and Technical Committee's proposals on this subject". The Council referred this preliminary report to the Assembly, which took note of it, congratulated the Council on having promoted the study on this question and adopted the following resolution:

"The Assembly,

"Being desirous of adopting all measures likely to make possible the prompt application of the system contemplated by the Covenant for the maintenance of peace, and of giving to States Members of the League of Nations a greater feeling of security;

"Convinced that, in this connection, it is of the utmost importance to ensure the rapid working of the organs of the League of Nations at times of emergency;

"Considering that their intervention in the shortest possible time may prove to be an essential condition for the prevention of war;

"Trusting that greater facilities for the immediate operation of the machinery of the League of Nations will assist the work of disarmament;

"Inspired by the spirit and provisions of the Covenant:

“ Reasserts that it is the obligation of the States Members of the League of Nations to facilitate by every means in their power the rapid meeting of the Council in times of emergency ;

“ Invites the States Members of the League of Nations to take in advance all necessary measures for this purpose ;

“ Congratulates the Council on having studied the question, to which the Assembly attaches the greatest importance, and requests the Council to continue its studies, particularly in regard to . . . the establishment of a radio-telegraphic station at the seat of the League and, more generally, provisions enabling the League of Nations to be prepared at any moment to meet any emergency with the greatest possible rapidity. ”

In accordance with the Committee's decision mentioned in the preliminary report to the Council, the Secretary-General of the Committee completed the investigations already begun. He received from the Committee of Experts examining the questions of the construction and operation of the station a detailed report, which is attached (Appendix A); and he consulted a number of highly competent experts attached to telegraphic administrations with reference to those questions regarding the operation of the station on which definite information seemed necessary; all such questions are dealt with in a special note, which is also attached (Appendix B and footnote on page 1112).

As the Committee has now at its disposal, through its Secretary-General, the results of these investigations, it submits to the Council the following general conclusions, which would appear to provide the Council and Assembly with sufficient information at the present stage.

* * *

When adopting the resolution quoted at the beginning of this report, which defined the work to be done by the Advisory and Technical Committee, the Council clearly meant that it was or might be important for the working of the League's organs in case of emergency that direct telegraphic communications should be available at such times between the Secretary-General and the Members of the League (more particularly the Members of the Council and any special missions sent by the Council to carry out investigations on the spot), without resort to administrations under Governments other than that to be communicated with.

The Advisory Committee was asked to make a purely technical study and is therefore certainly not competent to form an opinion as to what is required to enable the League to act in time of emergency or what value may be attached to a certain guarantee that the League will be able to work independently. Any opinion on this subject must be governed by views on political or military questions, which do not come within the Committee's competence. In a resolution adopted at its session of March 1927 and already communicated to the Council, the Committee merely noted that, “ in time of general emergency, more particularly in the period immediately preceding mobilisation, and most of all during mobilisation, the taking over, wholly or in part, by the national authorities of the means of communication would in many cases unquestionably tend to make communications of importance to the League slow or uncertain, in spite of any progress which might have been achieved through the measures advocated in the report approved by the Council at its session of December 1926 (measures of priority, etc.), unless it has been arranged for such communications to be maintained by special means, independent of the general system of national communications. Article 8 of the existing International Telegraphic Convention stipulates, with a view doubtless to contingencies of this kind, that each Government “ reserves the right to suspend the international telegraphic service for an indefinite time if it thinks necessary, either as a whole or only on certain lines and for certain classes of correspondence, provided that it immediately informs each of the other contracting Governments ”.

The political organs of the League are alone able to give an opinion on these questions of principle, and more particularly on the importance of independence for the League's means of communications at times of emergency; consequently they alone can finally decide the question of establishing a wireless telegraph station for the League, after examining the conditions governing the construction and operation of such a station. On the other hand, the Committee for Communications and Transit is now in a position to state what those conditions would be.

* * *

The station described in Appendix A fulfils, from the technical point of view, the conditions laid down in the Council's resolution.— It comprises a short-wave transmitter which can send out transmissions on two wavelengths simultaneously and would be supplemented if necessary by a medium-wave transmitter; and the experts are unanimously of opinion that it would be able, from a technical point of view, to provide very good communications with all other stations throughout the world.

In times of emergency the number of receivers would enable direct communication, permanent or semi-permanent, to be organised immediately with the Members of the Council, the States more particularly concerned, and any special missions sent by the Council, in addition to relayed communications with the world as a whole.

The staff, which is reduced to a minimum, would be sufficient to cope with the period of continuous and perhaps intense activity which would arise at the beginning of a crisis. If the crisis were protracted, the staff would be supplemented by "mobilising" similar experts from a list of persons placed at the League's disposal by various Governments in advance. This supplementary staff might also, for practice' sake, carry out similar services at the station for certain periods at normal times (at meetings of the Assembly or Council for example).

As regards the receiving service provided and organised in normal times, there would be two permanent listening-in shifts, so that, without prejudice to the ordinary communications referred to below, the League's station would, by means of a time-table drawn up in advance, be sufficiently in touch with the stations of the countries concerned to enable an unexpected call for League action from a Member of the League to be heard without delay, even before the special receiving services provided for emergencies were organised.

* * *

The object of the station is to provide for communications at times of emergency or at times when a crisis is developing. According to the terms of the question as defined by the Council, therefore, the use made of it in normal times would only be of secondary importance. The creation of such a station has not been considered primarily for the purpose of meeting normal requirements of traffic from an administrative and commercial point of view. The same considerations would appear to weigh in the case as have led a number of States to establish military, naval and police wireless stations independent of commercial stations, and instituted in normal times doubtless as a precautionary measure in the event of disturbances either at home or abroad, for reasons of national defence or public safety.

At the same time, arrangements should be made for good use of the League's station in normal times, both because the smooth working of the station in times of emergency would be ensured if its operation and its communications with various other stations were constantly checked and the staff given sufficient practice, and also in order that the Members of the League and the League itself (as regards its own working and development in normal times) may receive the best return for the financial sacrifices necessarily incurred by the establishment of a station which cannot be justified on commercial grounds alone; and, lastly, in order to obtain some revenue to lighten the burden placed on the League's budget.

The general scheme of operation set forth in Appendix B answers these requirements.

In the first place, the station would have, particularly at certain periods, a fairly large traffic in circular telegrams. It could telegraph information on the work of the League, in accordance with a plan which would be drawn up in full co-operation with the Press and Press agencies, with a view not to duplicating but to supplementing the existing information services. It might also be used in the interest of relations between the League and extra-European States, to telegraph circulars and important documents, which, if sent by post as at present, involve long delay in delivery and reply. Possible progress in photo-telegraphy may render this service of increasing importance. Lastly, information of interest to the various Governments could be sent by this means (epidemiological information, etc.).

The station might further be used to promote in another way relations with countries which are distant or relatively distant from the seat of the League by the institution of telegram-letters, such as already exist in certain countries, whereby messages — even other than those included in circular letters — could be sent and received by radio-telegraphy which at present are sent by post on account of the excessive cost of telegraphic transmission.

Lastly, a considerable proportion of the telegrams now exchanged between the Secretary-General of the League and the different Governments and between the Governments and their delegations would certainly be sent through the League's wireless station.

The traffic referred to in the two previous paragraphs would be charged for, and revenue could also be obtained from the circulation of information. The general traffic in normal times would be effected on the terms fixed by the telegraph and radio-telegraph conventions now in force.

The uses to which the station would thus be put in normal times, to which would be added telephonic broadcasting transmissions, would ensure the entirely satisfactory working of the station at all times.

Apart from the question of circular telegrams, radio-telegraphic traffic could, of course, only be carried on with stations which would agree to work with the League's station for a sufficient period daily, and in order to enable full use of the League's station to be made for this purpose, adequate facilities would have to be given in as many countries as possible. The necessary facilities, however, can certainly be provided if all or most of the Governments attach general importance to the working of the League's station. No technical difficulty need be anticipated in this matter (see Appendix B, page 1112). It will be remembered that the last Assembly "reasserted that it is the obligation of the States Members of the

League of Nations to facilitate by every means in their power the rapid meeting of the Council in times of emergency", and "invited the States Members of the League of Nations to take in advance all necessary measures for this purpose".

* * *

As regards the financial aspect of the erection of a League station, the Committee of Experts has, provisionally and subject to reservations, estimated the cost of construction, including the price of land, at an inclusive figure in the neighbourhood of 1,250,000 Swiss francs. If it were found necessary (though certain experts think this unlikely), after experimenting with the short-wavelength station, to supplement it by a medium-wavelength station, the extra cost would be something like 800,000 Swiss francs.

Definite prices can only be obtained by tender from firms capable of doing the work, and such tenders could not be invited until the Assembly had reached a first decision on the principle. The cost of construction could most probably be paid off by annual instalments if this were thought necessary.

The working expenses of the short-wavelength station have been estimated at 200,000 francs a year. The medium-wavelength station, if established, would involve additional working expenses amounting to 30,000 francs a year. Important replacements of equipment, necessitated by changes in technique, are not included in the annual expenses, and for this purpose special credits would have to be asked for when necessary.

The station's receipts during the first few years of working have been estimated at from 100,000 to 150,000 francs per annum.

* * *

As soon as the Assembly has reached a final decision, the Advisory and Technical Committee will, of course, be ready to take any steps that the Council may think necessary to carry it out. The report of the Committee of Experts in itself embodies specifications, which could, if necessary, be supplemented. On these specifications, tenders would be invited from firms experienced in the construction and operation of stations of this kind. After receiving and discussing the tenders, the Committee of Experts would be able to make proposals to the Secretary-General of the League regarding the contract for the erection of the station. Steps would also be taken to acquire land, after selecting sites and consulting the authorities concerned. The transmitting and receiving stations would both be outside the city of Geneva and not less than 15 kilometers apart. At the same time, preparatory steps should be taken in order to make it possible subsequently to start the construction of the station without delay. All necessary arrangements would be made with the various telegraph departments, in consultation with a committee of experts from those departments, to regulate the detailed work of the station in ordinary times and the conditions for exchange of traffic.

The Committee feels that it can forward the present general report to the Council immediately, in order that, in accordance with the wishes of the last Assembly, it may be submitted to Governments in time to be examined by the next Assembly. Nevertheless, in order that the Assembly may have all possible supplementary explanations and be in a position to avoid all misunderstandings, the questions of operation which have already been submitted to experts individually (see Appendix B, and footnote, page 1112) or other relevant questions will be examined by a special committee, whose views will be duly communicated by the Chairman of the Communications and Transit Committee before the next Assembly.

Annex A.

REPORT OF THE COMMITTEE OF EXPERTS ON THE PROPOSED CONSTRUCTION OF A RADIO STATION FOR THE USE OF THE LEAGUE OF NATIONS, FOLLOWING THE MEETING HELD AT GENEVA FROM JANUARY 26TH TO 28TH, 1928.

The Committee consisted of the following:

General FERRIÉ, Member of the Paris Academy of Sciences, President of the International Union of Scientific Radio-telegraphy, *Chairman*.

Dr. P. JÄGER, Adviser to the Ministry of Posts of the German Reich.

Dr. KOOMANS, Chief Engineer of Posts and Telegraphs, Head of the Radio Laboratory at The Hague.

Lt.-Colonel A. G. LEE, O.B.E., M.C., of the General Post Office, London.

Professor VALLAURI, of the Royal Naval Academy at Leghorn, General President of the Italian Electrotechnical Association.

Secretary of the Committee: M. METTERNICH.

The Committee is of opinion that for financial reasons the idea of a long-wave station must be entirely dismissed.

Communication with stations outside Europe would be satisfactorily assured by a short-wave station of the type proposed below. In the opinion of the Committee, it is also possible and, according to some members, very probable that such a station would ensure adequate communications with Europe, but it is impossible to be absolutely certain of this until experiments have been made after the completion of the station.

On the other hand, if the short-wave station were used for broadcasting, it could not under present conditions be heard by the majority of listeners-in in Europe.

Accordingly, the Committee considers that, unless the League of Nations attaches particular importance to being able to broadcast in Europe immediately by its own means, the short-wave station only might be constructed to start with.

However, if experiments made immediately after the short-wave station comes into use show that this station cannot be heard at all times by all European capitals, it would have to be supplemented by a medium-wave station, which would be certainly capable of providing wireless telegraphy and broadcasting throughout Europe.

The Committee has therefore given the following indications as to the conditions of establishing a short-wave station and a medium-wave station.

I. GENERAL TECHNICAL PARTICULARS.

The plant would include a transmitting station, a receiving station and a central office.

At the outset, and in order to reduce working expenses, the central office would be attached to the receiving station, but it could be separated from it later if it was found necessary. In that case, the central office would be established in the buildings of the League of Nations.

Communication by telegraph, telephone, messengers and, possibly, by pneumatic tube would be established between the League and the central office and receiving station.

The transmitting and receiving stations would be at least 15 kilometers apart, the receiving station being nearer to the League and, if possible, outside the town, in order to avoid disturbance.

II. SHORT-WAVE STATION.

Aerials. — Details concerning the aerials will be settled later in accordance with the proposals of the builders. The only stipulation is that two masts of about 75 meters in height will have to be built to support the aerials. The site chosen for the transmitting station must allow of directed aerials being installed later if required.

It is regarded as necessary to erect at least two non-directed aerials, each for a different wavelength.

Transmission. — Two complete transmission plants will have to be furnished, both for the radio-telegraphy apparatus proper and for the supply of power. Moreover, it must be possible to obtain energy either from the electric-power mains or from a self-contained power unit. The transmitting power will be 20 kilowatts in the primary oscillating circuit. These plants must also include all the appliances necessary for radio transmission.

The plant must include all appropriate devices for maintaining the constancy of the frequencies selected at about 1/100,000 and for avoiding the radiation of harmonics.

The contractors will have to indicate the efficiency of the different oscillating circuits.

Each high-frequency transmitting apparatus must permit of the use of any wavelength between 15 and 50 meters.

The rate of keying must be such as to allow of the transmission of anything from 10 to 200 words a minute.

The contractors will have to furnish all accessory parts necessary for transmission, in particular measuring and controlling apparatus, and also a suitable number of spare sets or parts for which a separate estimate will be submitted.

Receiving. — The receivers will number eight for radio-telegraphy so as to cover the whole wavelength band from 21 kilometers to 10 meters — four for long and medium waves and four for short waves. It must be possible for two of the receivers to hear any wavelength.

The plant will comprise two Morse recording apparatus, capable of operating at a speed of between 10 and 200 words a minute and of being connected up with any wireless receiver. The number and type of the frames and aeriels must be sufficient to allow of the simultaneous operation of all the apparatus mentioned above, and to provide as high a degree of selectivity as is possible with the technical appliances at present available for counteracting disturbance and atmospheric.

The plant will also include three radio-telephone receivers, two for waves of between 2,000 and 200 meters and one for short waves.

It will also comprise all accessories necessary for the smooth working of the whole receiving apparatus, including two complete sets for charging the accumulators, one of them fed from the mains and the other from a separate engine.

Buildings. — The contractors will have to furnish all requisite plans and particulars for the construction of the transmitting buildings and of the receiving buildings and the central office, and must indicate the area which they consider necessary for these buildings and their aeriels.

Miscellaneous. — The plant will also include cables to connect the League of Nations with the central office and the receiving station, and also cables to connect the receiving station and the central office to the transmitting station. These cables should contain ten circuits. The price will be quoted per kilometer both for air lines and underground lines. Two of the circuits will provide for satisfactory broadcasting (speech and music).

Special tenders may be invited later as regards the supply of transmitting and receiving apparatus for transmission of photographs. Various contractors may be asked to submit material for comparative trials.

These tenders will have to include all necessary information as to the time required to construct the apparatus, to erect the masts and instal the transmitting and receiving stations and the central office.

It will be understood that the construction and installation of all the parts mentioned above will be carried out in Geneva and its immediate vicinity. A guarantee must be given that the apparatus will work efficiently for one year.

Prices will be quoted in Swiss francs, and must give the fullest possible details in respect of each item supplied.

The Committee of Experts reserves the right to determine, having regard to the proposals of the contractors, the trials and tests to which the equipment supplied is to be subjected.

Engineering firms will be allowed to submit any proposals they think desirable with a view to embodying the latest technical and practical improvements in the equipment, and to providing the maximum facilities in its operation, more particularly as regards automatic calling apparatus.

The various supplies must satisfy the conditions laid down by the Swiss Association of Electricians.

Receiving Service.

Staff	Number of persons
Two permanent receptions, including three radio operators at the receiving apparatus, to carry out a double day-and-night listening-in service (each operator working an eight-hour shift)	6
2 operators for the automatic and reserve apparatus	2
1 cleaner for the receiving station	1
1 electrician for charging the accumulators, etc.	1

Central Office.

A day-and-night service at the central office (eight hours per operator)	3
A day-and-night service at the League of Nations (eight hours per operator)	3

Transmission Service.

Two shifts only, each consisting of :	
1 mechanic for the power plant.	}
1 radio-electrician for the radio generating plant.	
1 operator (at the central office)	
1 cleaner	1
1 person for the maintenance of the masts	1

Direction.

1 director of service.	}
1 secretary	
1 head of the receiving station and central office	
1 head of the transmitting station	

Total	28
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This staff would not be sufficient to cope with the work in a protracted crisis. It could only work at high pressure for one or two days. Arrangements should therefore be made to provide supplementary staff if necessary. The various countries will be asked for the names and addresses of persons who could be summoned by wire in case of need.

Annual Working Expenses. — The operation of the short-wave station will entail the following annual expenditure :

	Swiss francs
Staff	125,000
Electric energy	25,000
Equipment requiring renewal (including valves)	25,000
Upkeep of buildings and equipment	10,000
Unforeseen expenditure	15,000
Total	200,000

This figure will only apply if the total length of time during which transmission takes place is kept down to two hours a day on the average.

