LEAGUE OF NATIONS

Official Journal

SPECIAL SUPPLEMENT No. 55.

(2)

RECORDS

OF THE

EIGHTH ORDINARY SESSION

OF THE

ASSEMBLY

MEETINGS OF THE COMMITTEES

MINUTES

OF THE

FIRST COMMITTEE

(CONSTITUTIONAL AND LEGAL QUESTIONS)

GENEVA 1927

CONTENTS.

S. d. N. 1.375 (F.) 1.275 (A.) 1/28. Imp. Kundig.

LIST OF MEMBERS OF THE COMMITTEE.

Chairman: His Excellency M. Miñeitcirô ADATCI (Japan).

Vice-Chairman: His Excellency M. Herluf ZAHLE (Denmark).

Abyssinia:	His Excellency Count LAGARDE, duc d'ENTOTTO.
Australia:	The Rt. Hon. Sir George Foster PEARCE, K.C.V.O.
	Sir William Harrison MOORE, K.B.E., C.M.G., LL.D., B.A. (Substitute).
Austria:	Dr. Markus LEITMAIER.
Belgium:	M. P.-E. JANSON. M. Henri ROLIN (Substitute).
British Empire:	Sir Cecil James Barrington HURST, G.C.M.G., K.C.B., K.C.
Bulgaria:	His Excellency M. Wladimir MOLLOFF.
Canada:	Mr. O. D. SKELTON, M.A., Ph.D. The Hon. Charles A. STEWART, P.C. (Substitute).
Chile:	His Excellency M. Enrique VILLEGAS, or His Excellency M. Armando QUEZADA.
China:	His Excellency Dr. OUANG TING TCHANG.
Colombia:	His Excellency Dr. Francisco José URRUTIA.
Cuba:	His Excellency M. Orestes FERRARA. His Excellency M. Guillermo DE BLANCK (Substitute).
Czechoslovakia:	His Excellency Dr. Stephan OSUSKÝ.
Denmark:	His Excellency M. Herluf ZAHLE.
Dominican Republic:	Dr. Tulio FRANCO FRANCO. M. S. E. PARADAS (Substitute).
Estonia:	His Excellency Dr. Friedrich AKEL. M. Karl TOFER (Substitute).
Finland:	His Excellency M. Rafael ERICH. M. George WINCKELMANN (Substitute).
France:	His Excellency M. Aristide BRIAND. M. Louis LOUCHEUR. M. FROMAGEOT. M. Joseph BARTHÉLEMY. M. Marcel PLAISANT. M. René CASSIN. M. PÉPIN (Expert).
Germany:	Dr. STRESEMANN. Dr. GAUS and M. GÖPPERT (Substitutes).
Greece:	His Excellency M. Nicolas POLITIS. M. Vassili DENDRAMIS (Substitute).
Guatemala:	His Excellency M. José MATOS.
Haiti:	His Excellency M. Alfred NEMOURS.
Hungary:	Count Albert APPONYI. His Excellency M. Ladislas GAJZÁGÓ.
India:	Sir Edward Maynard DES CHAMPS CHAMIER, K.C.I.E. Sir Basanta Kumar MULLICK (Substitute).
Irish Free State:	Mr. John A. COSTELLO. Mr. Michael MACWHITE, and Mr. J. P. WALSHE (Substitutes).

Italy:	His Excellency M. Vittorio SCIALOJA. M. Massimo PILOTTI and The Hon. Cesare TUMEDEI (Substitutes).
Japan:	His Excellency M. Mińeitcirô ADATCI. M. Nobumi ITO (Substitute).
Latvia:	His Excellency M. Felix CIELENS. M. Charles DUZMANS (Substitute).
Liberia:	His Excellency Baron Rodolphe Auguste LEHMANN.
Lithuania:	His Excellency M. Venceslas SIDZIKAUSKAS.
Luxemburg:	His Excellency M. Joseph BECH. His Excellency M. Emile REUTER (Substitute).
Netherlands:	M. Joseph LIMBURG. Jonkheer W. J. M. VAN EYSINGA (Substitute).
New Zealand:	The Hon. Sir James PARR, K.C.M.G.
Nicaragua:	His Excellency M. Tomas Francisco MEDINA or Dr. Antoine SOTTILE.
Norway:	Dr. Christian L. LANGE. M. L. OFTEDAL (Substitute).
Panama:	His Excellency Dr. Eusebio A. MORALES.
Paraguay:	Dr. Ramon V. CABALLERO.
Persia:	His Highness Mohammad Ali Khan FOROUGHI. Dr. P. KITABGI KHAN and M. André HESSE (Substitutes).
Poland:	Professor Michel ROSTWOROWSKI. M. Szymon RUNDSTEIN. Count Charles POTULICKI (Substitute).
Portugal:	His Excellency Dr. Antonio Maria Bartholomeu FERREIRA. M. Antonio Gomes D'ALMENDRA (Substitute).
Roumania:	M. Mircea DJUVARA. M. V. V. PELLA (Substitute).
Salvador:	His Excellency Dr. J. Gustavo GUERRERO.
Kingdom of the Serbs, Croats and Slovenes:	M. M. STRAZNITZKY. M. L. PITAMEZ.
Siam:	His Highness Prince CHAROON. Nai Thawin ARTHAYUKTI.
South Africa:	Professor Edgar Harry BROOKES, M.A., D.Litt. (S.A.).
Sweden:	His Excellency M. Jonas Eliel LÖFGREN. Dr. T. M. HÖJER and Mme. Anna WICKSELL (Substitutes).
Switzerland:	His Excellency M. Giuseppe MOTTA. M. Walther BURCKHARDT (Substitute).
Uruguay:	His Excellency Dr. Julio BASTOS or Dr. Alberto Dominguez CÁMPORA.
Venezuela:	His Excellency M. Diógenes ESCALANTE.

FIRST COMMITTEE.

CONSTITUTIONAL AND LEGAL QUESTIONS.

AGENDA.

1. ACCESSION TO INTERNATIONAL AGREEMENTS, GIVEN SUBJECT TO RATIFICATION.

2. WORK OF THE COMMITTEE OF EXPERTS FOR THE PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW.

3. PREPARATION OF A CODE OF INTERNATIONAL LAW: DRAFT RESOLUTION PROPOSED BY THE DELEGATION OF PARAGUAY.

4. DRAFT OPTIONAL CONVENTION FOR THE COMPULSORY ARBITRATION OF DISPUTES, SUBMITTED BY THE THIRD COMMITTEE TO THE FIRST COMMITTEE.

FIRST MEETING.

Held on Tuesday, September 6th, 1927, at 10 a.m.

Chairman: M. ADATCI (Japan).