Special credits will be required for any extensive renewal of equipment.

III. MEDIUM-WAVE STATION.

Aerials. — It is proposed to erect three 150-meter masts to carry the aerials of the medium-wave station. The contractor will, however, be entitled to make any suggestions he thinks desirable as to using these masts in conjunction with those of the short-wave station if the two stations are to be erected simultaneously.

Transmission. — It is proposed to erect a radio-telegraphic and radio-telephonic transmitting station.

For purposes of radio-telegraphy, the wavelength selected will be between 2,725 meters and 5,000 meters.

The wavelength selected for radio-telephony will be between 1,340 meters and 1,875 meters, but will only be finally settled after agreement has been reached with the Union internationale de radiophonie.

For purposes of radio-telegraphy, the power of the station will be 50 kilowatts on the aerial when transmitting a long dash.

The high-frequency transmitters will be provided separately for wireless telegraphy and wireless telephony.

The power plant of the radio-telegraphy station, including rectifiers, will be used for radio-telephonic transmission, which should have good modulation without distortion. Firms making tenders must state the estimated percentage modulation.

One complete set of the radio-telegraphy and telephony plant shall be supplied, but the radio-telegraphy and radio-telephony stations must be able to be fed either from the mains or from a self-contained power set, which can be combined with that of the short-wave station. The self-contained power set shall be divided into two equal parts.

The keying of signals must be such as to allow of the transmission at any speed of between 10 and 200 words a minute.

Apparatus must be supplied with all accessory equipment and necessary spare parts — in particular, measuring and control instruments. Special estimates shall be prepared in respect of the supply of spare parts.

The engineering firm must provide all necessary arrangements to stop the radiation of harmonics and to prevent any variation of frequency exceeding one ten-thousandth. The engineering firm shall indicate the efficiency of the different oscillating circuits.

The radio-telephonic transmitting apparatus must be capable of being tuned to any wavelength in the 1,340-1,875-meter wavelength band, and the telegraphic transmitting apparatus to any wavelength between the 2,725 and 5,000 meters. A suitable form of adjusting device will be provided to enable a permanent modification of approximately 5 per cent to be effected smoothly and on either side of the mean frequency after either apparatus has been tuned to a given wavelength.

Receiving Apparatus. — No modifications shall be made in the proposed apparatus for the short-wave station.

Buildings. — The contractor shall supply all necessary particulars regarding the extension of the buildings proposed for the short-wave station, so as to provide accommodation for the medium-wave station equipment, allowing at the same time for the possible doubling of that equipment as set forth above.

Miscellaneous. — Tenders must give full particulars of the time required to construct the apparatus, erect the masts and instal the whole plant.

The tenders shall be based on the assumption that the construction and installation of all the proposed items of equipment are carried out in Geneva or in the immediate neighbourhood. They must be accompanied by a guarantee that the apparatus will work efficiently for one year.

Prices will be quoted in Swiss francs and must give the fullest possible details in respect of each item supplied.

The Committee of Experts reserves the right to determine, having regard to the contractors' tenders, the trials and tests to which supplies are to be subjected.

Firms making tenders may submit any proposals they think desirable with a view to embodying the latest technical and practical improvements in the equipment, and providing the maximum facilities in its operation, more particularly as regards automatic calling apparatus.

The various appliances must satisfy the conditions laid down by the Swiss Association of Electricians.

Staff. — No extra staff.

Annual Working Expenses. — The operation of the medium-wave station will entail the following supplementary annual expenditure :

	Swiss francs
Electric energy	6,000
Equipment requiring renewal (including valves)	15,000
Upkeep of buildings and equipment	5,000
Unforeseen expenditure.	4,000
	<hr/>
Total supplementary expenditure	30,000

This supplementary expenditure has also been calculated on the assumption that the total length of time during which transmission (medium-wave and short-wave) takes place is kept down to two hours per day on the average.

Annex B.

NOTE ON THE WORKING OF THE WIRELESS STATION IN ORDINARY TIMES.¹

In the text of the report full details are given of the various classes of traffic that would be dealt with by the station in ordinary times. They are as follows :

(a) General distribution, by circular wireless telegrams, of Press news and Government information, circular letters, important documents, etc., according to a time-table of which all stations would be notified.

(b) Organisation of a letter-telegram service for the exchange of letters and documents between the Secretary-General or delegations and any distant countries that may desire it.

(c) Exchange of State telegrams between the Secretary-General or delegations and as many Governments as possible, either direct or by relay, according to a prearranged time-table.

Classes (a) and (b) call for no comment.

With regard to class (c) (use of the station for forwarding an important proportion of the official telegrams passing between the Secretary-General or delegations and the Governments), it is important that an adequate number of stations, and if possible one station in every Member country, should agree to keep in touch with the League station for reception and, wherever possible, for transmission also, a reasonable number of times every day in

¹ The main programme of operation in ordinary times was submitted to the opinion of the experts whose names are given below, in order that this or an equivalent programme might be put into execution under conditions which will allow of the smooth working of the service in times of emergency. In particular, the experts were asked the two following questions :

"1. Supposing that the Government of a country was in favour of the station's working properly, and was therefore inclined to furnish all possible facilities for communications with its country, would there be any serious difficulties, from the point of view of the working conditions of stations in that country, which would prevent such station from establishing communication with the League station a sufficient number of times a day ?

"2. Will the use of the station in ordinary times be sufficient and the staff sufficiently trained to assure an adequate service in times of emergency ? "

M. Arendt, Ministerial Director at the German Ministry of Posts ; M. Boulanger, Director of Telegraphic Operation in the French Ministry of Posts, and Commander Pession, Director General of Posts and Telegraphs at the Italian Ministry of Communications, who were consulted individually, were of opinion that the programme of operation could be applied without any serious difficulties provided that Governments wished that it should be. They replied in the affirmative to both questions. The text of the report is based upon their opinions.

Mr. Phillips, Assistant Secretary of the General Post Office of Great Britain expressed doubts as to the possibility of applying a programme of operation in ordinary times which would suffice to ensure the efficient working of the station in times of emergency. He found it impossible, in his individual capacity, to answer the questions asked of him, and thought that they required to be considered collectively by traffic experts.

accordance with a time-table to be drawn up later. Satisfactory direct communication, and, if necessary, relayed communication, could thus be secured, apart from any special arrangements that might be made during the Assembly and Council sessions and other important meetings. In view of the intermittent and fluctuating character of the normal traffic between the various countries and the League, such arrangements could not, of course, be recommended from the point of view of a strictly commercial operation or of the best economic yield of the different stations — except in the case of distant countries which have a direct interest in maintaining independent telegraphic communication with the headquarters of the League in ordinary times — particularly since receiving from and transmitting to the League stations in addition to their normal programme might compel certain stations to alter their present working arrangements or to incur additional expenditure (though this would not be great). However, according to the highly competent experts consulted, there seems no doubt that all necessary steps can be taken in every country whose Government attaches importance on grounds of public interest to the working of the League station; there is no technical difficulty to prevent Members of the League from giving the League station facilities which some of them would certainly, and quite properly, refuse to ordinary commercial stations.

* * *

The proposed programme for the station ensures its satisfactory operation even if the exchange of State telegrams is reduced to a minimum. The station would be used very much more than military or naval stations maintained in peace-time, and as much as, or even more than, a number of existing civil stations under normal conditions. Moreover, frequent calls would be made to the various stations in correspondence, during the period of the agreed time-table, to make sure that they were in touch. Lastly, the intensity of the traffic has nothing to do with the question of ascertaining whether the station is technically in proper working order; and as regards the staff, the only section of it whose training would to some extent depend on intensity of traffic is the staff of the central telegraph office. This staff could quite easily and perhaps advantageously be recruited on short contracts from persons seconded from their departments for that purpose.

The volume of traffic has been approximately estimated on the basis of the Secretariat telegraphic expenses for one year and on the number of telegrams despatched by the Secretariat, the delegations and the International Labour Office between October 1st, 1926, and September 30th, 1927. It was assumed that almost all the telegrams despatched by the Secretariat would go through the station, but that only half the telegrams from delegations would use that route — at all events, at the beginning; also that, in any case, telegrams despatched by delegations of countries bordering on Switzerland would not be sent by wireless. On these assumptions, we have an estimate of about 300,000 words per annum. The traffic in classes (a) and (b) has been estimated very roughly, account being taken of the nature and length of the communications likely to be sent, the number of countries affected, etc. It seems certain that at least 1,200,000 words will be despatched annually when the station is in full operation.

The receipts in respect of State telegrams have been estimated on the basis of statistics supplied by the Swiss authorities and on the telegraphic expenses of the Secretariat. Assuming that three-quarters of the telegrams are sent direct and only one-quarter relayed, we obtain a figure of about 55,000 francs for transmission receipts. The reception traffic has been provisionally taken as about equal to the transmission traffic so far as State telegrams are concerned. The reception receipts will also be about 55,000 francs, so that the total yield from official telegrams in both directions should be roughly something like 100,000 francs.

Class (b) traffic will yield transmission and reception receipts which cannot easily be estimated, as the rates will have to be very low in order to stimulate the traffic, which would otherwise go by post. The receipts from class (b) traffic, together with any miscellaneous receipts from class (a) traffic, may be estimated at something like 50,000 francs; and, in order to be on the safe side, the receipts that can be reckoned upon have been estimated in the text of the report at between 100,000 and 150,000 francs per annum. The receipts have been estimated by the Secretary-General of the Committee on the basis of the programme of operation laid down.

Geneva, August 23rd, 1928.

LEAGUE OF NATIONS

**Radio-Telegraphic Station for the Purpose of ensuring
Independent Communications
for the League of Nations at Times of Emergency.**

**NOTE AND MEMORANDUM
FROM THE SWISS FEDERAL GOVERNMENT.**

Berne, August 21st, 1928.

The Federal Political Department has the honour herewith to send the Secretariat of the League of Nations confirmation of the fact that, being anxious to facilitate League communications both in normal times and at times of emergency, the Federal Council is favourable to the proposal to establish in the neighbourhood of Geneva a radio-telegraphic station, to be placed at the League's disposal under the conditions set forth in the attached memorandum (see Appendix).

As that document shows, the Federal Council would be prepared, in normal times, to grant the League of Nations priority in the use of this station and, at times of emergency, to place it under the management of the League.

As regards the operation of the station at times of emergency, the Federal Council desires to make the following observations and reservations.

In virtue of its territorial sovereignty, a State is responsible to the other members of the international community for certain acts which may take place in its territory. The consequences involved by this responsibility may be very serious, and might even imperil the State's own security. Hence no sovereign State can possibly allow acts in which its responsibility towards other nations may be engaged to take place in its territory entirely outside its control.

This axiom applies to the case of a radio-telegraphic station, and no State can therefore disregard the activities of an establishment of this kind in its territory, since in certain circumstances these activities might have effects the nature and scope of which could not be foreseen. The League of Nations very legitimately feels the need of having an absolutely reliable wireless station at its disposal at times of emergency, but it is equally legitimate for the country in which such a station is established to require the guarantees essential to safeguard its sovereignty.

Nor is sovereignty alone at stake. The operation of radio-telegraphic stations directly affects the interests of national defence and, in view of these interests, it will readily be realised how difficult the situation would become in the event of a general mobilisation, or of war, if there existed in the territory of any country a station whose activities might not always be strictly compatible with military necessity.

To these considerations, which apply to any State, must be added those regarding the international status of Switzerland herself and the special position she occupies within the League of Nations.

As is generally known, Switzerland was only able to join the League on the basis of Article 435 of the Treaty of Versailles and as a result of the declaration made by the Council of the League on February 13th, 1920. This latter document, the effect of which was to reaffirm her neutrality within the framework and under the regime of the League, is of fundamental importance to her. Moreover, it was recognised that her scrupulous fulfilment of her obligations as a neutral State is as much in the interest of the League as in that of the Confederation itself. Switzerland, therefore, may assume without discussion that the League could not possibly intend to place the proposed wireless station under a regime incompatible with the obligations arising out of the Declaration of London and of the Hague Convention of October 18th, 1907, regarding the rights and duties of neutral Powers and persons in time of war. But although, according to Article 8 of the latter Convention, "a neutral Power is not called upon to forbid or restrict the use, on behalf of the belligerents, of telegraph or telephone cables or of wireless telegraph apparatus belonging to it or to companies or private individuals", it was unanimously agreed at the Hague Conference that the recognised freedom of neutral States in this matter "does not connote the right to use or allow the use of [such apparatus] for the clear purpose of assisting any of the belligerents". In the

same connection, Article 9 of the above-mentioned Convention lays down that every measure of restriction or prohibition taken by a neutral Power regarding, *inter alia*, the use of a radio-telegraphic station established in its territory, " must be impartially applied by it to both belligerents ".

Important though the above considerations may be, the Federal Council has no intention of using them as a bar to the proposal to provide the League of Nations at times of emergency with a radio-telegraphic station enabling it to carry on its work more easily. On the contrary, the Federal Council is prepared to do all in its power to enable this project to be carried out on as satisfactory a basis as possible. Nevertheless, in view of the duties entailed by Swiss sovereignty and Swiss neutrality, and in view of the needs of national defence, the Federal Council deems it indispensable to have at Geneva, during times of emergency, an observer able to keep it constantly informed as to the activities of the radio-telegraphic station.

Further, it is most important for Switzerland that her attitude should not be in any way misunderstood in the future. The Federal Council would accordingly esteem it of great value if the Assembly would pass a formal resolution recognising that the use to be made of the station by the League at times of emergency and under the conditions contemplated cannot be adduced in any way as involving the international responsibility of Switzerland.

The Political Department requests the Secretariat to be good enough to transmit the present communication and the attached memorandum to the Assembly, and has the honour to be, etc.

Appendix.

MEMORANDUM ON THE ESTABLISHMENT AND OPERATION OF A RADIO-TELEGRAPHIC STATION AT GENEVA FOR THE USE OF THE LEAGUE OF NATIONS.

I. *Technical Equipment.*

The technical specifications for the station to be constructed would be fixed jointly by Radio-Suisse, a wireless telegraphy and telephony joint-stock company, and the technical Committee of the League of Nations, on the basis of the plan already drawn up by that Committee, which may be reconsidered by the appropriate organ of the League with the assistance of Swiss experts. In making a final investigation, account would be taken, in connection with the medium-wave post, of the commitments already assumed by Radio-Suisse with the object of completing as quickly as possible the installations required in particular for Press traffic in Geneva. This medium-wave post, for which the order was placed as long ago as last autumn, will have a power of 50 kw. on the aerial, as specified in the proposal of the League technical Committee, and will make direct radio-telegraphic communication possible between Geneva and any country in Europe, North Africa or the Near East. As regards the short-wave post, which is primarily designed to meet the special needs of the League, particularly for oversea communications, this would be purchased in the manner proposed by the Secretariat of the League after consultation with the appropriate technical body of the League and with Radio-Suisse.

The station would be equipped with all such improvements as might be found useful for its purposes, and would always be abreast of the latest technical developments.

On taking over the station, and thereafter at any time, the appropriate organ of the League could supervise the technical condition and working of the station, either in person or through the delegate referred to below.

The station would be established on Swiss territory in the neighbourhood of Geneva.

II. *Operation.*

(a) *In Normal Times.*

The station, which would be the full property of Radio-Suisse, a company under Swiss Government control, would be operated by that company in normal times. When naming the station, account should be taken of the fact that its operation is of international importance. Its service would be so organised as to ensure its full working efficiency with a view to its operation independently of the rest of the Radio-Suisse system in an emergency.

The central operating office would be housed in separate premises in direct communication with the Central Telegraph Office at Geneva, which is already connected with the League Secretariat by a pneumatic tube which ensures rapid communication. It is essential that the wireless and telegraph services should work together; this is made easier by their being both housed in the same building, which is also, for technical reasons, the only rational solution.

An auxiliary centre for use at times of emergency, in direct communication by wire with the station and with the Geneva Central Telegraph Office, could be established at or near the Secretariat whenever the League chose.

The working programme for normal times would be drawn up by agreement between Radio-Suisse and the League Secretariat. The primary purpose of the station would be to despatch

and receive official League communications (messages from or to the Secretariat, the International Labour Office, and delegations to the Council, Assembly and Conferences of the League) and to despatch and receive unofficial communications connected with the League, such as Press messages, so far as it was feasible and in the sender's interest to transmit them by wireless. The station would also be open to commercial traffic as far as the despatch and receipt of official communications might permit.

The Swiss General Post Office and Radio-Suisse would take all necessary steps to secure the highest efficiency at the station. They would do all in their power to establish, through the station, any radio-telegraphic communications that the League might require.

The following measures might in particular be provided for in the programme of operation:

(1) The establishment, as an experiment, of direct radio-telegraphic connection on one occasion with each of the corresponding stations designated by the League of Nations, so far as the Geneva station and the corresponding stations have suitable technical equipment and are capable of being used for that purpose;

(2) A weekly exchange of traffic, at an hour fixed beforehand, with the stations designated by the League (call and acknowledgment), in order to make sure that radio-telegraphic communication with the stations in question can be established from Geneva at any moment;

(3) Daily broadcasting of one or more League *communiqués* by means of suitable broadcasting transmitters, in order to establish contact daily with the stations intended to receive messages from Geneva;

(4) A "listening-in" programme. Every day, at a time agreed upon, the Geneva station would listen-in to the stations designated by the League and would receive any messages intended for the latter.

It would be understood that, if necessary, special facilities might be granted by arrangement between the League of Nations and foreign administrations, to League official telegraph messages without such facilities being *ipso facto* extended to general commercial traffic. This would particularly apply to transmissions of the texts of documents and circular letters between Governments and the League of Nations under conditions to be fixed later.