1. Election of the Vice-Chairman.

M. ZAHLE (Denmark) was elected Vice-Chairman by acclamation, and thanked the Committee for this mark of confidence.

2. Publicity of the Meetings.

On the proposal of the CHAIRMAN, *the Committee decided that, in principle, its meetings should be held in public.*

3. Adoption of the Agenda.

The provisional agenda was adopted unanimously

M. FROMAGEOT (France) asked whether the Committee was not called upon to deal with Item 11 of the general agenda of the Assembly: " The system of the single transferable vote and the principle of proportional representation in general, in connection with the problem of the election of the non-permanent Members of the Council ".

After an exchange of views, in which M. SCIALOJA (Italy), Dr. LANGE (Norway) and M. FROMAGEOT (France) took part, *the Committee agreed* that, if the Sixth Committee, to which this item of the general agenda had been submitted, should deem it advisable, from the political point of view, to modify the present system, the First Committee would then be called upon to take cognisance of the question.

4. Appointment of Rapporteurs.

M. SCIALOJA (Italy) proposed that Rapporteurs should be appointed to report to the Committee apart from those appointed to represent the Committee before the Assembly.

The CHAIRMAN and Dr. LANGE (Norway) pointed out the advantages of that method, which would facilitate the consideration of particularly complicated questions.

At the suggestion of Sir Cecil HURST (British Empire), the CHAIRMAN proposed: (1) That M. Fromageot and M. Guerrero, who had followed the work of the Committee of Experts for the Progressive Codification of International Law as members of that Committee, should be requested to submit an introductory statement to the Committee; (2) that M. Politis should be appointed Rapporteur for this question.

The proposal was adopted.

M. MOTTA (Switzerland) was of opinion that, as the first item on the Agenda: " Adhesion to International Conventions, given subject to ratification ", presented less difficulty, it was not necessary that the above procedure should be adopted in dealing with it.

The Committee agreed.

SECOND MEETING.

Held on Tuesday, September 13th, 1927, at 10 a.m.

Chairman: M. ADATCI (Japan).

5. Minutes of the Meetings.

The CHAIRMAN read a communication from the Secretary-General reminding the Committee of the terms of the resolution adopted by the General Committee of the Assembly on September 7th, providing that the Minutes of committees were not stenographic reports but only summaries of the proceedings.

The delegates could make any necessary corrections in the Minutes before the meeting immediately following the one at which the Minutes had been distributed.

The Chairmen of the Committees could, if they thought fit, submit the proposed corrections to the members, with whom it would rest to draw up the final texts of the Minutes and to authorise their publication.

The communication of the Chairman was noted.

6. Procedure to be followed in making Proposals not covered by the Credits opened in the Budget Estimates for 1928.

The CHAIRMAN read a letter from the Chairman of the Fourth Committee drawing attention to Article 19, paragraphs 2 and 3, and Article 16, paragraphs 5, 6 and 7 of the Regulations for the Financial Administration of the League of Nations.

In accordance with those provisions, no resolution involving expenditure could in any case be voted by the Assembly before the Supervisory Commission and the Fourth Committee had expressed their opinion on the advisability of the proposed expenditure from the point of view of general budgetary resources.

The Chairman asked the First Committee to submit to the Supervisory Commission as soon as possible any proposal which was not covered by the credits opened in the budget estimates for 1928.

The communication of the Chairman was noted.

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 (Annex 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. Accession to International Agreements, given subject to Ratification (Annex 2).

The CHAIRMAN reminded the Committee that the Council had drawn the attention of the Assembly to the fact that, as regards agreements concluded under the auspices of the League of Nations, certain States which had not signed those agreements within the official period allowed for signature had subsequently acceded thereto by means of instruments which were themselves subject to ratification. The Council had pointed out that such accession, subject to ratification, did not appear to be in accordance with earlier procedure. Hitherto, accession had always been full and complete as soon as it was notified.

The Council had expressed no opinion on the question whether this new practice was advisable or not. His own view was that the practice had the advantage of facilitating the acceptance of general agreements by the States Members of the League. Twenty-two accessions subject to ratification had been made during the last few years, thus proving that this procedure was favoured by certain Governments.

The Chairman also referred to a letter from the Swiss Government (see Appendix to Annex 2) expressing the opinion that accessions subject to ratification might give rise to difficulties of interpretation.

He suggested that the question should first be referred to a Sub-Committee for consideration.

Sir Cecil HURST (British Empire) said that he would like a definite statement of the advantages claimed for this new practice.

M. POLITIS (Greece) asked to be informed, if possible, in what circumstances and for what reasons the Bolivian Government had acceded to the Opium Convention subject to ratification.

The CHAIRMAN pointed out that Bolivia was not represented on the Committee, but that the twenty-two other cases of a similar nature might be investigated in order to ascertain the reasons for the procedure followed.

M. MOTTA (Switzerland) explained that when he had been informed that the representative of Bolivia had signed the Opium Convention subject to ratification, he had raised the question of the legal value of an accession given in that manner. The Secretary-General, to whom the matter was referred, was of opinion that the question was an important one and should be placed on the agenda of the present session of the Assembly.

Until such time as the advantages of the new procedure had been clearly shown, M. Motta was of opinion that it would be best to adhere to the old practice.

The CHAIRMAN mentioned among the States that had adopted this new procedure France, Peru, Roumania, Venezuela.

M. FROMAGEOT (France) expressed the view that no special significance should be attached to the fact that a Department of the French Ministry for Foreign Affairs had sent in an accession subject to ratification. He did not think there would be any repetition of such an occurrence.

M. Fromageot went on to state that — unlike signatures given by plenipotentiaries — accession, like ratification, was an act directly emanating from the Government itself. There was no reason, therefore, why accession should be subject to ratification.

He added that it was advisable that it should be understood that accession given subject to ratification was of no legal value, and that an accession made without such a reservation was legally complete.

Mr. McKinnon WOOD, Secretary of the Committee, speaking at the Chairman's request, drew attention to two advantages which the new practice presented.

In the first place, Governments which had not originally proposed to sign the convention had changed their minds. In giving their adhesion, subject to ratification, before they had been able to lay the matter before their Parliaments, they intimated their approval of the convention, and this was likely to lead other States to follow their example.

In the second place, a Government which had not signed a convention and desired to accede thereto would find it easier to obtain the approval of its Parliament if it had already performed an international act, such as that of notifying its accession subject to ratification.

As a matter of fact, twenty-two States had followed this line of action.

The important thing was to avoid all misunderstanding. Accession subject to ratification had, of course, no legal effect. It would perhaps be well, however, to make it clear that a Government which gave its adhesion subject to ratification was not bound thereby, and was simply in the position of a State which had signed the Convention within the ordinary time-limit.

M. GUERRERO (Salvador) was of the opinion that, when a Government acceded before having obtained the approval of its Parliament, and its accession was consequently subject to ratification, it should be considered as being in the same situation as a State which had signed a convention but had not yet ratified it.

He considered that it would be undesirable to forbid accession subject to ratification, for the latter was a weapon which Governments could use in order to obtain the approval of their Parliaments.

In reply to the Chairman, the speaker added that, in his view, such accession had a legal value. He concluded that there could be no objection to allowing Governments to give their accession in this way.

M. POLITIS (Greece), after the explanations which had been given, thought it unlikely that so many Governments had adopted the new practice, which was at first sight a strange one, owing to a mere inadvertence on the part of their departments. It was therefore legitimate to suppose that this practice would continue.

The Greek delegate did not think that the Committee was qualified to fix the extent of the freedom enjoyed by Governments in this matter. Nevertheless, on the basis of the facts before it, the Committee should ask itself whether accession subject to ratification had a legal value. If not, it would have to be concluded that, when a country acceded with reservations, it was not bound thereby, but that when it acceded without observation it was bound.

Another question to be examined was that of the practical advantages of the method of accession subject to ratification, and whether this practice ought to be encouraged.

The speaker concluded by proposing that the two questions should be referred to a Sub-Committee, on whose report the Committee might then draw up a draft resolution for submission to the Assembly.

Dr. LIMBURG (Netherlands) said that in international law accession was the complete act by which a State associated itself with a convention. An accession subject to ratification was only a signature, and did not constitute an accession proper.

M. TUMEDEI (Italy) pointed out that in many cases even negotiating States which had given their approval to a convention did not sign it immediately. Two periods were allowed them: a first time-limit for signature, and, after the signature, a second time-limit before they finally bound themselves. Why should not States which had not taken part in the framing of the convention be placed in an identical situation ? This observation, he added, referred to accessions subject to ratification, given before the end of the signature period. But, even as regards accessions subject to ratification given after the close of the signature period, it might be desirable to permit these. This method might constitute a means of encouraging accessions. The obligation thus entered into, in principle, would not be devoid of moral value. The Italian delegate therefore declared himself in favour of the method in question.

Sir George PEARCE (Australia) thought that, before the question was referred to a Sub-Committee, it might be well to obtain information from the Secretariat as to whether the various States which had acceded subject to ratification had afterwards ratified, and how long they had taken to do so. This would show the value attached by the States concerned to their accession subject to ratification.

Mr. MacKinnon WOOD (Secretary) said that the desired information could easily be supplied. It would perhaps be inconclusive, for the time intervening between accession and ratification often depended upon the nature of the Convention and upon the particular laws of the States concerned.

M. MOTTA (Switzerland) pointed out that, in virtue of a recommendation of the Assembly, Governments which had not given their ratification after intimating their accession were asked from time to time to do so as soon as possible. In this way, States which had acceded subject to ratification were encouraged not to leave too great an interval between accession and ratification.

M. ESCALANTE (Venezuela) said that in his country Parliament only sat from April to July. If a Convention were submitted to the Government in September, the Cabinet meeting which approved it communicated its accession subject to ratification. This accession, no doubt, had no legal value. It had, however, a moral value, as it was likely to make an impression on Parliament and to induce the latter's approval.

Sir Cecil HURST (British Empire) was in favour of referring the question to a Sub-Committee and desired a second point to be submitted to the same Sub-Committee.

If the system of accession subject to ratification became general, it would be necessary to change the documents published by the League of Nations showing the different States which had signed, ratified or not yet ratified such-and-such a convention. The Sub-Committee would therefore have to consider in what form the future publications of the League of Nations in this connection should be drafted.

The CHAIRMAN thought he would be meeting the Committee's wishes in proposing the formation of a Sub-Committee for the purpose of examining: (1) the legal value of the method of accession subject to ratification; (2) its possible advantages. If it were thought desirable to encourage the practice, the Sub-Committee would also have to consider the form to be given to the future publications of the League of Nations.

He proposed that the Sub-Committee should consist of the following members:

M. MOTTA (Switzerland),
Mr. SKELTON (Canada),
H.H. Mohammad Ali Khan FOROUGHI (Persia),
Professor ROSTWOROWSKI (Poland),
M. GUERRERO (Salvador).

The proposal was adopted.

The CHAIRMAN said that it was understood that the documents for which the Australian delegate had asked would be submitted to the Sub-Committee and that the latter would take into account the suggestion made by the delegate of the British Empire.

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

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.

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 concluded previous to the advent of the League and 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, in the form of a convention, an agreement 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 a convention 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 prodecure 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 consideration 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 substance of the 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 this question 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 result 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 criticisms 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 question of the procedure of international conferences and that of 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.

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).

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 regarding the question 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.

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.

Dr. LIMBURG (Netherlands) thought it advisable to recall a passage in M. Zaleski's report, as well as the first delegate of the Netherland'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:

1. *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 all 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 became 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.

FOURTH MEETING.

Held on Friday, September 16th, 1927, at 3.30 p.m.

Chairman: M. ADATCI (Japan).

11. Work of the Committee of Experts for the Progressive Codification of International Law (continuation).

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 everyone 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 might exist 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; if it were so confined, 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.

Dr. 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, Dr. 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),
Dr. 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.

FIFTH MEETING.

Held on Wednesday, September 21st, 1927, at 10.30 a.m.

Chairman: M. ADATCI (Japan).

13. Draft Optional Convention for the Compulsory Arbitration of Disputes: Reference by the Third Committee to the First Committee of the Norwegian Proposal.

The CHAIRMAN reminded the Committee that this question had been referred to the First Committee by the Third Committee in the form of a draft optional convention (Annex 4).

Dr. LANGE (Norway) remarked, in the first place, that the Third Committee had unanimously agreed to the principle of the proposal, and had left it to the First Committee to decide upon the methods and details.

He pointed out that the proposal submitted by his delegation simply represented a basis for discussion which might lead to a definitive draft that could be submitted to the next session of the Assembly. While he admitted no compromise on the principle of the proposal, he was prepared to accept any useful amendment to the text. He himself had an amendment to suggest, namely, that in Article 2 the actual text of the Locarno Treaty should be inserted as follows:

> "All questions . . . with regard to which the Parties are in conflict as to their relative rights . . . in particular those . . . "

In order to make the nature of the proposal clearer, he compared it to the Optional Clause of the Statute of the Permanent Court.

M. LÖFGREN (Sweden) explained his special reason for addressing the Committee. As M. Sandler had already observed in the Third Committee, the present Norwegian proposal resembled a Swedish proposal that had been submitted to the Assembly in 1925.

The Swedish proposal had been to the effect that the Assembly requested the Council to cause the provision of the Geneva Protocol concerning compulsory arbitration to be re-examined by a Committee of Experts. The idea had been that a general treaty might be concluded, open to signature by all States. Thus the system proposed was based on the same principle as Article 36 of the Statute of the Permanent Court. The Swedish proposal had been less far-reaching than the proposal now made by the Norwegian delegation. It had merely suggested an enquiry and had not included any definite draft. It had also made express provision, unlike the Norwegian draft, for accession with reservations.