Government telegrams sent to and from the station might be allowed the reductions in rates granted to Government telegrams sent by other means.

The Secretary-General of the League might be represented in an advisory capacity on the Board of Directors of Radio-Suisse for all questions affecting the Geneva station, with a view to safeguarding the interests of the League in the operation and use of the station. Whenever such questions arose, the Radio-Suisse administration would inform the Secretary-General's delegate, who himself could also raise questions of this kind. If he considered a decision of the Board of Directors likely to prejudice the League's interests, the question would be examined by the Swiss Government and the Secretary-General. All questions of this nature which come within the competence, not of Radio-Suisse, but of the Swiss Federal Administration, and to which the attention of the Swiss Government had been drawn by the Secretary-General of the League, could also be examined jointly by the Secretary-General of the League and the Swiss Government.

To facilitate the necessary co-operation between Radio-Suisse and the competent organs of the League of Nations in regard to the Geneva station, the Secretary-General might be represented by a delegate accredited to the Director of Radio-Suisse and to the head of the Geneva Station. Every facility would be given to this delegate to carry out his duties as liaison officer between the Secretary-General and the Radio-Suisse.

In order that at times of emergency the necessary additional or replacement staff might be available and that such staff might in normal times become familiar with the working of the station, the Radio-Suisse would give reasonable facilities for the admission, as temporary staff in training or as additional staff in periods of heavy traffic (Assemblies, etc.), of any specialists whom foreign administrations might place beforehand at the disposal of the League Secretariat, to assist, if necessary, in the operation of the station at times of emergency. Any additional expenditure thereby incurred by Radio-Suisse would be chargeable to the budget of the League of Nations.

(b) *At Times of Emergency.*

As soon as the Secretariat of the League officially notified the Swiss Government that a period of emergency had commenced, the station would come under the management of the League. The latter would, at its own risk, take over the material of the station, which would be regarded as League material. The staff of the station would be at the disposal of the Secretary-General and would be regarded as League Secretariat staff, even if the Swiss army were mobilised. The Secretary-General of the League would be authorised to take any measures relating to management and organisation which he might deem desirable, and, in particular, he might make any increase or change in the staff. In order, however, to facilitate the resumption of normal working at the end of the period of emergency, the permanent staff would only be changed in exceptional cases. The Secretary-General would be bound to compensate any member of the permanent staff of the station whose contract was suspended and for whom other employment could not be found by Radio-Suisse.

The station should continue to handle all other traffic in so far as this did not interfere with the increase in the League's communications, but on condition that the control imposed in Switzerland was applied to such traffic.

During the time of emergency, the expenses of the station, including the amortisation and interest charges on the capital invested, would be borne by the League, which would also collect the revenue from the station; the Swiss Administration, however, would receive the share of the receipts to which it was entitled in respect of commercial traffic (terminal charge). Any net profit from the operation of the station during the period of emergency should, however, be allotted to Radio-Suisse, as the holder of the concession from the Swiss Telegraph Administration, since the sole object of the League's management of the station would be to ensure the independence of its communications.

It would be for the Secretariat to decide which of its own telegrams should be sent by wireless and which by the lines of the Swiss Administration. In any case, the Swiss Telegraph Administration would take all necessary steps to despatch by wire, as rapidly as possible, such League traffic as for any reason could not be transmitted from the radio-telegraphic station. The official traffic of the League sent by telegraph would also be given priority over all private messages. The Swiss Administration has already stated that it would be quite willing to draw up jointly with the Secretariat a detailed scheme enumerating the routes by which telegrams could most easily be despatched at periods of emergency.

The Swiss proposals are calculated to ensure complete independence for the League's radio-telegraphic traffic at times of emergency, and, further, whenever for technical reasons transmission could not be effected by wireless, to enable the League's communications to be despatched rapidly by telegraph, in co-operation with the Swiss Administration.

Reference may also be made to the Memorandum which the Federal Political Department sent to the Secretariat on January 13th last¹, enumerating the technical benefits which the Swiss proposal would offer both in normal times and at times of emergency.

The termination of the period of emergency would be notified in the same manner as its commencement. There would be an equitable settlement, if necessary after consulting experts or after arbitration, between Radio-Suisse and the Secretary-General of the League, as regards losses sustained or advantages secured as a result of the operation of the station during the period of emergency.

The Swiss Government would give the station and the installations connected therewith, at all times, the same protection from the point of view of general security as it gives the buildings of the League. It would also be entitled, should it consider such a measure necessary to facilitate such protection, to ask the Secretary-General to bring into operation the measures provided for in respect of the station at times of emergency.

(c) *Financial Scope of the Swiss Proposals.*

These proposals would impose upon Switzerland a considerable financial sacrifice, to which she is prepared to consent in view of her privilege of housing the League of Nations. According to these proposals Switzerland would at the outset meet all initial expenditure on land and buildings for the transmitting and receiving stations, and also the cost of installing a powerful medium-wave transmitter, including the aerial, the commercial receivers, and the equipment of the central operating-room. The new medium-wave transmitter is, it is true, necessary for private traffic, particularly for the international Press traffic connected with the League. Nevertheless, Radio-Suisse would incur a very considerable annual expenditure on account of the fact that, contrary to the first proposal, the new installation would not be incorporated in the station situated near Berne, but, in accordance with the League's wishes, would be erected near Geneva. The League's telegrams despatched from this medium-wave high-power transmitter would only pay the international charge.

In order to cover the costs of establishing and operating the *short-wave post* recommended by the League's experts, the receivers for a special listening-in programme for the League of Nations, and the necessary aerials, an annual payment would be required, the amount of which would have to be fixed. This amount would depend primarily upon the cost, to Radio-Suisse, of these transmitting and receiving installations; in the second place, upon the extent of the transmitting and listening-in programme, which in normal times would be carried out by arrangement with the Secretariat of the League in order to enable a satisfactory service to be ensured at times of emergency; and, lastly, upon the extent to which these installations could be used by Radio-Suisse for the transmission and reception of paid messages.

The following general financial arrangement might be contemplated:

The short-wave post being designed to meet the special requirements of the League, the latter would be responsible for the interest and amortisation charges on the capital invested in this post, together with the operating expenses. An annual grant from the League to Radio-Suisse would be calculated on this basis. The League would, however, only pay 90 per cent of the grant thus calculated. On the other hand, the revenue from the short-wave post would be divided as follows: for official traffic, the League would receive all the charges collected; as regards commercial traffic, the Swiss Administration would in all cases receive the terminal charge; the transit charge would be paid to Radio-Suisse up to the 10 per cent referred to above. Over and above this 10 per cent the transit charge would accrue to the League up to the amount of its contribution to the short-wave post, but minus a certain percentage sufficient to make it worth while for Radio-Suisse to send commercial traffic through the post.

¹ See document C. 142. M. 33. 1928. VIII.

Any surplus receipts, over costs of operation, amortisation and interest charges on the capital invested in the short-wave post, from the operation of that post, would be paid to Radio-Suisse, since such receipts could only be obtained from the use of the station for the commercial traffic dealt with by Radio-Suisse.

A special grant would be paid to Radio-Suisse by the League of Nations for any special services which the League might think fit to require from the medium-wave post (extra listening-in, for example).

• There is every reason to believe that the annual sum fixed on this basis would, during the experimental period, reach a specified amount, which would gradually be reduced with the increasing possibilities of making practical use of the transmitting and receiving installations for paid messages.

If the Swiss offer were accepted, the League of Nations would certainly incur less expenditure than if it built and operated a station itself. The running costs of a station belonging to the League and comprising two short-wave-length transmitters and one medium-wave-length transmitter would very probably amount to not less than 300,000 francs a year, to which must be added amortisation in respect of premises and equipment, calculated at a mean rate which could hardly be less than 10 per cent. The total annual expense to be borne by the League would thus amount, in round figures, to half-a-million francs.

To offset this expenditure of not less than half-a-million, there would be receipts from the official traffic of the station. Without entering into details as to the financial yield from a station the actual property of the League, the receipts may perhaps be estimated at 60,000 or 80,000 francs. An autonomous station belonging to the League would therefore involve an actual annual expenditure of at least 400,000 or 450,000 francs, and this apart from the interest on the capital invested in the installations.

It is scarcely possible at present to give precise details as to the amount of the annual payment which the League would be required to make if the Swiss offer were accepted. Obviously, however, this payment, if calculated on the basis of the Swiss grants and the possibilities of using the Geneva station for Swiss commercial traffic, would be much less than the annual cost of a station attached to the League itself.

To sum up: if the League of Nations accepted the Swiss offer, it would obtain, at very small cost, a means of radio-telegraphic communication which would afford it excellent service in normal times, and which at times of emergency would ensure it direct and independent connection with the maximum-number of States Members.

(d) *General Observations.*

The agreement which the League would conclude should contain provision for a method of settling any differences regarding the interpretation or application of the agreement which might arise between the various parties concerned — the Secretary-General of the League of Nations, the Swiss Government, and Radio-Suisse.

The agreement might be concluded for a period of ten years. Thereafter it would be renewed by tacit consent, but might be denounced by the Swiss Government or by the Secretary-General of the League of Nations under conditions which should be defined with due regard to the problems that would arise as a result of such denunciation.

Geneva, August 22nd, 1928.

LEAGUE OF NATIONS

**RUSSIAN, ARMENIAN, ASSYRIAN, ASSYRO-CHALDEAN
AND TURKISH REFUGEES.**

Report to the Ninth Ordinary Session of the Assembly.

Note by the Secretary-General:

The Secretary-General has the honour to communicate to the delegates at the ninth ordinary session of the Assembly:

- I. A letter forwarding the Report of the High Commissioner for Refugees to the Assembly;
- II. A letter from the Director of the International Labour Office forwarding his Report on the Work of the Refugee Section of the International Labour Office.

LETTER TO THE SECRETARY-GENERAL FROM THE HIGH COMMISSIONER FOR REFUGEES.

Geneva, August 14th, 1928.

In conformity with instructions received from Dr. Nansen, I have the honour to enclose, for transmission to the ninth ordinary session of the Assembly, the English and French texts of the report on refugee questions by the High Commissioner for Refugees.

(Signed) T. F. JOHNSON,
Assistant High Commissioner for Refugees.

PART I.

REPORT BY THE HIGH COMMISSIONER OF THE LEAGUE.

I. INTRODUCTION.

Part I of this report covers the activities of the High Commission for Refugees concerning the political, legal and financial aspects of the various refugee problems since the meeting of the eighth ordinary session of the Assembly. Part II of the report, submitted by the Director of the International Labour Office, deals with the activities of the Refugee Section and refers to the technical work of placing refugees in employment.

For the purpose of convenient reference, the resolutions on these subjects adopted by the Assembly at its last session, on the recommendation made to the Fifth Committee by its Rapporteur, the British delegate, and by the Council at its fiftieth session, are reproduced hereunder.

The resolution passed by the eighth ordinary session of the Assembly was as follows:

“ The Assembly:

“ Having carefully examined the reports of the High Commissioner and of the International Labour Office on the refugee questions;

“ Recognises the progress that has been made towards the solution of a problem that at one time constituted a very serious danger;

<p>Publications of the League of Nations VIII. TRANSIT 1928. VIII. 6.</p>

“ Expresses its high appreciation of the important work that has been accomplished on behalf of the refugees;

“ Invites the High Commissioner to convene a small Conference, on the lines indicated in his report, to formulate proposals for submission to the Council in regard to the legal status of refugees. This should be preceded by a full and careful examination of the juridical situation of the refugees in the different countries, the necessary information to be communicated to the respective Governments beforehand;

“ Congratulates those responsible for the measures already taken and contemplated for the permanent settlement of Armenian refugees in the Near East;

“ Expresses the hope that, as a result of the efforts described by the High Commissioner in his report, the necessary funds will be secured for the execution of this work and that, with the continued co-operation of the mandatory Power, this aspect of the problem may be successfully liquidated;

“ Approves the provisions in the budget for the Refugee Service in addition to the supplementary credit of 7,500 Swiss francs for the services for establishing Armenian refugees in Syria.

“ Further, the Assembly:

“ Notes with interest the offers of employment now available for refugees in overseas countries;

“ Recognises that the execution of these schemes requires the immediate establishment of an adequate revolving fund;

“ Urges the Governments concerned to inform the High Commissioner as soon as possible what measures they are prepared to take for financing the settlement of refugees from their territories;

“ Requests the Council to invite the Governing Body of the International Labour Office, in examining the budget of the Refugee Service for 1929, to consider whether adequate funds for settlement have been thus provided.”

The resolution adopted by the Council at its last session was in these terms:

“ The Council invites the Governments which have adopted the Arrangements of July 5th, 1922; May 31st, 1924; and May 12th, 1926, in favour of Russian and Armenian refugees to extend the benefits of those Arrangements to the Assyrian, Assyro-Chaldean and Turkish refugees mentioned in the High Commissioner's report, and requests the High Commissioner for Refugees, in consultation with the interested Governments, to take the necessary steps to extend the measures in favour of Russian and Armenian refugees to the above refugees.

“ The Council also invites the Inter-Governmental Conference on the legal status of Armenian and Russian refugees, which has been convened for June 28th next in conformity with the resolution adopted by the Assembly at its last session, to consider the possibility of making appropriate recommendations concerning the issue of passports to the analogous categories of refugees and for the regularisation of their legal status.”

II. LEGAL STATUS.

In accordance with the resolution of the last Assembly, an Inter-Governmental Conference was held in Geneva from June 28th to 30th, 1928. Seventeen Governments more directly interested in the refugee problems were invited to send representatives. The Governments of the following fifteen countries were represented at that Conference, which elected M. Delaquis, the Swiss delegate, as its President: Austria, Belgium, Bulgaria, Czechoslovakia, Egypt, Estonia, Finland, France, Germany, Greece, Latvia, Poland, Roumania, Kingdom of the Serbs, Croats and Slovenes and Switzerland.

The Conference accepted as the basis for its deliberations a memorandum on the legal status of the refugees, prepared by a Committee of Russian and Armenian refugee legal experts in consultation with the High Commission for Refugees. That Committee also assisted at the Conference in an advisory capacity.

The information thus placed at the disposal of the Conference enabled it to form an opinion as to the serious disabilities from which over one million Russian and Armenian refugees suffered owing to the absence of a stable and clearly defined legal status, and resulted in the adoption of an Arrangement and Agreement (document C.392.1928) which, if generally applied, will mark an important step towards regularising the situation of the refugees, and thus confer not only appreciable benefits on those refugees but on the nationals of the various countries with whom they have daily intercourse.

The following are the most important provisions of that Arrangement:

I. The High Commissioner is recommended to appoint representatives in the various countries vested with the following functions, which should be given the largest possible official character, and for which moderate fees may be charged:

- (a) To certify the identity of the refugees.
- (b) To certify their civil status.
- (c) To attest the regularity and legality of documents issued in their country of origin.

(d) To certify the signatures of the refugees and of documents drawn up in their own language.

(e) To attest *vis-à-vis* the authorities the character and good conduct of the refugees, their previous records of service, their professional and academic qualifications.

(f) To recommend the refugees to the competent authorities, particularly for obtaining visas, *permis de séjour*, admission to schools, libraries, etc.

2. Definition of the personal status of the refugee.
3. Enjoyment of certain rights usually granted to foreigners on conditions of reciprocity.
4. Benefit under certain conditions of free legal assistance.
5. Recommendation that restrictive regulations concerning foreign labour be not rigorously applied to the refugees.
6. Relaxation, in certain circumstances, of expulsion measures.
7. Taxation equality with nationals.
8. Facilities for obtaining and prolonging passports and visas and for freedom of movement.
9. That the formula in the refugee identity certificate: "The present certificate is *not* valid for the return", etc., should be replaced by the words: "The present certificate is valid for return into the country which has issued it during its validity", etc.

This Arrangement has already been signed by the delegates of the following countries: Austria, Belgium, Bulgaria, Estonia¹, France, Germany, Greece¹, Latvia¹, Poland¹, Roumania, Kingdom of the Serbs, Croats and Slovenes and Switzerland.

III. EXTENSION TO OTHER CATEGORIES OF REFUGEES OF THE MEASURES TAKEN IN FAVOUR OF ARMENIAN AND RUSSIAN REFUGEES.

In conformity with a resolution adopted by the Council on September 15th, 1927, the High Commissioner submitted to the Council, at its meeting in June last, a report concerning the position of the Assyrian, Assyro-Chaldean and Turkish refugees, with proposals as to the steps which might be taken to improve their situation.

The High Commissioner pointed out in that report that it had been necessary to rely, in a large measure, on the information at the disposal of organisations interested in the welfare of these refugees in order to avoid, by means of more direct enquiries, raising hopes among the refugees concerned until the Council had arrived at a definite decision on the subject.

The following table summarises the information thus obtained by the High Commissioner regarding the distribution and number of the refugees mentioned in his report:

Assyrians and Assyro-Chaldeans.

Greece	600
Iraq	12,000
South Russia	15,000
Syria	1,500
Total	29,100

Turkish Refugees.

Albania	2
Bulgaria	3
Cyprus	3
Egypt	14
France	5
Greece	37
Iraq	5
Roumania	32
Syria	30
Other countries	19
Total	150

The Assyrian and Assyro-Chaldean refugees, most of whom were reported to be agriculturists, wished, it was understood, to be settled as Assyrians in colonies in Syria, the Lebanon and Iraq, under the direct protection of the respective mandatory Powers of those States. Failing that solution of their difficulties, they asked that steps might be taken to settle them as colonists on similar lines to those adopted by the High Commissioner and the International Labour Office for the settlement of the Armenian refugees in Syria or in other countries.

¹ With certain reserves.

The resolution adopted by the Council in this connection is quoted in Chapter I of the present report, and requested the Inter-Governmental Conference on the legal status of Armenian and Russian refugees, which had been convened for June 28th, 1928, and the High Commissioner to take the necessary steps to extend to the above-mentioned refugees the measures taken in favour of Armenian and Russian refugees.