The outcome of the Swedish proposal of 1925 had been a resolution adopted by the Assembly during its seventh ordinary session recommending States to conclude special arbitration treaties with a view to facilitating the conclusion of a general treaty in the comparatively near future. Sweden, like other countries, had hastened to conclude a large number of bilateral treaties providing for the pacific settlement of all disputes, whether legal or political. It was in the light of this progress and the present political situation that the proposal before the Committee should be considered. Sweden had not faltered in her attachment to the principle of a general arbitration convention remaining open for signature by all States, but she thought that the conclusion of an arbitration treaty specially affecting purely political questions must be preceded by or coincide with the accession of the majority of countries to the Optional Clause of the Permanent Court.

In 1925, the Swedish delegation was not prepared to state without a detailed investigation that the terms of arbitration laid down in the Protocol were most calculated to serve as a basis for a general treaty of this type. M. Löfgren was perhaps still less ready to do so. Article 3 of the Norwegian proposal resembled Article 4 of the Geneva Protocol; arbitration was only contemplated after the dispute had been submitted to the Council, and after the conciliation procedure before the Council had failed. This extract from Article 4 of the Protocol had perhaps not been very successful. The already inadequate guarantees provided in the Protocol with regard to the impartiality of the arbitrators and the procedure were not reproduced in the Norwegian proposal. M. Löfgren's remarks when the Protocol was being drawn up, to the effect that any system of general compulsory arbitration must be completed by a detailed and definite statement of procedure by the Council, remained intact.

There was one point, however, which to his mind was more important. The Protocol had contemplated proceedings before the Council, the idea being to make good the deficiency of Article 15 of the Covenant. Since then, however, the movement for compulsory arbitration had quite changed its direction.

The result of the conclusion of bilateral treaties had been to take arbitration procedure out of the hands of the Council, and to entrust it to bodies employed by the parties themselves. But the Norwegian proposal, as it read at present, did not in any way encourage the establishment of these independent arbitral bodies. M. Löfgren could not give his support to any system which

would mean an interruption or a change in the valuable progress in the system of arbitration made during recent years.

He would therefore content himself with recommending that careful consideration be given to the Norwegian proposal in connection with the entire question of arbitration. The Committee might perhaps consider, as had been suggested by the Netherlands delegation in the Third Committee, the possibility of drawing up a model treaty.

It would, he thought, be most useful to examine and clear up the position of special arbitral tribunals established to settle also political disputes in connection with the Council of the League of Nations, as well as the problem of the execution of their decisions. He held — and many others agreed with him — that the Covenant admitted the principle that arbitration preceded mediation by the Council, and that once arbitration proceedings had been entered upon the Council had no further power to consider the substance of the dispute.

The situation was exactly the same in cases of conciliation procedure taken up before a special Committee established by a bilateral treaty. In each case the bodies mentioned had been established as the result of the contractual obligations of the two parties arising out of the Covenant, and the Council should keep special watch over the fulfilment of obligations of this kind. In grave emergencies, of course, in accordance with Article 11, the Council was even called upon to deal with a question that had already been submitted to arbitration. In such cases, however, the Council's main business must be to bring pressure to bear upon the parties, in order to make them fulfil their legal obligations. The fact that a legal question submitted to arbitration might influence the political situation did not justify the Council in touching upon the substance of a dispute in order to give force to political considerations. This was, he thought, confirmed, at all events in principle, by the opinion given by the Special Committee of Jurists on September 28th, 1923, in its reply to the second question put to it by the Council.

It was not less important to remember the generally recognised rule that an arbitral tribunal had sole power to decide the extent of its own jurisdiction, and that there was no appeal against this decision, unless express provision to the contrary was made by the parties.

Lastly, it was part of the work of the Council, as a peacemaker, to secure by any satisfactory means the enforcement of arbitral awards. In this connection he referred to the Assembly resolution of 1925 regarding the sanctions provided for in Article 13 of the Covenant. As regards this problem, however, there were several questions for the solution of which no indication was given by the Covenant and its rather vague Article 13. To what extent, for example, was the Council bound by stipulations in an arbitral decision concerning the provisions of an executory nature?

It might perhaps be said that certain of the questions, which would be the object of an enquiry, were already so clear that any further examination appeared to be superfluous. M. Löfgren would also have been of this opinion a few months ago, but recent events, and the remarks of certain members of the Council of the highest authority, had shown that the examination of these points was of extreme, indeed vital, importance to the development of compulsory arbitration.

It was therefore essential, he concluded, to make every effort to strengthen the general confidence in arbitration which, particularly for small nations, was the surest guarantee of peace.

Mr. BROOKES (South Africa) asked whether the idea of the proposal was to establish compulsory arbitration. His Government was still opposed to that.

Dr. LANGE (Norway) replied that the Convention was to be optional.

Mr. BROOKES (South Africa) suggested a few amendments and additions which, he thought, were necessary. In the first place he thought it might be well to insert a preamble explaining how the proposal had come to be drawn up. He suggested the following text:

> " The Contracting Parties, taking into consideration the solemn resolution adopted by the Assembly of the League of Nations during its eighth ordinary session, which forbids recourse to war as a method of settling international disputes, and being desirous of amplifying their obligations under the Covenant so as to conform to the principles of the same resolution . . . "

He then pointed out that Article 15 of the Covenant contemplated several methods of settling disputes, including intervention by the Assembly instead of the Council. He therefore thought that the words " or the Assembly " should be added after the word " Council " in Article 3. Similarly, in Article 2, after the word " Council ", the words " or the Assembly if the question has been laid before the Assembly in accordance with paragraph 9 of Article 15 of the Covenant ", should be added. He also proposed that the word " and " should be replaced by the word " or " in this paragraph, and wherever else it occurred.

M. VAN EYSINGA (Netherlands) thought that the question which had been opened up by the Norwegian proposal was most important.

He would be delighted to see all legal disputes submitted to the Permanent Court of International Justice, as provided in Article 2 of the Norwegian proposal, but Article 3 seemed to him to give rise to somewhat serious difficulties. During the last years, arbitration had developed on divergent lines. Dr. Lange seemed to be prepared to accept only one of these. He excluded conciliation, but conciliation was an extremely useful procedure. Could it not be made more perfect? A conciliation procedure ended in a report which was not binding. It was perfectly possible to arrange that, if a certain specified majority decided in favour of the report, the latter should be binding on the parties.

In a somewhat similar connection he called attention to the special American system of joint Committees. Each party was represented on these Committees by an equal number of members, and the report was only binding when there was a majority.

Referring to the Optional Clause, he said that it was not an innovation, but had been suggested as long ago as the Second Peace Conference in 1907.

Dr. BASTOS (Uruguay) reminded the Committee that Article 12 of the Covenant imposed upon the signatory States the obligation to submit either to arbitration or to enquiry by the Council any disputes likely to lead to a rupture.