The Conference considered that the most urgent requirements of those refugees, notably the provision of passports and of facilities for settlement, would be met by the adoption of an international Arrangement similar to that of May 12th, 1926, in favour of Armenian and Russian refugees. The Conference therefore prepared an Arrangement (document C.392.1928) recommending that the provisions of the Arrangements of July 5th, 1922; May 31st, 1924; and May 12th, 1926, should be extended to the Assyrian, Assyro-Chaldean and Turkish refugees.

The Conference also recommended the adoption of the following definitions:

“ Assyrian, Assyro-Chaldean and assimilated refugee. — Any person of Assyrian or Assyro-Chaldean origin, and also by assimilation any person of Syrian or Kurdish origin, who does not enjoy or who no longer enjoys the protection of the State to which he previously belonged and who has not acquired or does not possess another nationality.

“ Turkish refugee. — Any person of Turkish origin, previously a subject of the Ottoman Empire, who under the terms of the Protocol of Lausanne of July 24th, 1923, does not enjoy or no longer enjoys the protection of the Turkish Republic and who has not acquired another nationality.”

As regards the legal status of these refugees, the Conference came to the conclusion that, whilst recognising the necessity of recommending measures similar to those provided for the Armenian and Russian refugees, no definite steps could be taken until the High Commission had had an opportunity of collecting the requisite information as a basis for a full consideration of the question.

IV. REFUGEE SETTLEMENT.

(a) *Settlement of the Armenian Refugees in Syria.*

It is very gratifying to report that, in spite of the difficulties experienced in securing adequate funds, very notable progress has been made during the last year towards the solution of the most acute portion of the Armenian refugee problem in Syria.

It will be remembered that, at the request of the mandatory Power, the seventh ordinary session of the Assembly invited the International Labour Office and the High Commission for Refugees to consider the possibility of making an effective response to the appeals for their co-operation in the permanent settlement of these refugees. In conformity with that request, the undermentioned international Armenian Committee was formed, which includes representatives of the most important relief organisations interested in the welfare of the Armenian refugees:

Dr. NANSEN, Chairman.	
M. Albert THOMAS, Vice-Chairman.	
Senator Victor BÉRARD	
His Excellency M. VANDERVELDE	
Senator CIRAULO	
Dr. Umberto Z. BIANCO	
M. L. PACHALIAN	
Miss PYE	
Mr. BACKHOUSE	
Mr. L. B. GOLDEN	
Mr. John HARRIS	
Captain G. GRACEY, D.S.O.	
A representative of the Comité international de la Croix-Rouge.	
Mr. G. L. BERRY	
M. KRAFFT-BONNARD	
Mr. A. HACOBIAN	
His Excellency M. THIÉBAUT	
	French Phil-Armenian organisations.
	Belgian Phil-Armenian organisations.
	Italian Phil-Armenian organisations.
	Armenian organisations.
	United British Committee, representing the
	“ Save the Children ” Fund, Armenian
	(Lord Mayor’s) Fund, Friends of Armenia
	and the Society of Friends.
	Near East Relief.
	International Near East Association.
	British Armenian organisations.
	Comité central de la Croix-Rouge française.

A close liaison with the situation on the spot was established by means of the creation of a Refugee Settlement Committee at Beyrouth, consisting of representatives of the High Commissioner for the mandated territories, of the local authorities and of M. Burnier, who acts for the Refugee Section, the High Commission for Refugees, and the International Armenian Refugee Committee. Sub-Committees of the Beyrouth Committee supervise the work in the Aleppo and Alexandretta areas. Finally, with a view to securing the closest possible co-operation of the refugees themselves, the actual settlement operations are placed under the control of an outstanding Armenian personality, Moses der Kaloustian, who has enjoyed a widespread influence and popularity among the Armenians since the war, in which he gained distinction in organising the exodus of large numbers of Armenians to Cyprus. Under him has been placed at the head of each colony a mudir,

who has the powers and the duties of the mayor of a native village. He, in turn, is assisted by a council of three members elected by the villagers. The mudir and council are responsible for the establishment and organisation of the colony and for the maintenance of discipline and order. They are likewise charged with the control of applications for advances and with their recovery. As each colony is collectively responsible for the advances made to the population forming part of it, the most economical administration of the Settlement funds is assured by the refugees themselves. In this way, all the interests of the various parties have been safeguarded and the most harmonious collaboration has been ensured.

A thorough investigation of the situation of the Armenian refugees concentrated in the Beyrouth, Aleppo and Alexandretta camps showed that the problem which demanded the most urgent attention consisted of some 40,000 refugees who were existing in those camps under conditions which the mandatory Power considered should be terminated as soon as possible. It was ascertained that 28,000 of those refugees belonged to agricultural categories and that the remaining 12,000 were of the artisan classes. The problem therefore resolved itself naturally into one of transferring these refugees as soon as possible into agricultural colonies and urban settlements. The first experiment of settling refugees as métayers at Ras-ul-Ain, in the region of Tyre and Sidon, although productive of satisfactory material results, was eventually liquidated, as the Armenian refugees found it difficult to adapt themselves to the métayage systems, which did not offer them the possibility of eventually owning their own farms.

Profiting by the experience gained at Ras-ul-Ain, a thorough search was instituted to find a really suitable region which would serve as a centre for the establishment of an Armenian agricultural colony. Good land was necessary which could be obtained at a reasonable price on estates large enough to receive thirty families at a time, some of which estates would be suitable for the mountain folk from Anatolia and some for the peasants from Cilicia. The region had also to be sufficiently sparsely populated to allow for the introduction of some thousands of Armenians without prejudicing the interests of the inhabitants. A choice was finally made and the Sandjak of Alexandretta has been selected as fulfilling all the necessary conditions, and as having the additional advantage of an indigenous Armenian population whose presence would prove an encouragement to the refugees.

The following colonies have been established on those lands:

Colony	Area: Hectares	Refugee families	Approximate cost
Ikiz-Keupru	600	60	£ 2,450
Sooug-Sou	100	50	3,350
Kirik-khan	40	36	1,116
Kirik-khan	20	20	160
Pré militaire	600	209	9,049
Totals		375	£16,125

If such important progress has been made with those agricultural schemes, it is due to the British United Committee, consisting of the Armenian (Lord Mayor's) Fund, the "Save the Children" Fund, the Friends of Armenia and the Society of Friends, who, thanks to the generosity of their subscribers in Great Britain, Australia and Canada, have promised to provide the funds necessary for the establishment of these colonies. The Friends of Armenia have generously agreed to adopt the colony of Sooug-Sou (see Appendix I).

Urban Settlements.

To meet the needs of the artisan refugees, the following settlements have been established in Beyrouth, Aleppo, Kirik-khan and Alexandretta:

Settlement	Houses in course of construction	Refugee families to be accommodated	Approximate cost
Beyrouth (1)	208	208	£ 25,000 ¹
Beyrouth (2)	500	500	6,500
Aleppo (2)	200	200	2,000
Aleppo (1) }	180	180	2,000
Kirik-khan }			
Alexandretta	70	70	225
Totals	1,158	1,158	£35,725

The cost of the construction of the second Beyrouth and of the Aleppo and Kirik-khan urban settlements is being met largely from funds subscribed by the International Near East Association, the Union arménienne de Bienfaisance, an anonymous subscriber and the Nansen Stamp and Private Funds (see Appendix I).

It will be seen from the foregoing particulars that no fewer than 1,533 families, or about 7,660 refugees, are already being settled for the modest total expenditure of £51,850.

¹ The sum of 3,000,000 francs for the creation of the first Beyrouth urban quarter was made available by the Lebanon Government.

As explained in last year's Assembly report, the funds utilised for the settlement work have to be refunded by the refugees within periods varying from five to ten years. As and when refunded, the sums thus advanced will be employed for the settlement of further groups of refugees.

In some cases, the funds placed at the disposal of the revolving fund are outright gifts; in other cases, a certain proportion of the grants has to be returned to the subscribing organisations on the termination of the settlement work.

In addition to the settlement schemes already in course of execution, M. Burnier has drawn up, in consultation with the mandatory authorities, the following plans for the settlement of further groups of refugees when the necessary funds become available for the purpose:

Colony	Refugee families to be settled	Approximate cost
Djebel-Moussa	350	£14,300
Ras-ul-Ain	200	8,500
Alexandretta (Urban)	250	2,500
	<hr/>	<hr/>
Totals	800	£25,300

(b) Other Settlement Work.

In addition to the important refugee colonisation in Syria, the High Commissioner has, during the past year, placed funds at the disposal of the Refugee Section of the International Labour Office for the settlement in employment of no fewer than 7,578 Armenian and Russian refugees in various countries. More detailed information regarding these placings will be found in the report of the Director of the International Labour Office, but reference should be made to the important development of the placing of the refugees in France as métayers and industrial workers, thanks to the extremely benevolent attitude of the French Government and to the most valuable administrative co-operation of M. Paon and M. Pouillot, the respective chiefs of the competent Services of the Ministries of Agriculture and Labour.

(c) Settlement of the Refugees from Constantinople.

The attention of the last Assembly was drawn to the extremely critical situation of the remaining Russian refugees in Constantinople. Those refugees, approximately 2,500 in number, had been required by the Turkish Government to leave Turkey before August 1st, 1927. Thanks to the intervention of the International Labour Office, the Turkish Government consented to extend the final departure date until February 6th, 1929, on condition that active measures were taken for the transfer of the whole of the refugees to other countries before that date. The Office and High Commission were thus confronted with a formidable problem, not so much because of its numerical dimensions, but on account of the categories to which the refugees remaining in Constantinople belonged. Many of those refugees had established themselves in various capacities in Constantinople, and did not possess the technical or physical qualifications to enable them to take advantage of the contracts for industrial or agricultural workers mostly available for the refugees. Moreover, a large number of the refugees were invalids, old people or children, who could not in any case be placed in employment. It was obvious that such a difficult problem would require for its solution a large fund much beyond the small funds collected from the issue of the Nansen stamps. It was in this emergency that American philanthropic organisations once more came to the assistance of the High Commission. Dr. Anson Phelps-Stokes, Canon of Washington Cathedral, who, in the early days of the Constantinople refugee problem, had taken a leading part in raising funds in America, invited the High Commission and the International Labour Office to submit a constructive plan for the final liquidation of the Constantinople refugee problem. Such a plan was drawn up and submitted to Dr. Phelps-Stokes, who, in the space of a few weeks, succeeded in remitting to the revolving fund no less than \$100,000 subscribed chiefly by the following organisations:

- American Jewish Joint Distribution Committee, New York.
- Near East Relief, New York.
- Russian Refugee Relief Society, New York.
- Laura-Spelman Rockefeller Memorial, New York.
- Catholic Near East Welfare Association, New York.
- American Red Cross, Washington.

That fund (see Appendix II), administered in consultation with a local Advisory Committee consisting of representatives of the American donors and of interested refugee organisations, has already enabled 750 refugees to be evacuated from Constantinople, and it is hoped that the remaining refugees will be enabled to become self-supporting or settled in other countries before February 6th, 1929, the date fixed by the Turkish Government for their final departure from Turkey.

The High Commission has once more to record, in this connection, its gratitude for the valuable co-operation afforded by Miss Mitchell and Miss Ruggles, who during the last few years, at great personal and financial sacrifices, have contributed so largely to bringing the Constantinople refugee problem within reasonable distance of a final and satisfactory conclusion.

V. PASSPORTS.

Important progress has been made in connection with the provision of passports to the refugees since the last Assembly. The Cuban and Paraguayan Governments have notified their adhesion to the passport Arrangements for Russian and Armenian refugees respectively, thus bringing the total number of adhesions to the Russian Refugee Arrangement up to fifty-one and the total number of adhesions to the Armenian Refugee Arrangement to thirty-eight.

- • In addition, the following Governments have notified their adhesion to the important Arrangement of May 12th, 1926, thus increasing the number of Governments applying that Arrangement to a total of twenty: Cuba, Germany, Kingdom of the Serbs, Croats and Slovenes, and Roumania.

It will be remembered that, at the last Assembly, the British Government announced that it would put into immediate application the articles of this Arrangement concerning the issue of the Nansen stamp in the United Kingdom as soon as five of the Governments of the following seven countries had adopted the Arrangement: Czechoslovakia, Germany, Japan, Latvia, Lithuania, Roumania and the Kingdom of the Serbs, Croats and Slovenes. The German, Roumanian and Serb-Croat-Slovene Governments have already adopted the Arrangement, and the Czechoslovak delegate announced to the last Assembly the intention of his Government to take the necessary measures to apply the terms of the Arrangement in Czechoslovakia.

As the application of the articles of this Arrangement concerning the issue of the Nansen stamp constitutes an important source of revenue for the placing of refugees in employment, a most earnest appeal is made to the Czechoslovak, Japanese, Latvian and Lithuanian Governments to enable advantage to be taken of the promise of the British Government, and to the Governments which have signed that Arrangement but have not yet put it into force to consider the possibility of doing so in the near future.

VI. REVOLVING FUND.

It will be remembered that the Arrangement adopted by the Inter-Governmental Conference of May 12th, 1926, recommended the creation of a revolving fund of at least £100,000 to provide for the cost of transportation and settlement of indigent refugees. The Conference recommended, to that end, that States which desired to diminish the heavy annual charge imposed on their national budgets by the existence of large numbers of unemployed refugees on their territories should make contributions or loans to the revolving fund.

The German Government immediately responded to this recommendation by opening a credit of 100,000 Reichsmarks. Since the report to the last Assembly, the Czechoslovak Government has, in spite of the enormous sacrifices it has already made on behalf of the refugees, and which have been mentioned in previous reports, most generously agreed to open the substantial credit of £12,500 per annum for three years for the transfer to employment in other countries of the unemployed refugees in Czechoslovakia. Furthermore, it will be remembered that the Lebanon Government set aside a grant of 3,000,000 French francs for the construction of an urban quarter to relieve the congestion in the Armenian refugee camp in Beyrouth. Needless to say, these credits are being administered in conformity with special arrangements made with the interested Governments.

The Polish Government has also notified that it is considering the possibility of making a grant, in lieu of the issue of the Nansen stamp in Poland, to provide for the evacuation to employment elsewhere of unemployed refugees in Poland.

The Conference moreover recommended that self-supporting refugees should be required to make a contribution of 5 gold francs per annum to the revolving fund by the purchase of a stamp which would be affixed to their passports or *permis de séjour*. An audited copy of this account will be found in Appendix III.

The total funds raised from the issue of the Nansen stamps now amount to more than £8,000, and, thanks to the increasing number of countries which are putting this system into operation, there is every reason to hope that it will constitute an important source of revenue in the future.

A credit of 1,000,000 French francs has been obtained from the Crédit Agricole in France, on guarantees against risks offered by the revolving fund, for the development of the important settlement of refugees as *métayers* in France.

Finally, it is a pleasant duty to record once more the gratitude of the High Commission for the continued and increasing support of the most important international and national relief organisations forming the Advisory Committee for Refugees, which have redoubled their efforts in view of the refugee emergencies in Syria and Constantinople. A special tribute is due in this connection to the British United Armenian Committee, consisting of the Armenian (Lord Mayor's) Fund, the "Save the Children" Fund, the Friends of Armenia and the Society of Friends, to the International Near East Association and its branch Committees, and to the Union arménienne de Bienfaisance for the substantial contribution set forth in the audited accounts forming Appendix I to this report, and to the American organisations which responded with a grant of \$100,000 to the appeal for funds for the final solution of the Constantinople Russian refugee problem (see Chapter IV(c) and Appendix II).

Thanks to this widespread co-operation, the following payments or credits have been made available for refugee settlement:

	Grant made			Credit opened			Grant or credit promised		
	£	s.	d.	£	s.	d.	£	s.	d.
German Government.	—			5,000	0	0			
Czechoslovak Government:				12,500	0	0			
1928	—						12,500	0	8
1929	—						12,500	0	0
1930	—			8,000	0	0			
Crédit Agricole, France.									
Nansen Stamp Fund (less transfer of £1,000 to Armenian Settlement Fund)	7,000	0	0						
<i>Armenian Settlement in Syria:</i>									
Lebanon Government (for construction of Beyrouth quarter) ¹	24,000	0	0						
Anonymous loan	1,000	0	0						
Private organisations (see Appendix I)	16,073	5	5				3,000	0	0
Allocation from:									
Nansen Stamp Fund.	1,000	0	0						
Nansen Private Fund	3,094	6	2						
<i>Constantinople Account:</i>									
American donation	20,000	0	0						
Totals	£72,167	11	7	£25,500	0	0	£28,000	0	0

In addition, there is a sum of £9,000 in the High Commissioner's Private Fund, from which he makes settlement or compassionate grants at his discretion, or a total of £134,667 11s. 7d.

The credits on which the revolving fund can now draw represent the substantial increase of more than £81,000 on the credits which were reported to last year's Assembly, or an increase of no less than 150 per cent.

VII. CONCLUSION.

An attempt has been made in the foregoing pages to give a general outline of the present political, legal and financial aspects of the refugee problems, and of the steps taken or contemplated by the High Commission to deal with them.

It should be emphasised that, of the original problem of some 1,300,000 Russian and Armenian refugees, most of whom were indigent, there still remain approximately 200,000 who are able to work but are unemployed, including some 18,000 in China. The situation of the remaining 70,000 Russian refugees in China is, moreover, very precarious in view of the unsettled state of affairs in that country, although recent events tend to improve that situation, and especially the arrangements made by the representative of the High Commission with the Chinese authorities for the issue of the refugee passports to the Russian and Armenian refugees in China. There are, furthermore, some thousands of invalids, old people and children, who look to the High Commission for assistance. To these must now be added some thousands of Assyrians, Assyro-Chaldeans, Syrian and Turkish refugees to whom the refugee measures were extended by the recent recommendations of the Council and of the Inter-Governmental Conference of June 1928.