He said that Uruguay and the other Latin republics all preferred arbitration. Compulsory arbitration had been sanctioned by the Pan-American Conference at Washington in 1889. Uruguay, the Constitution of which included an obligation to submit its international disputes to an arbitral tribunal, had, during the last few years, signed many treaties containing no reservations, more particularly those with Italy, France and Great Britain; accordingly, the delegation of Uruguay wished to support the consideration of Dr. Nansen's draft.

M. ROLIN (Belgium) complained of the vague terms in which the First Committee had been asked for its opinion. He did not see the advantage of a discussion by the First Committee if the whole problem was to be referred to a Sub-Committee of the Preparatory Commission for the Disarmament Conference.

M. Rolin desired to emphasise the need of distinguishing between the idea of a model treaty, which could serve as a standard for bilateral treaties, and that of a general convention. It was necessary to know which of these ideas was in view.

Was it desirable to propose the adoption of a model treaty ? Mention had been made of the diversity of arbitration conventions. As the result of this diversity, public opinion in the different countries was no longer able to follow the system, and its appreciation of the weight of its obligations was lessened. It was therefore desirable that before long some degree of unity should be reached. This would be assured by the acceptance of the model treaty, though this procedure would encounter the susceptibilities of national negotiators, who would not find sufficient merits in that treaty to abandon the particular practice which, for technical reasons, they had hitherto followed.

A general convention, on the other hand, made for greater uniformity and allowed of a far more rapid extension of arbitration conventions. One objection had been put forward: some States desired to be bound to neighbouring States with which they were on excellent terms, and they would find some disadvantage in being similarly bound to all States Members of the League.

An attempt had been made to avoid this difficulty by means of reservations, whereby a State could exclude other States from the benefits of the convention. M. Rolin strongly opposed this system. The great advantage of the general arbitration convention was its anonymity and its universality, which the proposed reservations would destroy. Nevertheless, a State which, for moral reasons, could not conclude a bilateral convention with another State could enter into relations with it through a general convention.

Looking at the problem from the point of view of security, M. Rolin declared that arbitration was directly connected with security, not only because States which were sure of having their disputes settled with every guarantee of equity were naturally led to abandon resort to force, but also because the extension of compulsory arbitration by means of treaties was laid down in Article 13 of the Covenant, of which it was admirably suited to form the logical complement and in which it was supported by valuable sanctions.

In conclusion, M. Rolin dealt with certain special points. First, was conciliation to be optional or compulsory ? The advantage of making it compulsory was that it was better to conciliate than to settle, as conciliation left the parties with no impression of even a juridical defeat. On the other hand, it delayed a final solution, and might be inacceptable to a State sure of its legal position and impatient to reach a legal solution. The Belgian delegate, therefore, preferred to withhold his opinion for the moment. Secondly, with regard to arbitration proper, would there have to be one or two procedures ? Again, M. Rolin preferred to reserve his opinion.

Finally, he wondered whether arrangements should be made for the intervention of the Council. He was more than doubtful, and observed that individual general arbitration conventions concluded during recent years had all excluded this intervention. A Sub-Committee was necessary to examine all these questions.

The CHAIRMAN, referring to M. Rolin's observations, said he would get into touch immediately with the Chairman of the Third Committee to determine the exact terms of reference of the First Committee.

M. SCIALOJA (Italy) said that the Third Committee, which had entrusted the examination of the Norwegian proposal to the First Committee, could not limit the latter's field of discussion. The First Committee was therefore in a position to say what degree of security the Norwegian proposal appeared to promise.

The Italian delegate was of opinion that the proposal gave no new guarantee beyond those furnished by the Covenant and the Statute of the Permanent Court of International Justice. Further, the adoption of the proposal involved certain risks. Arbitration might, in some cases, be the cause of a rupture which would hamper any subsequent agreement.

At present there were three procedures which embraced everything: the judgment of the Permanent Court, examination by the Council — both provided for by the Covenant — and the arbitration established by special treaties. These special treaties differed from one another, but that was an advantage and not a disadvantage, since the parties, in their dealings with one another, took account of any disputes which might arise and sought the best means of settling them.

Italy had concluded numerous treaties of this kind, and had been compelled every time to introduce new improvements. It was presumptuous to suppose that models could be laid down for the whole world, as if perfection could be achieved. States had only to continue to conclude treaties with one another.

M. Scialoja declared that Article 2 of the proposal before the Committee was only a repetition of Article 36 of the Statute of the Permanent Court, which many countries had not yet accepted.

He thought that the system of compulsory arbitration was more imperfect than the system laid down by the Covenant. Conciliation had great advantages; if it were successful, everything was settled; if it failed, certain counsels remained, which with the aid of time, the great healer, would facilitate the solution of disputes. It was a great mistake to suppose that the best remedy for disputes was an award. The best remedy was, first of all, time, next conciliation, then mediation and, finally, the award. It must not be thought that differences between States were of the same kind as the inherited disputes of individuals.

Article 2 of the Norwegian proposal referred all disputes to the Hague Court. If these disputes were many, the Court would be unable to deal with all of them. It would have to create sections, which would possibly give rise to contradictory judgments. It would have to create special tribunals, constituting a juridical body which would weigh heavily upon States. In spite of these criticisms, M. Scialoja desired to pay a tribute to the high ideals which inspired the Norwegian proposal.

The CHAIRMAN communicated the reply of the Third Committee to the question previously raised; it asked the First Committee to study the question in all its legal aspects.

SIXTH MEETING.

Held on Wednesday, September 21st, 1927, at 3 p.m.

Chairman: M. ADATCI (Japan).

14. Draft Optional Convention for the Compulsory Arbitration of Disputes (continuation).

M. MOTTA (Switzerland) said that he regarded the Norwegian proposal with great sympathy. Switzerland pursued a policy very favourable to arbitration. His country had been one of the first to accede to the optional clause in the Statute of the Permanent Court. It had concluded eighteen arbitration treaties, including treaties with all its neighbours, and the treaties with France and Italy covered an extremely wide field.

Nevertheless, although in principle he favoured Dr. Lange's proposal and desired that its study should be continued, he must make certain reservations.

Article 2 (legal disputes) of the Norwegian draft was in no sense a novelty. The same result would be attained if States subscribed to Article 36 of the Statute of the Court.

Article 4, which reserved the rights and obligations devolving on the parties to treaties of arbitration which already existed or might in the future be concluded, was a wise provision.

He was in complete agreement with M. Scialoja's view that arbitration should not be developed at the expense of conciliation. Arbitration was not a panacea, and the intervention of judges should not be called for unless it was absolutely necessary. Law suits involved the same danger in international as in private life. If two States had too frequent recourse to international justice, their relations might suffer. Conciliation was preferable to arbitration and was its indispensable complement. Anyone who undertook to draw up an arbitration convention should be imbued with the spirit of conciliation.