In addition to the continuation of the work of transferring the unemployed refugees to countries where employment is obtained for them, the experience gained by the International Labour Office during the last four years has, as explained in the Director's report, demonstrated the necessity of creating training centres and agricultural colonies for large numbers of the refugees who are not technically equipped for agricultural and industrial contracts. The success which has attended the settlement efforts in Syria shows that large numbers of refugees can be so settled, even with the modest funds available, given the co-operation of interested Governments and of international and national relief organisations.

The increasing recognition of the Inter-Governmental Arrangements of July 5th, 1922; May 31st, 1924; and of May 12th, 1926, has resulted in important passport facilities which have enormously improved the situation of the refugees; whilst the far-reaching Arrangement adopted by the Inter-Governmental Conference of June 28th to 30th, 1928, opens up at last the prospect of providing the large mass of the refugees with a regular and stable legal and personal status.

The provisions of those various Arrangements either recommend definitely or imply the existence of an international organisation for their execution. In particular, the Inter-Governmental Conference of June 1928, after considering carefully the disabilities from which the refugees as a whole suffered in the absence of a clearly defined legal and personal status, considered it indispensable that provision should be made for services similar to those rendered by consuls to their nationals, and recommended that the High Commissioner should appoint representatives in the various countries for the purpose. Many of those services are already so rendered in an

¹ All reimbursements effected on advances made from this grant are to be applied to the settlement of further Armenian refugees at present in the Lebanon.

unofficial capacity, but it was considered essential that they should be given the largest possible official character.

The recommendations made by successive Inter-Governmental Conferences, which have carefully considered the different aspects of the refugee problem, have shown that the progress made in placing in employment those of the refugees who were suitable for manual labour provided only a partial solution of the problem. There remains much to be done even before this material assistance can be regarded as completely effective, seeing that there are not openings in the majority of the occupations to which the remaining 200,000 unemployed refugees belong.

Their settlement will require the establishment of re-adaptation centres, such as that contemplated in France, which will necessitate, in addition to the requisite funds, the execution of carefully prepared courses and a considerable lapse of time before the refugees can be finally assimilated in the occupations for which they are trained.

With that end in view, the High Commission is negotiating for the establishment of agricultural training centres and colonies in France and South America, and for smaller centres in other European countries.

It is estimated that such a centre could be established in France, which could train and place annually 500 refugees, and that a centre in the Argentine could give similar results for 250 refugees at a total absolute cost of £25,000. These estimated results may at first sight appear to be small, but countries which are battling with similar problems of the re-education of workers will be the first to admit that progress in re-assimilation of this nature is necessarily slow and that the cost per head is necessarily extremely high. As, however, it may be reckoned that, at a very low estimate, the refugee families average at least three persons, it will be seen that the above-mentioned schemes would provide for the settlement of no fewer than $750 \times 3 \times 5 = 12,250$ refugees in five years at an absolute capital cost of less than £2 per head.

During the same period it is reasonable to expect that the 40,000 Armenian refugees in Syria can be settled for a total working capital of £120,000, that 5,000 refugees can be settled as métayers in France for £40,000, and that, if the present demand is maintained, it should be possible during the same period to place 100 refugees per month, or 6,000 refugees in all, on contracts for an average advance of £3 per head, or for a total sum of £18,000.

These estimated placings may be summarised as follows:

Number of refugees	Estimated cost
40,000 Armenian refugees in Syria	£120,000
5,000 métayers	40,000
6,000 contracts	18,000
12,250 from re-adaptation centres	25,000
Total	£203,000

or 63,250 refugees for an average advance of £3 7s. 4d. per head.

It should be noted that, in addition to the placings outlined above, a considerable number of individual placings may be expected to continue, given the assistance of the refugee services, of refugees who are in a position to supply a portion or the whole of their transport expenses, but who require the passport, visa, transport and other facilities afforded by the refugee services.

Parallel with this material assistance, the High Commissioner is called upon, as a result of the Arrangements of the various Inter-Governmental Conferences, to ensure for the refugees functions of a political, legal and consular nature after their economic situation has been more or less stabilised.

It is obviously impossible to foresee the length of time during which those functions will be necessary. It is clear, however, that they will be indispensable until such time as the refugees can return to their own countries or obtain some other nationality. There is little indication that the first-mentioned solution will materialise in the near future; and, for reasons which are comprehensible and which it is difficult not to respect, the vast majority of the refugees do not desire to accept another nationality.

In addition to the functions referred to in the preceding paragraphs, which render necessary the existence of an international refugee organisation, it will be remembered that, at the instance of the Inter-Governmental Conference of May 1926, and with the approval of the Assembly and Council, the High Commission has obtained credits from Governments and relief organisations amounting to about £130,000, or an increase of 150 per cent on last year's fund, for the prosecution of the various settlement schemes. That tangible proof of the appreciation of the competent service is a tribute for which it has every reason to be proud. The High Commission is responsible not only for the proper administration of those funds but for their due reimbursement, in whole or in part, to the subscribers within periods ranging from three to ten years, in much the same way as the Greek Refugee Settlement Commission, on a much larger scale, is responsible for the administration of the Greek refugee loans.

Since 1920, the League has recognised consistently that inasmuch as the refugee problems owed their origins to international causes, so also their solution called for international action. Moreover, when at the seventh ordinary session of the Assembly the general question was discussed as to the problems with which the League should deal, both the British and French delegates, although for different reasons, emphasised that the refugee problems were pre-eminently questions for League action. It was possibly for those reasons that the Council in June 1927, on the

recommendation of M. Titulesco, supported by the President of the Council and M. Briand, unanimously urged the High Commissioner not to abandon his efforts for the settlement of the Armenian refugees in the Caucasus.

Furthermore, the British delegate, who was Rapporteur for these questions to the eighth ordinary session of the Assembly, stated that for some years to come it would be necessary for the Assembly to take account of these refugee problems.

The contention has sometimes been advanced that the League ought not to be called upon to meet permanently the budget necessary for the maintenance of an international refugee organisation. Apart from the arguments to the contrary which have been given above, it is not perhaps generally recognised that the alternative would throw still further charges on countries which have already incurred heavy expenditure on behalf of refugees who are on their territories largely owing to the accident of their geographical position. It is not always realised that the League refugee organisation is called upon to ensure the welfare of a number of unfortunate human beings in excess of the total population of certain States Members of the League, nor is it difficult to imagine what would result if the refugees were deprived of the protection at present afforded them. If intelligent human beings are forced to brood over a situation so much against their wishes and efforts that they come to regard it as an injustice, and if they are denied the most elementary forms of protection, there is the danger that their physical and intellectual energies, instead of being turned into constructive channels, may be exploited in other ways which will exact a heavy reckoning out of all proportion to the slight sacrifice they now ask.

It is not perhaps inappropriate, in this connection, to recall the words addressed to the 1924 Assembly by the British delegate, who was the Rapporteur on refugee questions: "Is there anyone who is likely to be a better friend of the League, a better child of the League, than he or she who has its international passport?" By the man in the street the refugees are in fact regarded as the League's children, and it would certainly be considered by the League's greatest sympathisers as inconsistent with its high ideals for them to be abandoned to their own resources.

In spite of the additional difficulties imposed by the lack of a country, the dispersal of the refugees throughout the whole world and their indigence, this large and complicated administration only costs the League the sum of £12,000 per annum. M. Hanotaux, who acted as Rapporteur to the Council at the time it decided to accept responsibility for the Russian refugee work, after a most exhaustive examination of the whole refugee problem, foreshadowed the creation of a permanent organisation with funds estimated at that time at not less than £4,000,000. It must be admitted, in view of that estimate, that the funds with which the work has so far been effected are modest in the extreme.

It has already been remarked that the non-indigent refugees themselves are, by means of the purchase of the Nansen stamp, providing funds for the settlement of their less fortunate brethren. At the recent Inter-Governmental Conference, the Committee of Armenian and Russian refugee legal experts intimated that the refugees are prepared to pay for the services of a consular nature which are to be rendered to them by the delegations of the High Commission under the Arrangement adopted by that Conference. When that Arrangement is applied in the countries where there are the largest concentrations of refugees, it is hoped that considerable economies will be effected by the High Commission. It would, however, be most undesirable, for reasons which will be obvious from a perusal of this report and from a superficial knowledge of the refugee problems, for a course to be contemplated which would be tantamount to an abrogation of the authority of the League in these important questions.

These, apparently, were the considerations that influenced the Governing Body of the International Labour Office at its last meeting, and after an exhaustive examination of the refugee problems, to make the unanimous recommendation that the time had arrived to centralise the whole of the refugee work under the High Commission, which should be consolidated and its authority strengthened for the purpose. The Governing Body, after recalling that, in response to the request of the Assembly of 1924, it assumed temporary responsibility for the technical work of placing the refugees in employment, came to the conclusion that the major portion of that work had been completed by the placing, since 1925, of some 50,000 refugees in employment. It considered that the work which remained to be performed consisted mostly of colonisation, preceded in some cases by the establishment of training centres, in addition to the important aspects of the work relating to political, legal and financial questions, all of which belonged more properly to the competence of the High Commissioner. The Governing Body therefore recommended that, after the year 1929, and in order to avoid duality of functions, the whole of the refugee work should revert to the High Commission, assisted by a mixed Advisory Committee consisting of representatives of the Council of the League and of the Governing Body.

The Governing Body also made a strong recommendation to the effect that due recognition should be made of the services rendered during the last seven years by the staff of the High Commission and of the Refugee Section. The Assembly is well aware of the enormous volume of work which has been performed by that staff under extremely difficult and delicate conditions. This work could not have been accomplished with the comparatively extremely small budget available had not the whole of the staff worked consistently under the maximum possible pressure and with the greatest enthusiasm. That stress, however, has resulted in the invalidity, which in some cases may unfortunately prove to be permanent, of certain members of the staff. I am therefore glad to learn that the Supervisory Commission is considering the possibility of extending to that staff certain of the privileges enjoyed by the permanent members of the staff of the Secretariat and of the International Labour Office, and would express the earnest recommendation that, at long last, these members of the international Secretariat may be afforded the full benefits

of the conditions of service considered as indispensable for the members of the international Secretariat.

Needless to say, I welcomed the recommendations of the Governing Body which, when adopted, will go a long way towards relieving me of the very heavy personal responsibility I have carried during the last seven years. For that reason, I venture to suggest that the mixed Advisory Committee should be created by the present Assembly, with immediate functions.

As to the constitution of the Advisory Committee, the Assembly will probably consider it desirable to afford adequate representation to each group on the Governing Body, and to recommend the appointment of a sufficient number of members for that purpose. The Assembly will doubtless also wish to appoint as members of the Committee representatives of countries most directly and actively interested in the refugee problems and thus drawn from among the following countries: Argentine, Bulgaria, China, Czechoslovakia, France, Germany, Great Britain, Greece, Latvia, Poland, Roumania and the Kingdom of the Serbs, Croats and Slovenes. This mixed Committee could meet at intervals of three months and indicate the general lines of the policy to be followed by the High Commission in conformity with the resolutions adopted from time to time by the Assembly, Council and Governing Body, to whom it would report and make appropriate budgetary recommendations. It would also be desirable, in order to preserve the necessary close liaison with the Secretariat and the International Labour Office, that the Secretary-General and the Director of the Office, or their nominees, should be entitled to attend the meetings of the Committee in an advisory capacity.

Finally, the Committee could have recourse to the Advisory Committee for Refugees for information on specific questions concerning the welfare of the refugees.

In this way, the closest co-operation could be ensured of the Assembly, Council and Governing Body, of the Governments interested in the refugee questions, of the international and national organisations working for the welfare of the refugees and of the refugees themselves.

LETTER TO THE SECRETARY-GENERAL FROM THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE

Geneva, August 16th, 1928.

I have the honour to forward to you, herewith, the French and English texts of a Memorandum on the work of the Refugee Service, for transmission to the Assembly of the League of Nations.

(Signed) Albert THOMAS.

PART II.

REPORT BY THE DIRECTOR OF THE INTERNATIONAL LABOUR OFFICE.

The Governing Body of the International Labour Office had under careful consideration at its fortieth session, held in June 1928, the question of the development of the Refugee Section, its present position and its future prospects in the light of the reports which were then before the Governing Body.

Those reports dealt with the results which had been achieved by the Refugee Section since the transfer of the technical part of the refugee work to the Office on January 1st, 1925, with the present state of the refugee problem, and with the plans contemplated for bringing that part of the work to a successful conclusion.

Those reports are brought up to date in the following chapters.

I. PLACING AND SETTLEMENT MEASURES.

At the time when the technical part of the refugee work was transferred to the Office, it was estimated that there were approximately 400,000 Russian and Armenian refugees unemployed though able to work. In spite of the economic crises through which Europe has passed, which resulted in the increase of unemployment in general and considerably aggravated the difficulties which already existed to obtain work for the refugees, the number of refugees unemployed has been reduced during the period under review to approximately 200,000. Of the number of 200,000 refugees who have thus become more or less self-supporting, the Office can claim direct credit for over 50,000. Particulars regarding the placing of 38,000 of the refugees have been given in the reports submitted to the three preceding sessions of the Assembly. As regards the remaining refugees who have been transferred to employment during the past year, 7,578 have been secured employment on industrial, agricultural and métayage contracts in France and Tunis, or transferred to situations procured for them in Canada, South America and other countries,

and over 7,000 have been placed in the various settlement schemes in Syria. The first-mentioned group of refugees came from the following countries:

Austria	12	Latvia	520
Bulgaria	552	*Poland	837
China	316	Kingdom of the Serbs, Croats and Slovenes .	655
*Czechoslovakia	264	Switzerland	2
Estonia	647	Turkey	753
France	118		
*Germany	659	Total	7,578
Greece	2,243		

It should be emphasised, however, that the figures quoted above do not represent the full results obtained by the Office since the submission of the last report to the Assembly, seeing that the returns for the territories marked with an asterisk only relate to the first eight months of the period in question. In addition, however, to these important results, the Office and High Commission are entitled to claim credit for a large number of what may be described as "invisible placings" due either directly or indirectly to the activities of the High Commission and the Refugee Section, but for which no accurate records are available. Those placings are, however, reflected in the substantial reduction in the total number of unemployed refugees since the Office took over this work.

Without entering into the details of the steps taken by the Refugee Section and its delegations in various countries which have led to the above-mentioned results, it may be of interested to give, by way of illustration, an outline of the methods employed for the transfer and settlement of refugees in France, which has absorbed by far the largest number of refugees in the past, in Syria and in South America, which, as shown in Section (d) of this chapter, is considered, if careful precautions are taken, to be in a position to offer a future to an appreciable number of the refugees.

(a) *France.*

In conformity with arrangements entered into with the Office de la Main-d'œuvre étrangère and the Office de la Main-d'œuvre agricole, the Refugee Section obtains from its delegates from time to time lists of refugees who have expressed the desire to obtain employment in France. On the basis of these lists, the competent French authorities send contracts to the Refugee Section and intimate whether the prospective employers are prepared to advance the transport expenses to enable the refugees to proceed to France, or whether it will be necessary to have recourse for that purpose to the High Commissioner's revolving fund. In the case of métayage contracts, the Office de la Main-d'œuvre agricole also indicates the amount of the advance, which ranges from 1,000 to 2,000 French francs per head, to enable the refugees to take advantage of the métayage contracts. These contracts are then transmitted to one of the delegates of the Refugee Section, either with the transport expenses advanced by the employer or with a corresponding advance made from the High Commissioner's revolving fund.

On receipt of the contracts, the delegate invites the refugees for whom they are intended to call at his office and submits them to a careful examination, generally with the assistance of an advisory committee, to ensure that they are technically, physically and morally suitable for the employment offered to them.

As soon as the selection work is completed, steps are taken by the delegates to secure passports, exit, transit and entry visas for the refugees and to fulfil various formalities which may be required by the country of their residence. As a result of negotiations with the various European Governments, many of the visas are now obtained either free of charge or at reduced fees.

When the above-mentioned formalities are completed, arrangements are made for the transport of the refugees by the quickest and cheapest land or sea route. Here, again, the cost to the refugees has been considerably reduced thanks to special facilities which have been obtained from State and private railways and from shipping companies.

In the case of those refugees whose transport and passport expenses have been advanced from the revolving fund, they are required to sign an authority to their future employer to deduct from their wages, in favour of the revolving fund, the percentage allowed by French law until the advance made to them has been fully redeemed.

As a rule, the refugees are transported by convoys of about twenty persons in charge of a convoy leader, who is responsible for their good conduct and who also ensures that the transit visas are not abused or that the transport advances are not employed for other purposes.

On arrival at Marseilles, Toulouse or any other concentration centre indicated by the French authorities, the refugees report to the competent services, which transfer them to the employer mentioned in the contract.

In order that the refugees who accept métayage contracts may be protected as far as possible from failure arising from their ignorance of the French language and French agricultural conditions, a service of Russian-speaking inspectors has been arranged, in agreement with the Office de la Main-d'œuvre agricole, which affords them the necessary advice and guidance for the good management of their holdings.

It is most gratifying to report that this system of settling refugees in France has, with a few isolated exceptions, afforded complete satisfaction to the French authorities and employers, and

has resulted in a steady demand for refugee workers for France. It should, however, be emphasised that the success which has attended those efforts is due, in a very important measure, to the exceedingly sympathetic co-operation extended to the Office by the French Government and by the administrative services of M. Paon and M. Pouillot, the chiefs of the Office de la Main-d'œuvre agricole and of the Office de la Main-d'œuvre étrangère respectively.