He also made certain reservations as to the manner in which the Third Committee had referred the matter to the First Committee. The aim in view and the method pursued should be more clearly stated.

Sir William MOORE (Australia), although representing a country which did not, at the present time, consider it essential to accept compulsory arbitration, was sympathetically inclined to the Norwegian proposal. The preparation of a model treaty was a task which the League might very profitably undertake. The Norwegian proposal had the great merit of distinguishing legal from political disputes and reserving the former class only for the Permanent Court.

He regretted that provision had not been made for conciliation side by side with arbitration. Experience in Australia, in the sphere of labour disputes, had shown that conciliation had very great advantages over arbitration.

In the proposed investigation, the question of compulsory arbitration for the signatory States should be united with that of the execution of arbitral awards, contemplated in Article 13 of the Covenant.

M. FROMAGEOT (France) said that the immense progress which had been made in the matter of arbitration since the first Hague Conference must be recognised and credit must be given to the League of Nations, to which this progress was due. It was now an accomplished fact that

recourse to judges, to the Permanent Court, or to special tribunals was normal in disputes in which the parties were in disagreement about some right.

But, in addition to legal disputes, there were also political or economic disputes which divided opposing and, at first sight, perfectly reasonable interests. It might be considered that either party was wrong or right, or that both were wrong and right at the same time, according to the point of view. It was disputes of that kind which presented the greatest difficulties to-day. Certain States had, in bilateral conventions, provided a peaceful procedure for settling such disputes. They had in some cases contemplated the intervention of arbitrators acting as friendly peace-makers. In other cases they had preferred to confine themselves to conciliation. It had here and there been arranged that, if the mediation of individuals should not succeed, recourse should be had to the mediation of the Council of the League, a mediation of Governments which had obviously a very great moral authority.

Linked with that of disarmament the question was now placed in a new light. The measure of security afforded by bilateral or general treaties had to be estimated in order that practical conclusions might be drawn therefrom.

He thought it extremely remarkable that the question of disarmament, which nobody had ventured to consider in 1907, should now have been under consideration by the Governments for many months.

In the speaker's opinion the reference of the question to a Sub-Committee of the Third Committee composed of jurists was perfectly permissible; the First Committee could also refer the question to a Sub-Committee of enquiry. The task of this Sub-Committee would be to determine what were the elements of security existing to-day and what systems of bilateral or general engagements, such as that proposed by the Norwegian Government, might increase this security. The French delegate said, in conclusion, that he would recommend his Government to examine the Norwegian proposal.

M. ROLIN (Belgium) thought that it would be desirable to undertake a close investigation, which might be entrusted to a Sub-Committee of enquiry.

Dr. LIMBURG (Netherlands) did not see how the Norwegian proposal could lead to any result during the present session of the Assembly. It would be impossible, even in two weeks, to examine the various questions which had to be examined, particularly the definition of legal disputes and the comparison of the systems of arbitration provided for by Article 36 of the Statute of the Permanent Court, by the Treaties of Locarno and Dr. Nansen's present proposal.

Dr. Limburg wondered what would be the position of States which might have adhered to the Nansen Convention but not to Article 36 of the Statute. He concluded by saying that the careful examination which the Norwegian proposal demanded could not be completed this year.

M. MOTTA (Switzerland) pointed out that the Sub-Committee which would be appointed would only be able to examine the more general aspects of the question.

M. ROLIN (Belgium) said that he had never considered the appointment of a Sub-Committee to meet in the interval between sessions. He merely thought that work in common, in the course of the present session, on the part of the two Sub-Committees of the First and Third Committees might be profitable.

Dr. LANGE (Norway) did not wish to seem uncompromising. He only wanted the great question of arbitration to be closely studied.

This question had already made great progress. There had been created in Europe what might be called areas of pacification. Switzerland had concluded treaties of arbitration without reservations. She had been closely followed by Germany and Italy. The countries of Northern Europe had also concluded numerous treaties of arbitration which did away with resort to force. Finally, there was the important system exemplified in the treaties of Locarno.

Dr. Lange emphasised the contrast between the pre-war and post-war movements. The old treaties of arbitration contained reservations which robbed them of nearly all effect. On the other hand, whilst before the war arbitration flourished, especially in America, its recent development had been confined almost entirely to Europe.

M. Rolin had just shown the Committee the necessity of obtaining documentation which would make it possible usefully to enquire into the principles of the Norwegian proposal. Dr. Lange warmly supported this point of view. He recalled that last year he had submitted a similar suggestion in connection with the summary of treaties of arbitration, conciliation and guarantee, published by the Secretariat (document C.34.1926.V). The proposal to complete this collection by a full statement of the agreements binding States either to compulsory arbitration or to conciliation proceedings had not been favourably received by the First Committee. He ventured to say to-day that such a collection would have been useful and it would now be indispensable if the work provided for in the proposal before the Committee was to be properly carried out.

Speaking of the diversity of treaties, Dr. Lange did not consider this absolutely indispensable. It was often not justified and that was why the Norwegian proposal aimed at unification. It provided for the creation of a diplomatic instrument which might serve as a generally accepted starting-point for future growth. This treaty could be used as a model convention or might constitute a general convention. The preparation of a model treaty would be a simple appeal to good will.

He doubted if it was the duty of the League to draft such a treaty. As regards the criticisms submitted by M. Löfgren concerning Article 3, Dr. Lange replied that the authors of the draft had been mainly anxious to facilitate recourse to arbitration. The Council of the League was an institution which could act with the least possible delay. The exact part to be played by the

Council, however, could be considered, and the place to be given to conciliation in international procedure could be determined after discussion.

Referring to reservations regarding disputes to be submitted to arbitration, Dr. Lange was of opinion that these should not be made in the vague form in use before the war. As regards reservations concerning States to which the Treaty applied, he wondered whether it would not be possible to discover an appropriate formula; for instance, when the parties were advised of a new accession, they could themselves make a reservation in regard to the acceding State.

In conclusion, Dr. Lange expressed the hope that the investigation of the question of arbitration would be pursued to some extent independently and would not be considered solely as an aspect of the question of security and disarmament. This point of view might be placed before the Assembly in the form of an appropriate resolution with a view to its adoption.

The CHAIRMAN declared the discussion closed and proposed to appoint a Sub-Committee.

Sir Cecil HURST (British Empire) submitted a list of names of members of the Committee other than those already serving on the Sub-Committee dealing with the codification of international law:

M. MOTTA (Switzerland),
Dr. LANGE (Norway),
M. SCIALOJA (Italy),
Dr. BASTOS (Uruguay),
Sir W. MOORE (Australia),
Dr. GAUS (Germany),
M. MATOS (Guatemala),
Mr. COSTELLO (Irish Free State).