(b) *Armenian Refugee Settlement in Syria.*

Very considerable progress has been made with the technical part of the work for the settlement of the 40,000 Armenian refugees who have to be removed from the refugee camps in Aleppo, Alexandretta and Beyrouth. Thanks to the energy of M. Burnier, who acts as the representative of the Refugee Section of the High Commission and of the International Armenian Committee, and to the wholehearted co-operation of the mandatory authorities, a careful registration of the refugees to be evacuated from the camps has been effected, and plans drawn up for the settlement of no fewer than 12,300 of them in six agricultural colonies in the Sandjak of Alexandretta and in urban quarters in Alexandretta, Aleppo, Beyrouth and Kirik-khan, at an average figure of about £40 per family. Of that number, 7,660 refugees are already in course of settlement with the amounts contributed to the revolving fund and referred to in the High Commissioner's report, and no difficulty is anticipated in settling the remaining refugees as soon as the additional necessary funds become available. (Fuller details of these settlement operations are given in the High Commissioner's report.)

It is a matter for regret that, so far, it has not been possible to take advantage of the generous offer made by British philanthropic societies to obtain a loan of £120,000, the minimum sum considered necessary to provide for the settlement of the most indigent refugees in Syria. Those societies intimated that they could obtain a loan for that amount if the French Government would agree to afford a covering guarantee for the securities, offered by the High Commission for Refugees for the purpose, in the shape of the lands purchased for the refugee settlements, the revenue derived from the issue of the Nansen stamp in the mandated territories and the reimbursements of advances effected by the refugees. It was considered that the securities thus offered would be sufficient for the redemption and service of the loan within a period of ten years, and that the mandatory Power would therefore incur little risk in giving a covering guarantee which would enable the loan to be raised forthwith.

A statement made by M. Bastid at the last Assembly that the French Government would afford favourable consideration to that proposal encouraged the expectation that it would be possible to secure the necessary funds on that basis.

That expectation has not up to the present been realised, but there is reason to hope, as a result of recent measures taken by the French Government to study the situation on the spot, that the negotiations in this connection may be brought to a favourable conclusion.

(c) *Constantinople.*

The attention of the last Assembly was directed to the crisis arising at Constantinople in view of the decision arrived at by the Turkish Government that the Russian refugees in Constantinople, numbering some 2,500 persons, should leave Turkey before August 1st, 1927. In deference to urgent representations made by the Office to the Turkish Government that, for technical and financial reasons, it would be quite impossible to secure the evacuation of an appreciable number of refugees by that date, especially in view of the fact that many of the refugees belonged to categories for which no demand existed, or were invalids, old people or young children, the Turkish Government agreed to adjourn the final departure date until February 6th, 1929. The problem with which the Office was thus confronted would, in view of the restricted opportunities of obtaining employment and of the claims of unemployed refugees in other countries, have been a sufficiently formidable one had the refugees belonged to categories which were capable of manual labour. Its solution was, however, rendered infinitely more difficult by reason of the fact that a large proportion of the refugees were only fit for special occupations or were unfit for any form of employment, and would require for their settlement funds far in excess of even the total at the disposal of the revolving fund. It was in this emergency that the American relief organisations came to the assistance of the revolving fund in the circumstances outlined in the High Commissioner's report. Thanks to the grant of \$100,000 thus made by the American organisations and to some hundreds of contracts and of visas most generously placed for the emergency at the disposal of the Office by the French and Tunis authorities, and by the Bulgarian and Serb-Croat-Slovene Governments respectively, it seemed reasonable to hope that the chief obstacles in the way of the departure of the refugees within the specified time had been removed. A new and altogether unexpected difficulty, however, arose. The refugees, the majority of whom had been in Turkey for some six years and had succeeded in obtaining some sort of livelihood, elected to believe that they would be allowed to remain in Turkey indefinitely and refused either to accept the contracts offered or to register for their transfer to other countries. The Office had obviously not the possibility of forcing the refugees to leave Turkey against their will, but it was equally clear that a delegation could not be maintained in Constantinople if it had outlived its usefulness. On the other hand, it appeared to be necessary to give the refugees a fair warning that the facilities offered by the Office could not be kept open indefinitely.

It was in these circumstances that the Office decided to issue a *communiqué* to the refugees in Constantinople calling their attention to the decision of the Turkish Government requiring their departure before February 6th, 1929, and pointing out that the services of the Constantinople Delegation would be at the disposal until May 31st of those refugees who registered the necessary information for their evacuation before a given date. It is satisfactory to note that, as a result of that *communiqué*, the large majority of the refugees registered with the Delegation before the date in question, and that material has thus been furnished for a final constructive solution of this problem.

An Advisory Committee has been formed at Constantinople, consisting of representatives of the American donors and of interested refugee organisations, which submits applications from refugees to the High Commissioner for the use of the funds and generally assists in facilitating the evacuation of the refugees.

Although the Governing Body endorsed the Director's decision to close the Stamboul Delegation on May 31st, it is, of course, understood that the Refugee Section will continue to afford all assistance in its power in order to secure the departure at the earliest possible moment of the refugees remaining in Constantinople.

(d) *South America.*

In order to acquaint the Assembly with the progress made with the settlement of the refugees in South America, with the great difficulties encountered and with the steps taken to overcome them, the following extracts are given from the reports submitted by the delegate of the Refugee Section in Buenos Aires and presented to the Governing Body at its last meeting:

It was hoped that South America would receive important numbers of refugees, and that the measures successfully taken as regards refugee transfers in Europe could be successfully duplicated for South America.

The difficulties inherent in the situation were, of course, realised from the outset and were summed up in the following extract from the report of the High Commissioner for Refugees to the sixth session of the Assembly:

"The experience gained and the results accomplished in the seven months now under review seem sufficient to enable a clear estimate to be formed of the exact nature of the problem. They suggest that it can be solved; but it would be misleading the Assembly to imply that the refugees who are now out of work, or even the major portion of them, could be transferred to overseas countries next year or the year after. An operation of this character will necessarily be slow.

"Colonisation cannot be rapid, however willing the receiving countries are to obtain colonists, and even in the case of employment in industry or agriculture, which does not require an outlay of capital, it will obviously be more difficult and more expensive to arrange for transfer overseas than for transfer within Europe.

"Moreover, in the view of the Office, it would be a mistake to undertake any scheme involving overseas migration unless it was possible to see ahead and to lay out plans over several years.

"Arrangements would probably have to be made which would extend over longer periods than twelve months if they were to be effective."

This point of view was reiterated in the report to the subsequent Assembly.

The South American Delegations began to work in the early part of 1926 and, after preliminary tours of inspection in the various countries of the continent, it was decided that the most promising field for the major effort was Argentine.

Difficulties.

When the Delegation in Buenos Aires was ready to start operations, it became very obvious that a large number of very serious, and apparently almost insuperable difficulties, stood in the way of the achievement of a numerically important refugee transfer. A further study soon made it clear that the programme outlined in the report by Colonel Procter was not completely realisable for many reasons. These difficulties may be briefly described as follows:

- (a) Difficulties connected with visa and entry formalities;
- (b) Financial difficulties;
- (c) Difficulties as regards the finding of employment;
- (d) Difficulties as regards the establishment of an agricultural settlement or colony.

As regards (a), it is a general rule in most South American countries that emigrants who wish to proceed to South America must produce a certificate of good conduct, certifying that the bearer has not been before the judicial authorities of his countries of previous residence for a period of five years, and that he is of good conduct generally.

The obtaining of such a certificate is not unduly difficult in the case of ordinary emigrants who have not, through force of circumstances, been compelled during the last five years to reside

in a number of different countries. In the case, however, of the refugees, many of whom had passed from Constantinople through Bulgaria, Czechoslovakia and the Kingdom of the Serbs, Croats and Slovenes, to France and Germany and had resided in each of these countries for a certain period, it became a matter of almost complete impossibility for them, or for the Refugee Delegation working on their behalf, to produce from the competent authorities the complementary certificates that are required to cover the whole period. Many of the provincial functionaries involved were not in possession of the material which would allow them to issue such certificates, and others had not the necessary authority.

In view of this position, efforts were made to obtain from the countries of reception their agreement to an arrangement by which, when such difficulties occurred, a certificate provided by the Delegations of the Refugee Service might be accepted as sufficient by the various consuls abroad. Considerable progress has been made in this direction and it is hoped that complete success will be obtained. It is obvious that the previous contact of the Delegations of the Refugee Service with the refugee masses renders them the most qualified of all organisations to produce a valid guarantee concerning the character of this class of applicant.

The effect of this regulation was to restrict the possibility of emigration to the Argentine to those refugees who had been settled in one country for a considerable period, or to those for whom this difficulty could be overcome by the institution of laborious negotiations of an individual nature in each case.

Another matter which reacted very unfavourably as regards the question of refugee emigration to the Argentine was the position brought about by the partial, instead of the complete, recognition of the Nansen Passport System by the Argentine Government. Briefly, the situation in this connection is as follows:

It is possible for a Russian or Armenian refugee to obtain admittance to the Argentine when in possession of a Nansen passport provided that he can fulfil the visa regulations in force, but it is impossible for him, supposing that he wishes to leave the Argentine after a year's residence, to obtain either the renewal of the passport with which he came or its substitution by a similar document issued by the Argentine authorities. The standard period of validity of the Nansen passports is one year. The position, therefore, is that it is possible to come into the Argentine but it is not always possible to get out, and this very naturally makes prospective immigrants hesitate before committing themselves to what is apparently an irrevocable step. It is true that the passports issued by the ex-Russian diplomatic agent in Buenos Aires do serve for certain countries in cases of emergency, but many countries which have adopted the Nansen Passport System are unwilling to visa any other type of passport in the case of Russian and Armenian refugees, and consequently in many cases refugees who wish to leave the Argentine for certain countries as a result of urgent private affairs or for business purposes are unable to do so. Efforts are being made to remedy this position and it is hoped that success will shortly be achieved.

(b) *Financial Difficulties.* — The most serious obstacle of all, however, was, as usual, of a financial nature. Before the reductions recently obtained by the Refugee Service as regards fares to South America, the standard steamship fare from Europe for an emigrant going to the Argentine was £20 per head. At this figure, the transatlantic fares for a family of average size very nearly approached the sum of £100 sterling. In addition to the money for the voyage, a minimum of £10 per head to cover incidental expenses and the cost of maintenance during the period between arrival and the finding of employment is necessary. In making this calculation, the period of free lodging at the Immigration Hotel in Buenos Aires has been taken into consideration.

The efficient use of the revolving fund to remedy this state of affairs presented certain difficulties in view of the following facts: (1) The Argentine immigration authorities have adopted a policy of free immigration, that is to say, that they do not demand that the immigrant shall have work waiting for him of a definite nature; (2) the Argentine law regarding the payment of salaries forbids an employer to make any deduction from the wages of workmen or employees.

It is obviously very difficult to obtain contracts for workers in Europe and retain places for them until they arrive, when every week or indeed almost every day some immigrants arrive and come on the labour market. The natural reaction of any employer in such circumstances is to do his recruiting on the spot and not bother with an organisation which promises to bring selected immigrants from Europe after an interval which is necessarily somewhat long. Also the local employer who recruits in the Argentine, as opposed to the European, labour market can see and test the candidates personally, whereas, if he recruits them through a national or international organisation in Europe, he must of necessity depend upon the choice of other people. Furthermore, his obligation towards those whom he recruits locally is obviously less than would be the case had he furnished labour contracts to an organisation in Europe with the result that his workers decided to cross the ocean in order to take up employment with him.

The result of these difficulties was that it became practically impossible, except in very rare cases, to obtain anything in the nature of a labour contract, and, in consequence, good security for an advance on travelling expenses in the case of refugee candidates was practically impossible to obtain and had to be provided by the country of emigration. This difficulty, therefore, made the effective use of the revolving fund extremely hard to arrange.

(c) *Difficulties as regards the Finding of Employment.* — The Russian refugees are not in the happy position of the Italians or Spaniards, who possess two great advantages over other emigrants, namely, the absence of the language difficulty and the presence in the Argentine of large and powerful collectivities containing many important employers of labour, persons in a position to facilitate the obtaining of employment for their co-nationals and well-organised immigrants, aid societies of long standing and good local connections.

The language difficulty was very noticeable in the case of the Russian^o refugees who did come, and experience showed that most emigrants required a period of one to three months before they obtained reasonably permanent employment. As a result of this, it is obvious that only those could come who were in a position to put up the necessary funds to cover that period, or who could obtain a loan from the revolving fund with which to meet such a position.

(d) *Difficulties as regards the Establishment of an Agricultural Settlement or Colony.* — In view of the demands made by many refugees for an opportunity to settle on the land, and of the desire of the Argentine authorities to avoid congestion in the cities, many efforts were made to find a possible solution and certain small experimental nuclei were actually formed and established as colonists. The Delegation, however, came to the conclusion that the Russian refugees cannot be transferred from Europe and placed immediately after their arrival in an agricultural colony as self-supporting colonists by means of a scheme by which credits to cover all the necessary elements for their establishment are supplied by the revolving fund without running very grave risk of failure.

The reasons for this state of affairs are briefly as follows: The sum required to take an indigent refugee from Europe and place him on the land in the Argentine, after supplying him with all that is necessary for him to commence agricultural operations, a house and possibly maintenance for a year, is very large. The Railway Colonisation Consortium, an organisation recently formed in the Argentine in the one colony that they have so far established, incurred a total outlay of £2,000 for each family colonised and the assistance credits alone, without taking into consideration the cost of the land, which amounted to £560 per family. It is obvious that no refugee revolving fund could contemplate such large expenditure per family.

A search was made for schemes which provided credit for colonisation supplied from other than revolving fund sources, and voyages were made to Peru and Bolivia to inspect schemes which presented, on paper at any rate, many advantages. After long and careful consideration, however, the Delegation was forced to decide that there was nothing to be gained by the adoption of any of these schemes in view of the grave risks of failure to which they were subject. In some cases, the conditions did not seem suitable for the refugees, and in other cases the refugees did not seem suitable for the conditions.

As a general principle, it became fairly obvious that, when advantageous terms were offered to the refugees, there was usually some grave disadvantage which prevented them from being generally acceptable. When real and possible colonisation opportunities were found to exist, it was practically impossible to introduce refugees to them because of the capital expenditure required to be put up, either as a direct contribution by the refugee or as a loan from the revolving fund, and also because, for such schemes, national emigrants were also available in large numbers and the refugees could not compete with them for preference.

The scheme proposed for the settlement of a large number of families near Lake Gaiba, in Bolivia, seemed to promise a solution of this difficulty. If it could have been carried out, a large and satisfactory movement might have been started. It had to be abandoned, after much time and trouble had been spent on the preliminary details, because the arrangements of the company in the proposed colonised area seemed totally inadequate to cover the execution of the plan that had been proposed. This was a great misfortune, because the promising appearance of the scheme had led to the postponement of other plans and also of decisions of a general nature. It was thought that the Bolivian scheme had provided the solution of our difficulties. Close observation showed that it had not.

General.

In addition to the above-mentioned obstacles and difficulties, one must not forget that the Delegate on arrival in South America found that in general there was a very definite hostility towards the idea of receiving refugee immigrants. This was probably due to illusions which had been formed as to the nature of our operations and as to their impact on South America. They still exist, but gradually they are being destroyed. They were, however, very prevalent and exercised a most unfavourable influence upon all the negotiations for settlement and emigration conducted by the Delegation.

In spite of these very serious and formidable difficulties, the Delegation has been able to create a small but satisfactory movement of refugees to the Argentine, and in a much lesser degree to Brazil and Paraguay.

Results obtained.

Some 450 persons have been placed in various countries, principally in the Argentine.

On the whole, the result, though small, is very satisfactory, and there is no doubt that the employed refugees in the Argentine are generally more prosperous than those in a similar position in Europe or elsewhere. There is no doubt but that their future prospects are bright and that their economic situation will improve gradually as they gain experience of local conditions.

Already the persons settled are beginning to attract relations and friends from overseas, and the arrival and absorption of these latter is already appreciably easier than it was, owing to the improved position of the pioneers.

The process, however, is slow and sometimes painful.

At times the pressure in Buenos Aires is extremely high, and recently there came to the notice of the Delegation the case of a firm which had advertised for an assistant book-keeper at a salary

of 120 pesos per month, which may roughly be calculated at £120 per annum, and for which no fewer than 154 persons presented themselves in one day.

It is, however, very satisfactory to think that a prosperous refugee collectivity has been established in the Argentine and, to a lesser extent, in the neighbouring countries, in spite of the difficulties that have previously been referred to. It is hoped that the result obtained will do something to provide a bright spot in the generally difficult refugee situation, will continue to exercise a beneficial influence on that situation and will redress the general level by acting as a counterpoise to situations such as Constantinople.

II. PRESENT STATE OF THE REFUGEE PROBLEM.

The table which appears in Appendix IV affords a general idea of the present state of the Armenian and Russian refugee problems. It should be emphasised, however, that in a large number of cases the figures are approximate, as both the Governments and the Delegations of the Refugee Section have to rely largely on a voluntary registration of the refugees, seeing that it is only in exceptional cases that the latter are entitled to unemployment benefits, and cannot therefore be registered under a system of unemployment payments. Even this voluntary registration has to be accomplished with considerable prudence, in order not to raise hopes of employment among the refugees which it may be impossible to satisfy. For these and other reasons, it would be wise to regard the figures of unemployed refugees now reported as erring, if anything, on the conservative side. For instance, although the last returns received from China indicate only 15,700 Russian refugees as unemployed, urgent appeals have recently been received from Russian refugee organisations, which have called attention to the fact that the recent unsettled state of affairs in that country has placed the remaining 73,000 refugees in a precarious situation which renders imperative the assistance of the League.