He thought it essential to adopt terms of reference which would be accepted unanimously and not prejudge the solution of any of the questions on which divergent views had been expressed. He therefore suggested the following:

"(1) To frame an answer to the question referred to the First Committee by the Third Committee;

"(2) To consider, to the extent which time allows, whether a treaty containing provisions on the lines of the Norwegian proposal should be recommended to the Members of the League, or what changes or amendments would be desirable, and what form such a treaty should take."

He emphasised the importance of the words "to the extent which time allows", as the Committee could not delay the completion of the general work of the Assembly. Nevertheless, if time did allow, it should consider the points to which he had referred.

Dr. LIMBURG (Netherlands) moved the following addition to the terms of reference of the Sub-Committee:

". . . and such other points as the Sub-Committee may think desirable."

The composition of the Sub-Committee and its terms of reference as proposed by Sir Cecil Hurst and amended by Dr. Limburg were approved by the Committee.

M. ROLIN (Belgium) asked that the Sub-Committee should get into touch with the Sub-Committee of the Third Committee.

This proposal was adopted.

Mr. BROOKES (South Africa) asked that the amendments which he had proposed that morning should be submitted to the Sub-Committee.

The CHAIRMAN said that this would be done.

15. Accession to International Agreements, given subject to Ratification: Report of Sub-Committee No. 1 (Rapporteur, M. Motta).

M. MOTTA (Switzerland), Rapporteur, read the Sub-Committee's report (Annex 5).

The recommendation made was as follows:

"In view of the foregoing, the Sub-Committee recommends the First Committee to propose to the Assembly a resolution on the following lines:

"The procedure of accession to international agreements given subject to ratification is an admissible one which the League should neither discourage nor encourage.

"Nevertheless, if a State gives its accession it should know that, if it does not expressly mention that this accession is subject to ratification, it shall be presumed to

have undertaken a final obligation. If it desires to prevent this consequence, it must expressly declare, at the time of accession, that the accession is given subject to ratification."

M. Motta stated that the Sub-Committee had refrained from all theoretical discussions, its aim having been to achieve practical results.

M. FROMAGEOT (France) proposed a purely formal alteration. He would like instead of " presumed to have undertaken a final obligation " the words " shall have undertaken . . . ". Accession given without reservation should have a perfectly definite meaning.

M. MOTTA (Switzerland) stated that the word " presumed " had been used intentionally instead of " considered ".

M. ROSTWOROWSKI (Poland) said that the Sub-Committee had wished to avoid any appearance of interfering with the freedom of States.

M. DUZMANS (Latvia) asked that, in order to conform with the explanations which had been given, a statement should be included in the Minutes, that the words " shall be presumed " indicated the stronger of the two presumptions for the adhering States, being the *præsumptio juris et de jure* — the legal presumption which rebutted in advance any later proof of contrary intent. M. Duzmans disagreed with the opinion of the Polish delegate and insisted on a rigid wording which would leave adhering States no freedom of interpretation when they had given their unconditional adhesion.

Sir Cecil HURST (British Empire), in reply to M. Rostworowski, said that a State acceding to a Convention did so as the result of an invitation made by the parties to the Convention, and the latter might require that the terms of the reply should give clearly the acceding State's intention.

M. MOTTA (Switzerland) proposed, with the consent of M. Rostworowski, to replace " presumed " by " considered ".

The proposal was adopted.

M. ROLIN (Belgium) thought that " accession subject to confirmation " might have been inserted in order to reserve for the term ratification the meaning which had hitherto been attached to it.

M. MOTTA (Switzerland) replied that ratification was the appropriate term, since the act was performed by the Government.

The report of the Sub-Committee was adopted.

SEVENTH MEETING.

Held on Friday, September 23rd, 1927, at 9 a.m.

Chairman: M. ADATCI (Japan).

16. Draft Optional Convention for the Compulsory Arbitration of Disputes : Report of Sub-Committee No. 3 (Rapporteur, M. Motta).

M. MOTTA (Switzerland), Rapporteur, submitted the report of the Sub-Committee (Annex 4*a*).

The Sub-Committee had not been able to attempt a detailed study of the Norwegian proposal, which raised the whole question of arbitration. Who was to undertake the task ? The Third Committee had decided to form a special Committee associated with the Preparatory Commission for the Disarmament Conference. It was unnecessary to create another organ in addition to the proposed special Committee, which ought to suffice for this investigation.

The Sub-Committee drew attention to four points which seemed to it particularly important. In the first place, it thought that the acceptance of the optional clause of Article 36 of the Statute of the Permanent Court and the conclusion of special treaties should, as far as possible, be encouraged.

Next, it thought that, in accordance with the wise suggestions of M. Löfgren, the idea of conciliation should be linked with that of arbitration.

It then considered the connection between the mediatory action of the Council and the procedures of arbitration and conciliation. The mediation of the Council, which was a mediation of States, was very different from ordinary conciliation.

Lastly, the Sub-Committee had considered how it would be possible to put an end to the hesitation and reluctance of certain States, for various reasons, to accede to general arbitration conventions (history, proximity, traditions, etc.). This raised the problem of reservations.

The Rapporteur offered, on behalf of the Sub-Committee, his apologies for having been unable to submit a fuller report owing to lack of time.

Mr. BROOKES (South Africa) deplored the haste of the discussions. He was sorry that his suggested amendment to the Norwegian proposal had not been accepted by the Sub-Committee.

He further regretted that the principle of the Polish proposal, that resort to war should be considered as a crime, had not been mentioned by the Sub-Committee.

The South African delegate criticised paragraph (*a*) on account of the use of the word " soit " in the French text, which seemed to establish a kind of alternative. Paragraph (*d*) did not seem very clear to him and would be the better for amplification. As regarded paragraph (*c*), he recalled his amendment giving the parties the option of appealing to the Assembly or the Council. This appeal to the Assembly or the Council was provided for by the Covenant, and it was desirable that it should also be provided for in arbitration treaties.

The CHAIRMAN endorsed the last speaker's criticism as to the haste with which the work of the Committee had to be conducted. At the meeting of the General Committee of the Assembly on the previous day he had protested against such a procedure.

M. POLITIS (Greece) supported the proposals of the Sub-Committee. He thought it was impossible to do better in the existing circumstances. The new organisation contemplated by the Third Committee, being both technical and political in character, would be able to carry out the careful and methodical investigation that was essential.

The Greek delegate submitted some remarks on the four points indicated in the report.

He considered the word " encouraged " to be inadequate. Something more was necessary. M. Politis thought the initiative ought to come from the Council and this idea should be suggested. He agreed with the South African delegate that the word " soit ", appearing on two occasions in the French text, which gave paragraph (*a*) an alternative meaning, certainly not in keeping with the Rapporteur's intention, should be deleted.