Reference has already been made in previous chapters to the magnitude of the Armenian refugee problem in Syria, which calls for the settlement of a further 33,000 indigent refugees, and to the urgency of the acute, though limited, refugee crisis in Turkey.

Since the last Assembly, the seriousness of the Armenian and Russian refugee questions in Bulgaria and Greece has been grievously aggravated following the disastrous earthquakes which have visited those countries, and which have brought in their train destitution to nationals and refugees alike. Finally, both Czechoslovakia and the Kingdom of the Serbs, Croats and Slovenes are still carrying heavy burdens for the maintenance of some thousands of refugee students and invalids, which they have the right to ask should not be prolonged indefinitely.

III. FUTURE SETTLEMENT WORK.

As has been shown in previous reports, the Office has not confined its activities to forming estimates of the degrees of indigence and unemployment of the refugees or to the prosecution and development of placing measures which were already in operation. It has, on the contrary, initiated enquiries in practically every country in the world conceivably capable of offering employment to refugees, or developed opportunities of settlement in the countries where the refugees already lived. That policy has been fully justified by the substantial progress made with the settlement of the Armenian refugees in Syria, by the important development of the settlement of refugees as *métayers* in France and by the refugee emigration currents which have been created to South America.

If the majority of the 200,000 refugees at present unemployed were agricultural workers, or equipped to accept industrial contracts, it would be a comparatively easy mathematical calculation to state when they could be finally absorbed into the employment market. This unfortunately is not the case. At least one-half of the refugees are, on the contrary, unfitted, at the present time, for agricultural or other manual employment, although physically capable of undertaking the lighter forms of manual work.

A very large number of those refugees were originally trained for the liberal professions, and therefore constitute elements that, for obvious reasons, should not be abandoned to their own resources. Many of those refugees have, with commendable courage, adopted the most humble occupations to gain their livelihood, and still continue to register voluntarily for industrial and agricultural contracts. It is clear, however, that, in the absence of the necessary training, such employment of those refugees is unfair both to them and to the employers who accept them, and must inevitably lead to disappointments and discouragement, and militate eventually against the placing of even qualified refugees.

The High Commissioner has therefore found it necessary to recommend, as mentioned in his report, that, parallel with the active prosecution of the present system of settling refugees, there must be established a system of training centres which will constitute reservoirs from which refugees may be drafted to the countries where experience has taught the Office that employment can be found for properly equipped refugees.

IV. CONCLUSION.

In order to arrive at a more accurate appreciation of the present situation of the refugee problems, it is necessary to remember the various phases through which they have passed. The transition of the work should be recalled from the original emergency stage, when the High

Commissioner was called upon to initiate urgent measures to save the lives of many thousands of refugees; to the second stage, when steps had to be taken, for political, hygienic, economic and other reasons, to disperse the refugees from countries which could not support them; to the stage when the Office was called upon to arrange, on organised lines, the placing of the refugees in the employment for which they were best fitted.

The account given in this report of the activities of the Refugee Service during the past year indicates that it is becoming increasingly difficult to place the refugees in employment on agricultural and industrial contracts, seeing that the remaining 200,000 unemployed refugees belong for the most part to liberal professions, or are otherwise unequipped for or unable to accept such contracts. It is for these reasons that the High Commission has been obliged to concentrate its efforts on colonisation plans, such as those for the settlement of the refugees in Syria, South America and elsewhere and on the placing of *métayers* in France. There is no doubt that many more refugees can still be settled by those means, without any special training, as soon as the necessary funds become available, but a considerable proportion of the remaining refugees require special training in colonies and training centres, such as that contemplated in France and mentioned in Chapter III, before they can be made self-supporting.

The work, however, of making the refugees self-supporting, whatever form it may take, represents only a portion of the activities on behalf of the refugees, and concerns only 20 per cent of their total number. Side by side with that work are the important political, legal and financial duties of the High Commission, which are of vital importance to the whole mass of the refugees, and which will remain indispensable for them either until they return to their own countries or until they obtain the nationality of some country which will afford them protection.

It will be seen, therefore, that the refugee work has entered another phase, which requires services for the consolidation and execution of the various measures which have been adopted by successive Inter-Governmental Conferences with a view to providing the refugees with a more normal existence.

It may not be inappropriate for the Office to give its views on those important measures on which it has been able to form an opinion as a result of its daily contact with the various phases of the refugee problems.

The most important part of the political side of the refugee problems is that concerned with the application of the Inter-Governmental Arrangements of July 5th, 1922, and May 31st, 1924, which created the passports for the Russian and Armenian refugees respectively, and of the Inter-Governmental Arrangement of May 12th, 1926, which amended and completed those Arrangements. Although the first two Arrangements have received the recognition of fifty-one and thirty-eight Governments respectively, it is quite obvious that their application to the individual refugee can only be assured by the daily co-operation of the High Commissioner and his representatives, in the same way that national passport systems would lose the major portion of their efficacy without the active co-operation of the interested consular services. To cite only a few outstanding instances in which the Office has been obliged to appeal to the High Commissioner for co-operation to secure the movement of refugees for whom it has obtained employment, it may be mentioned that many Governments only agree to issue passports, exit, entry or transit visas on the recommendation of the High Commission or its representatives. Other Governments have only agreed to the issue of the Nansen stamp in their countries on the understanding that the work is performed by the representatives of the High Commissioner. It is quite certain that, had the services of the High Commissioner not been available in this way, it would have been impossible for the Office to transfer to employment the major portion of the 50,000 refugees who have been settled during the last 3 ½ years, as it is highly improbable that the Governments, who are not always in possession of the necessary information considered as an essential preliminary to the issue of passports and visas to the refugees — information which, in the majority of cases is only available to the High Commissioner — would have accepted independently the risk of issuing the requisite passports and visas. Moreover, in addition to those services rendered to the refugees for whom employment has been found, there are the large mass of refugees who, although now self-supporting, have daily recourse to the High Commissioner for similar services when they desire to travel in pursuance of their normal occupations or for family or health reasons. There is no doubt that, in the absence of that assistance, the large mass of the refugees would become once more immobilised.

The necessity of the services of the High Commissioner in connection with assuring the refugees a definite and stable legal status is even more pronounced than in the case of the passport question. One of the foremost reasons which prevents the refugees from adapting themselves to the new conditions under which they are placed is the inadequacy of their legal status. The consequent insecure and unstable position of the refugees is prejudicial not only to themselves but to the citizens of the countries in which they reside, and is incompatible with accepted ideas of law and justice. It was these considerations which inspired the Inter-Governmental Conference of June 28th-30th, 1928, to adopt an Arrangement which recommended that the representatives of the High Commissioner should be vested with at least some of the functions usually exercised by consuls abroad for the nationals of their countries.

As regards the financial issue, it would obviously be idle to labour the point as to the paramount necessity of having a substantial fund available to provide for the settlement of some 200,000 unemployed refugees, not to mention some thousands of invalids, old people and children. In the early days of the refugee problem, it was estimated that four million pounds would be required for the liquidation of the Russian refugee question alone. What progress has been made towards a solution, not only of the Russian refugee problem but of the Armenian refugee problem, with but a small percentage of that sum, has been demonstrated in this and previous reports.

It will be seen, therefore, that the many and complex services which have to be rendered to the refugees fall under the four principal headings of political, legal, financial and settlement assis-

tance, of which the first three have always belonged to the competence of the High Commission, whilst its close co-operation has always been necessary for the prosecution of the measures of a colonisation nature, taken to provide for the settlement of the refugees.

It was in view of those considerations, and because the work which has now to be done to make the remaining 200,000 refugees self-supporting involved settlement work similar to that in progress in Syria — the placing of refugees as métayers in France and colonisation work in overseas countries, preceded in some cases by the creation of training centres — that the Governing Body at its last meeting recommended that, in order to obviate duality of functions, the whole work for the refugees should be centralised under the High Commission, whose authority should be strengthened by the creation and co-operation of a Mixed Commission consisting of representatives nominated by the Council of the League and of the Governing Body of the International Labour Office.

The following are the resolutions and recommendations of its Finance and Refugee Committees which were adopted unanimously by the Governing Body at its last meeting:

" 1. The entire refugee work should be entrusted to the High Commission, assisted by a mixed committee of representatives of the Council of the League of Nations and of the Governing Body of the International Labour Office. This solution should be suggested to the Assembly when it next meets.

" 2. The 1929 budget should be regarded as the last refugees budget to be administered by the International Labour Office. It is recommended that the Governing Body should adopt the estimates as submitted to it.

"The Finance Committee and the Refugee Committee, whilst proposing that the refugee work should be wound up in so far as it consists of a service for finding employment attached to the International Labour Office, request the Governing Body to associate itself with them in paying a warm tribute to the officials of the Refugee Service, and to express their profound gratitude for the intelligent and devoted way in which they have carried out their complex and difficult task, and for the considerable measure of success which they have obtained in spite of the difficulties of all kinds which they have encountered and overcome. They also ask the Governing Body to recommend to the Assembly to give full consideration to the position of those officials and the claim which they have on the gratitude of the League of Nations, which most of them have served for nearly seven years (although up to the present they have not enjoyed the secure status of permanent officials), when it is setting up the organisation which will take over the refugee work in its new form from the Office and carry it to a conclusion."

It is clear from that recommendation that the Governing Body came to the considered conclusion that the High Commission should be strengthened in order to enable it to deal effectively with the various phases of the refugee work. Such a step would appear to be all the more necessary in view of the request made by the Council at its last meeting that the High Commissioner should extend to certain other categories of refugees the measures taken in favour of Russian and Armenian refugees during the last seven years.

As regards the future status of the High Commission, it would be desirable, with a view to securing the rapid executive action necessary for effective intervention in the daily emergencies inherent in the refugee work, that the present large measure of autonomy should be preserved as much as possible and that the High Commission should continue as an autonomous organisation, under Dr. Nansen, the High Commissioner, assisted by the Assistant High Commissioner and the existing staff of the Refugee Service. Mention should be made, in this connection, of the strong recommendation made by the Governing Body that the members of that staff, most of whom have served the League and the International Labour Office, on temporary contracts, under conditions of great stress for seven years, and have been called upon to perform most arduous, complicated and delicate functions, should be afforded the same conditions of service as the other members of the international Secretariat. The exceedingly heavy strain imposed by the refugee work has already resulted in serious invalidity to certain members of that staff, and in some cases it is feared that this invalidity may prove to be permanent. The temporary contracts at present held by this staff make no provisions for invalidity exceeding a period of six weeks, for indemnities on the termination of their contracts or for their dependents in the event of their decease. It is inconceivable that it should be the wish of the League that its officials should receive not only a treatment inferior to that meted out by its Government members to their officials, but inferior to that provided by many private enterprises for their servants.

As regards the direction of the refugee work, it was considered unreasonable to expect Dr. Nansen to continue to shoulder unaided this heavy and increasing responsibility, which the Governing Body considered should be effectively shared by the Assembly, the Council and the Governing Body by means of the proposed Mixed Commission, consisting of representatives of Governments more directly interested in the refugee questions.

Taking into consideration the constitution of the Governing Body, the Assembly will probably consider it desirable to provide for the representation on the Mixed Commission of each of the three groups forming part of the Governing Body.

The report of the High Commissioner gives the principal general outlines regarding the establishment of the new organisation, and it is believed that, constructed on those lines, it would not only furnish all the necessary safeguards for the efficient prosecution of the refugee work, but would also constitute a valuable instrument for the execution of any work of a similar character with which the League may be called upon to deal in the future.

Appendix I.

REVOLVING FUND FOR THE SETTLEMENT OF ARMENIAN REFUGEES IN SYRIA.

BALANCE SHEET AS AT JUNE 30th, 1928.

ASSETS.	£	s.	d.	LIABILITIES.	£	s.	d.
Bank accounts:				Capital (see Sub-Appendix A)	20,167	11	7
Lloyds and National Provincial Foreign Bank Ltd., Geneva:				Creditor for non-interest-bearing loan (see Sub-Appendix A)	1,000	0	0
Current account, Swiss fr. 8,965.60	357	0	11	Profit and Loss Account*	64	0	3
Deposit account, Swiss fr. 117,283.30	4,634	2	2	Bank interests			
Deposit account, sterling	5,032	8	0				
Banque Lubersac, Paris	500	0	0				
Settlement advances (Sub-Appendix B):	£.	s.	d.				
(a) To refugee colonies	6,960	11	0				
(b) To Beirut Committee	3,747	9	9				
	<u>10,708</u>	0	9				
Total	21,231	11	10	Total	21,231	11	10

Audited and approved for the Refugee Advisory Committee:

(Signed) C. GOULKÉVITCH.
E. CLOUZOT.
L. PACHALIAN.

Sub-Appendix A.

CONTRIBUTIONS TO THE REVOLVING FUND FOR THE SETTLEMENT OF THE ARMENIAN REFUGEES IN SYRIA.

	£	s.	d.
British United Armenian Committee	9,000	0	0
Remitted through the Treasury of the International Near East Association:			
British United Armenian Committee	2,000	0	0
International Near East Association	4,181	16	7
Den Danske Armeniervenner	162	15	7
Norwegian and German Societies	165	19	2
Dr. Lepsius, Deutsche Orient Mission	57	5	1
Miss Wallis	5	9	0
Union arménienne de bienfaisance	6,573	5	5
Dr. Nansen's Private Fund	500	0	0
Nansen Stamp Fund	3,094	6	2
Non-interest-bearing loan (Anonymous)	1,000	0	0
Total	<u>£21,167</u>	11	7

In addition, there is a grant from the Lebanon Government of 3,000,000 French francs, which has been remitted to the Beirut Committee direct.

Sub-Appendix B.

ARMENIAN REFUGEE SETTLEMENT ACCOUNT AS AT MAY 31ST, 1928.

	Estimated total cost			Remitted to Beirut Committee			Sums advanced by Beirut Committee			Balance in hands of Beirut Committee
	£	s.	d.	£	s.	d.	£T. gold			
<i>Agricultural Settlements:</i>										
(a) Nor Zeitoun (ex Ikiz-Keupru)							1,017.35			
(b) Kirik-khan	16,125	0	0	8,708	0	9	2,283.34			
(c) Sooug-Sou							1,589.14			
(d) Pré-Militaire							648.00			
Administrative expenses	—			—			153.22			
							<u>£T.5,691.05</u>			
							£	s.	d.	
							or	5,054	4	5
									3,653	16
										4
II. Urban Settlements:										
(a) Kirik-khan							134	17	0	—
(b) Aleppo	2,134	17	0	2,000	0	0				
(c) Beirut (2) ¹	6,500	0	0	—			1,771	9	7	93
										13
										5
Total	£24,759	17	0	10,708	0	9	6,960	11	0	3,747
										9

Audited and approved for the Refugee Advisory Committee:

(Signed) C. GOULKÉVITCH.
L. PACHALIAN.
E. CLOUZOT.

July 28th, 1928.

Appendix II.

CONSTANTINOPLE EVACUATION ACCOUNT.

BALANCE SHEET AS AT JUNE 30TH, 1928.

ASSETS.		LIABILITIES.	
Bank accounts:	\$	Capital (received from American philanthropic organizations)	\$
Lloyds and National Provincial Foreign Bank, Ltd., Geneva:		Profit and Loss Account	100,000.00
On current account	1,067.09	Advance by Constantinople Committee on account of remittances	910.98
On deposit account, 16 days	20,333.06		
On deposit account, 3 months	55,889.58		195.97
	<u>77,289.73</u>		
Remitted to Constantinople Advisory Committee and advanced for the evacuation and settlement of 465 refugees	22,856.62		
Remitted to Belgrade for refugee settlement	960.60		
Total	\$ 101,106.95	Total	\$ 101,106.95

¹ Since compiling this statement, a sum of £3,000 has been sent to the Beirut Committee towards the cost of constructing Beirut quarter No. 2.

PROFIT AND LOSS ACCOUNT.

DEBIT.		CREDIT.	
	\$		
Bank charges for transfers of funds, etc.	42.99	Interest on Bank accounts	953.97
Balance (net profit)	910.98		
	<hr/>		
Total	\$953.97	Total	\$953.97

Audited and approved for the Refugee
Advisory Committee:

(Signed) C. GOULKÉVITCH.
L. PACHALIAN.
E. CLOUZOT.

July 28th, 1928.

Appendix III.

I. ADMINISTRATION OF NANSEN STAMPS IN 1927.

	Russian Refugees	Armenian Refugees	Various	Total	Swiss francs
Stamps issued to refugees in:					
Austria	334	16	—	350	1,750
Belgium	870	150	—	1,020	5,100
Bulgaria	3,947	1,138	—	5,085	25,425
Denmark	187 ¹	—	—	187	935
France	4,999 ¹	—	—	4,999	24,995
Luxemburg	19 ¹	—	—	19	95
Norway	21 ¹	—	—	21	105
Sweden	111 ¹	—	—	111	555
Switzerland	1,350 ¹	—	—	1,350	6,750
Syria	—	136	—	136	680
Stamps issued to individuals:					
Refugee Service	—	—	43	43 ²	215
Berlin Delegation	—	—	2	2	10
	<hr/>				
	11,838 ¹	1,440	45	13,323	66,615
Profit and Loss Account (four stamps lost in France)	—	—	—	4	20
	<hr/>				
Stamps sold in 1926	—	—	—	13,327	66,635
" 1926 " stamps converted into " 1928 " stamps.	—	—	—	17,661	88,305
Balance of " 1926 " stamps	—	—	—	41,320	206,600
Balance of " 1927 " stamps	—	—	—	1,039	5,195
	<hr/>				
	—	—	—	76,653	383,265
	<hr/>				
	—	—	—	150,000	750,000

Audited and approved for the Refugee
Advisory Committee:

(Signed) L. PACHALIAN.
Edmond BOISSIER.
C. GOULKÉVITCH.

¹ These figures also include stamps sold to Armenian refugees, as certain Governments were unable to keep separate accounts.
² Including one " 1926 " stamp.

II. POSITION AT DECEMBER 31st, 1927.

CREDIT.	Swiss francs	DEBIT.	Swiss francs
Balance in stamps	595,060.00	Capital (see Sub-Appendix 1)	775,675.16
Cash in hand	1,872.70	Creditors (see Sub-Appendix 3)	7,947.70
Balance in bank:		Profit and loss (see Sub-Appendix 2)	3,008.00
Swiss francs			
Deposit account	10,782.50		
Current account	4,468.90		
Deposit, sterling, £4,901 17s. 4d.	123,625.10		
Current, sterling, £57 2s. 4d.	1,449.70		
	140,326.20		
Advances (Armenians)	1,187.95		
Advances (Russians)	31,518.41		
Various debtors (see Sub-Appendix 3)	16,665.60		
	786,630.86		
Total	786,630.86	Total	786,630.86

NANSEN STAMP FUND AT DECEMBER 31st, 1927.

Capital	775,675.16
1927 profits	3,008.00
	778,683.16
Balance of unsold stamps	595,060.00
	183,623.16
Revolving Fund	183,623.16
Four-fifths of above allocated for advances to Russian refugees	146,899.16
One-fifth of above for advances to Armenian refugees	36,724.00
	183,623.16
Total	183,623.16

Audited and approved for the Refugee
Advisory Committee:

(Signed) L. PACHALIAN.
Edmond BOISSIER.
C. GOULKÉVITCH.

Sub-Appendix 1.

	Swiss francs
Capital at January 1st, 1927:	
1. 150,000 Nansen stamps (100,000 in French, 50,000 in English)	750,000.00
2. 360 provisional stamps, fees collected by the Swiss Government in 1926 before the stamps were printed	1,800.00
3. Net profits in 1926	23,875.16
	775,675.16
Total	775,675.16

On January 1st, 1928, the capital was 3,008 Swiss francs higher (net profits of 1927) and amounted to 778,683.16 Swiss francs.

Sub-Appendix 2.

PROFIT AND LOSS ACCOUNT FOR 1927.

	Swiss francs		Swiss francs
Expenditure	213.25	Interest on deposits in banks	2,503.35
Losses due to delay in departure of refugees	203.40	Profit on exchange	1,488.17
Losses on exchange	546.87		
Loss of four stamps in France.	20.00		
Balance at December 31st, 1927	3,008.00		
	<hr/>		
Total	3,991.52	Total	3,991.52

Sub-Appendix 3.

DEBIT AND CREDIT ACCOUNT, 1927.

Governments which sold "1927" stamps and paid in 1928:		Governments which paid for "1928" stamps in 1927:	
	Swiss francs		Swiss francs
Belgium	355.85	Switzerland	6,750.—
Denmark.	934.35	Sweden	1,002.70
Luxemburg.	95.00	Norway.	145.—
	<hr/>		<hr/>
			7,897.70
Delegations of the Refugee Service which paid for "1927" stamps in 1928:	1,385.20	Miscellaneous	50.—
Vienna.	70.00		
Sofia.	1,080.00		
Paris.	10,748.85		
Beirut	719.30		
	<hr/>	Total	<hr/>
			7,947.70
M. Lodge, 1927 interest paid in 1928	2,255.20		
Central Armenian Committee in Paris	204.45		
Refugees Service (printing of stamps)	87.60		
Miscellaneous	115.00		
	<hr/>		
Total	16,665.60		

According to a balance sheet drawn up at June 30th, 1928, and approved by the Sub-Committee for the distribution of the Nansen Stamp Fund, it appears that during the first six months of the current year the Revolving Fund derived from the sale of stamps was increased by 30,844.74 Swiss francs, of which 28,798.60 represented receipts from actual sales and 2,046.14 the net profit on the distribution of stamps.

The Revolving Fund amounted on June 30th to 214,467.90 Swiss francs, of which four-fifths, or 171,575.90 Swiss francs, are allocated to advances to Russian refugees, and one-fifth, or 42,892 Swiss francs, to Armenian refugees.

There has been a considerable increase in the allocation of advances during the early months of the current year. The balance of the two accounts for advances to Armenian and Russian refugees respectively rose from 32,706.36 Swiss francs on January 1st, 1928, to 102,720.69 Swiss francs on June 30th, 1928.

Appendix IV.

CENSUS OF RUSSIAN AND ARMENIAN REFUGEES.

Country	Total number of refugees		Number of refugees capable of work but unemployed or employed in casual or temporary work		Number of refugees incapable of earning their living (Number of children in parenthesis)	
	Russian	Armenian	Russian	Armenian	Russian	Armenian
Austria	2,505	265	53	—	298 (160)	65 (20)
British Empire:						
Great Britain.			Recent statistics not available			
Cyprus	40	2,500				
Iraq	222	6,784	687 R. and A.	—	—	2,975 (2,123)
Palestine . .	30	1,500	250 R. and A.	—	600	—
Belgium			No statistics available			
Bulgaria	25,942	22,000	5,000	2,500	3,431 (2,459)	6,900 (5,500)
China	88,548	500	15,750	—	10,425 (8,650)	—
Czechoslovakia	24,000	200	16,000	20	4,500 (3,000)	30 (20)
Danzig	269	—	27	—	10 (10)	—
Denmark	300	—	—	—	—	—
Estonia	17,353	—	3,353	—	6,000	—
Finland	14,314	—	10,825	—	—	—
France	400,000	—	—	—	—	—
Germany			No statistics available			
Greece	2,045	39,789	846	28,979	(134)	11,897
Hungary	4,764	15	—	—	1,901	—
Italy	1,154	603	427 R. and A.	—	203 R. and A. (83)	—
Japan	2,356	24	1,657	—	580 R. and A. (455)	—
Latvia	30,000	—	5,800	—	11,500	—
Lithuania . . .	8,000	—	1,500	—	3,500	—
Norway	Very small		—	—	—	—
Poland	100,000	1,000	39,163	—	—	—
Kingdom of the Serbs, Croats and Slovenes.	27,345	200	7,000	—	5,200	—
Spain	500	—	—	—	—	—
Sweden	1,000	—	500	—	—	—
Switzerland . .	2,266	250	—	—	218	—
Syria	—	86,500	—	32,700	—	—
Turkey (Stamboul) . .	1,747	—	1,300	—	—	—
Total	754,700	162,130	110,138	64,199	48,366	21,867

N.B. — Some of the above figures indicate only an average number. In consequence, the totals have only to be considered as indicating approximately the number of refugees of each category.

Geneva, September 20th, 1928.

LEAGUE OF NATIONS

ORGANISATION FOR COMMUNICATIONS AND TRANSIT

**REPORT ON THE WORK OF THE ORGANISATION BETWEEN
THE EIGHTH AND NINTH ORDINARY SESSIONS OF
THE ASSEMBLY**

Submitted on behalf of the Second Committee by M. NAGAI (Japan).

The report submitted by the Advisory and Technical Committee for Communications and Transit on the work of the Organisation between the eighth and ninth ordinary sessions of the Assembly shows that during this period the Organisation has pursued the normal and progressive development of its work in the various spheres of its activity.

After the Third General Conference on Communications and Transit, the results of which were pronounced on by the Assembly at its last ordinary session, the new Advisory and Technical Committee proceeded to reorganise the different special committees set up by it. The Assembly is aware that one of the characteristics of the methods employed by the Advisory and Technical Committee is the holding of regular meetings of specialists interested in the various problems of transport. The reorganisation in question made it possible to enlist assistance from a great variety of quarters, and to show that to an increasing degree the work of the Organisation for Communications and Transit concerns not only Europe but also the other continents. Thus the Permanent Committee for Transport by Rail now includes distinguished new members, particularly well qualified to represent the development of railway transport on the American continent.

In the sphere of maritime navigation, where the work of the Transit Organisation is necessarily of this worldwide character, the study of the unification of tonnage measurement in maritime navigation and of the unification of buoyage and the lighting of coasts is being pursued with the help of a large number of technical experts. The purely technical work connected with maritime tonnage measurement has, for the moment, been concluded. The report of the competent Technical Sub-Committee will soon be available for consideration by experts belonging to all the circles concerned. The work in connection with buoyage and the lighting of coasts already seems to have brought closer into line the views of the services concerned in Continental Europe, and those of the corresponding services in North America. A study of the conditions and ideas peculiar to North America was carried out on the spot by a number of members of the Technical Committee who are heads of the services concerned in certain European countries, with the assistance of the technical authorities of the countries of North America.

Air navigation is another mode of transport which necessarily involves conceptions exceeding the limits of a single continent. Various organisations, among them the International Air Navigation Commission placed under the authority of the League and the International Technical Committee of Legal Experts for Air Navigation, have dealt continuously with various international problems affecting this kind of transport. The Third Conference on Communications and Transit noted, however, that it would be a great advantage to endeavour to ensure wider co-ordination of international activities connected with air navigation, in order to permit of the co-operation of the greatest possible number of countries throughout the world. At the same time the Assembly at its last ordinary session referred to the Advisory and Technical Committee the question of the effect to be given to a resolution of the Preparatory Disarmament Commission which, on the report of its Civil Aviation Committee, had asked that an enquiry should be undertaken into the means of facilitating co-operation between civil air navigation undertakings in different countries. For these reasons the Advisory and Technical Committee decided to set up a committee to consider as a whole the problem of international organisation in air navigation, as raised by the above-mentioned resolution and by the discussions of the Third Transit Conference. It is greatly to be hoped that these new investigations will lead to an agreement which, without affecting the close relations already existing between different countries through the medium of the present organisations, will permit of the continuous co-operation of all the countries of the world which are

particularly interested in air navigation and will result in the establishment, if possible, of at least a few principles of public international law in the sphere of air navigation and the interchange of the essential technical services.

The Assembly is aware that for some years past, in liaison with the River Commissions, the Advisory and Technical Committee has been endeavouring to draw up draft conventions for the unification of certain sections of river law. This question concerns Europe more particularly, although, if it appeared necessary, similar problems might be studied in regard to other continents; previously, the Transit Organisation succeeded on the same lines in drawing up a convention on the tonnage measurement of vessels employed in inland navigation, which met with complete success. The drafts for submission to a Conference are now so far advanced that there is reason to believe that the Conference can be held in 1929 or 1930.

Since the last ordinary session of the Assembly the Permanent Committee for Road Traffic has been able to make considerable progress in the question of the unification of roads signals. A draft in this connection has been sent to all the Governments, a large number of which have declared themselves ready to adopt it or have even put it into force already. The observations received from other Governments only relate to certain points of detail. It thus appears practically certain that an important step will soon have been made in the work of unifying the codes of road signals, which is a matter of concern to so large a public. The Road Traffic Committee also has a task of particular importance to perform, that relating to the international conditions of commercial motor transport. The recent development of heavy commercial motor traffic seems to make it necessary to draw up international rules, which, although they have been fixed for a long time past in regard to other modes of transport, are completely lacking in the case of motor transport. The freedom of communications mentioned in the Covenant applies to all modes of transport, and it is a matter for satisfaction that the Committee's organs have given their attention to the problem, which has now become of pressing importance, of the introduction of a kind of international jurisprudence of commercial motor transport.

While the Advisory and Technical Committee has thus continued its work in the various specialised branches of transport, it has not neglected one of its main tasks, that of considering the more general problem of co-ordination between different modes of transport, or of all transports whatever means they employ. In response to a request by the Third Conference of Communications and Transit, it has elaborated a procedure for the study of the obstacles which might hamper the freedom of transit, and has begun the examination of the question of the re-establishment of communications when the latter are affected by grave events of a general character. It will be sufficient to mention here the work done this year by the Organisation for Communications and Transit concerning communications affecting the League of Nations at times of emergency. This work affects extremely varied means of communication. The same applies to another kind of enquiry which the Advisory and Technical Committee has had to undertake in consequence of the resolutions adopted by the Conference of Press Experts, the Council having asked it to examine the questions raised by this Conference relating to communications and transport. A Committee of Experts belonging to telegraphic administrations has already met and has drafted, with the help of representatives of the Press and of the cable and wireless companies, a certain number of recommendations to which practical effect will probably be given at the next Conference of the Telegraphic Union. The problem of newspaper distribution is also being carefully examined with the help of the International Railway Union and the International Air Traffic Association; and the simplification of Customs formalities in connection with the carriage of newspapers will be dealt with by special meetings of experts. Necessitating as it does the same co-ordination between different means of transport, but in a much more general sphere, the delicate question of combined transport has been retained on the Committee's agenda, concrete proposals having already been put forward in regard to combined transport by rail and air. Since the other problems of combined transport raise difficulties of an economic or legal nature, they still require careful analysis.

In this connection, however, special mention should be made of a question which, in certain of its aspects, had already been examined previously by the Transit Committee, but which, by a decision of the last Conference, was taken up again by the Committee in more general terms, and in regard to which preliminary studies have already been made with important results, namely, the question of the unification of transport statistics. The Advisory and Technical Committee had already examined, in conjunction with the work done by the Navigation Congresses and by the Central Commission for Rhine Navigation, the problem of the unification of inland navigation statistics and had succeeded in drawing up a preliminary draft for a uniform nomenclature and for the distribution by districts of the statistical data collected by the various Governments; but it very rightly considered after the last Conference that it would be inadvisable to deal separately with the unification of statistics for one means of transport only; that in any case the problem of the unification of statistics should as far as possible be considered simultaneously and jointly for inland navigation and maritime navigation; and that it ought to be considered whether the conclusion reached in regard to navigation could not, when the time came, and if necessary with certain adjustments, be applied also to railway transport. The Committee for the unification of inland navigation statistics has been enlarged so as to make it competent for the unification of statistics in general. The initial conclusions in regard to inland navigation have already been revised in such a way that satisfactory proposals may shortly be expected applying to navigation as a whole, both inland and maritime. This work is necessarily being carried on in liaison with that of the Economic Organisation in regard to the unification of Customs nomenclature and every effort will be made on both sides to provide for this essential co-ordination. The Assembly at its last ordinary session, in associating itself with the resolution of the Third Conference on Communications and Transit on the Transit Organisation's work concerning the collection and exchange of information on communications, indicated that it was for the Transit Organisation

to facilitate, as far as might appear necessary, the collection and diffusion of statistical information concerning transport. The Assembly will no doubt desire the Organisation to be given the opportunity to pursue this work progressively according to the methods which it considers most suitable and in the light of the experience it has acquired in the practical study of the principal problems of transport.

No review of the Transit Organisation's work during this period would be complete without a reference to the progress achieved as a result of past activities which have already been brought to the Assembly's knowledge and which have aroused considerable interest in many countries. The question of the reform of the calendar deserves special mention. In conclusions with which the Assembly associated itself, the Advisory and Technical Committee asked that national committees for the reform of the calendar competent to study the report drawn up by the Committee and to outline the state of national opinion on this subject should be formed in as many countries as possible. The question to which this enquiry related was that of the general reform of the calendar, independently of the fixing of the date of Easter, regarding which more definite conclusions had already been adopted by the Transit Committee. Since the last ordinary session of the Assembly a strong current of opinion has made itself felt in certain countries in favour of a detailed study of this question of the reform of the calendar. Special attention has been given to it by commercial and industrial circles. National committees are in process of formation. The National Committee of the United States of America has already been formed and consists of highly representative persons.

The Committee for Communications and Transit states in its report that it was informed in the course of its work of difficulties which have occurred owing to the fact that certain forms of propaganda regarded as inadmissible from the international point of view have been carried on by means of broadcasting. The attention of the Second Committee has been drawn to this point. As the political side of the question has been dealt with by the Sixth Committee, the Second Committee does not consider it necessary to submit a resolution on this subject. It notes, however, that, as a result of the measures of defence adopted in these cases by the Governments concerned, such action, apart from all disadvantages of a political nature, tends to disturb international wireless communications. Viewing the question from a general standpoint, the Second Committee thinks it would be desirable that the Committee for Communications and Transit should try to discover some means of establishing international agreements to ensure an equitable distribution of wireless wave-lengths among the various countries, in order to diminish the probability of disturbances in wireless broadcasting.

It does not appear necessary to add any further observations and particulars concerning the varied aspects of the work of the Organisation for Communications and Transit. If the Assembly will express its satisfaction with this work by associating itself with the few considerations and particulars which have been presented above, I should like to propose the following draft resolution for submission to the Assembly:

"The Assembly, noting the report of the Advisory and Technical Committee for Communications and Transit on the work of the Organisation between the eighth and ninth ordinary sessions of the Assembly, expresses its satisfaction with the normal progress of the Organisation's work."

(Communiqué au Conseil,
aux Membres de la Société et
aux Délégués à l'Assemblée.)

• Erratum au document
A.73 1928.VIII.

Genève, le 22 septembre 1928.

SOCIÉTÉ DES NATIONS

ORGANISATION DES COMMUNICATIONS ET DU TRANSIT.

Rapport sur l'oeuvre de l'organisation entre les huitième et
neuvième sessions ordinaires de l'Assemblée,

présenté au nom de la deuxième Commission par M. NAGAI (Japon).

E R R A T U M.

Page 3 - Alinéa 3 - 6ème ligne:

Lire: Elle a remarqué toutefois que, par suite des mesures de défense
que les gouvernements intéressés pourraient prendre dans de tels
cas

LEAGUE OF NATIONS

ORGANISATION FOR COMMUNICATIONS AND TRANSIT.

Report on the work of the Organisation between the Eighth and Ninth
Ordinary Sessions of the Assembly,

Submitted on behalf of the Second Committee by M. NAGAI (Japan).

E R R A T U M.

Page 3 - 3rd Paragraph - Line 6:

Read: It notes, however, that, as a result of the measures of defence
which might be adopted in these cases by the Governments
concerned