M. MOTTA (Switzerland) agreed on this last point.

M. POLITIS (Greece) would like to see paragraph (*b*) made clearer by changing its wording as follows:

> " In this investigation into the methods of the pacific settlement of disputes between States, special attention should be given to the procedure of conciliation, the value of which cannot be exaggerated. "

Again, paragraph (*d*) should also be amended. The special conditions of States did not depend only on their geographical situation but on their quality.

Dr. LANGE (Norway) thanked the Sub-Committee for its kind reception of the Norwegian proposal.

He emphasised the following sentence in the report: " This enquiry should include in its scope the development of arbitration in all its aspects ". Arbitration should not be considered solely from the point of view of security and disarmament.

The Sub-Committee could not be bolder or more categorical than the Third Committee itself. It must now await with confidence the outcome of the proposed investigation.

As regarded the use of the word " soit " in the French text objected to by Mr. Brookes, Dr. Lange said it was not meant to imply an alternative.

He had received the impression from private conversations that, in the case of certain States, the acceptance of the principle laid down in Article 3 of the Norwegian proposal, namely, arbitration in political disputes, encountered less opposition than the acceptance of Article 36 of the Statute of the Court. He therefore concluded that the idea of the Norwegian proposal, which was to encourage the spread of arbitration, had been favourably received.

M. MOTTA (Switzerland) said that the pressure at which the Sub-Committee had been obliged to work would account for any imperfections of drafting. He added, however, that the important thing was to give the right idea and that the form in which it was expressed was of secondary importance. He emphasised the fact that the First Committee should give the Third Committee its opinion as promptly as possible so that the latter would have time to examine it.

M. Motta was satisfied that the investigation of arbitration questions should be referred to the special Committee which the Third Committee was going to appoint. This Committee would be able to work methodically and with time for reflection.

The First Committee could not lay down any very detailed principles for the guidance of this special Committee. Rather than say nothing, however, the First Committee should give a few general indications similar to those contained in the report. Being forced to keep to these general principles, the Sub-Committee had been unable to adopt the South African representative's proposal, which was in the nature of a preamble to a convention.

M. Motta accepted M. Politis' recommendation for the amendment of paragraph (*a*), which would read thus:

> " The acceptance of the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice or the conclusion of special treaties for judicial settlement, arbitration and conciliation should be promoted and encouraged. "

He had hesitated to mention the Council, for the reason that among its Members there were some who had declared against the acceptance of the Optional Clause of Article 36. To ask them to recommend to others what they did not think fit to do themselves would place them in an awkward position. The objection, however, had lost its force, as it was proposed to recommend the conclusion of special treaties as well as the acceptance of Article 36.

M. Motta suggested that paragraph (*b*) should be worded as follows:

" Any investigations into the methods of the pacific settlement of disputes between different countries should include special attention to the procedure of conciliation, the value of which is pre-eminent. "

With regard to paragraph (*d*), M. Motta said that its flexible formula was intended to express in a few words a very complex idea. To meet M. Politis' wishes, however, he suggested the following wording:

" As regards any possible subsequent general and optional convention for compulsory arbitration, it should in any case be given that flexibility which would enable the contracting States to regulate their engagements in accordance with their special relations with other States. "

The CHAIRMAN recalled that the South African delegate had suggested the insertion in paragraph (*a*) of the words:

" . . . in particular by the action of the Council and the Assembly. "

M. MOTTA (Switzerland) acquiesced.

M. ROLIN (Belgium) said that if he had known under what conditions the First Committee was asked to give an opinion, he would not have been in favour of appointing a Sub-Committee. The work of that Sub-Committee had had to be conducted with a precipitation which was without precedent in the First Committee. He pointed out that the Third Committee had asked the First Committee to examine the details of the Norwegian proposal from the legal point of view. The reply given in the report was as follows:

" The Committee does not consider itself in a position to study the Norwegian proposal in detail. "

It had therefore neglected the details and had confined itself to principles. As regards the latter, M. Rolin had many criticisms to make.

The report declared itself in favour of the study of a general arbitration convention by the Committee provided for in the resolution adopted by the Third Committee on September 21st, 1927. This Committee was to be composed of representatives of States Members of the Council and of the Preparatory Commission for the Disarmament Conference. There was every reason to think, however, that the arbitration convention would be signed, particularly during the first few years, by States which were not Members of the Council. Could it be regarded as the best course to entrust to a Committee of the Council the study of a convention to which the Members of the Council would not be parties?

The first of the directions given to the Committee of Enquiry was to encourage, particularly by the action of the Council and the Assembly, the acceptance of the optional clause of the Statute of the Permanent Court. M. Rolin did not see the connection between the investigations undertaken by the Committee, which was essentially a committee of enquiry, and this duty of encouragement which was proposed. He also thought it singular to ask the Council to conduct a campaign in favour of Article 36 and of special treaties, when it was outside the Council that the majority of the adherents to this kind of undertaking were to be found.

As regards paragraph (*d*), M. Rolin would accept its vagueness, which was the counterpart of its flexibility, if the system of accession to a general convention, its effects to be confined to certain States, was not favourably regarded in certain quarters. M. Rolin considered that the chief advantage of a general convention was to permit certain States to bind themselves in regard to certain others when they could not do so by means of bilateral treaties. To take an example, before 1914 the idea of arbitration had made great progress in France, and the French people seemed prepared to undertake the widest obligations in this sphere. It was doubtful, however, whether it would have gone as far as to accept a separate arbitration treaty with Germany. On the other hand, it would have perhaps agreed to enter into obligations with the latter by means of a general treaty. Similar situations could be found at the present moment.

Believing that the Committee would find it difficult to reach an agreement in so short a time, M. Rolin was in favour of postponing the question until next year. The First Committee might pronounce itself in favour of studying the question. It might add that, for lack of time, it was unable to lay down definite guiding principles.

In conclusion, there was a piece of preparatory work which the First Committee might propose. In 1926 the Secretariat had published a special volume of arbitration treaties. Since that time many new treaties had been concluded. Not only should the 1926 publication be brought up to date but it should be completed and perfected. A complete series of documents containing a full and systematic analysis of the special conventions already concluded would be of great value to the body entrusted with the task of determining the basis of a general convention. It was to be hoped that the Assembly would grant the Secretariat the necessary credits to carry out this preparatory study, which would next year place valuable material at the disposal of the Committees.

The CHAIRMAN read M. Rolin's proposal, which was drafted as follows:

" The Committee does not consider that it is in a position to study the Norwegian proposal during the present session of the Assembly.

" The Committee requests the Secretariat to prepare, in the interval between the two sessions, a comparative and detailed survey of the partial conventions for compulsory arbitration concluded between certain Members of the League, so that this question can be discussed afresh under better conditions at the next session. "

The Chairman asked M. Rolin whether it would not be better if his proposal began:

" The Committee does not consider that it is in a position to study the Norwegian proposal in detail during the present session of the Assembly. "

M. ROLIN (Belgium) agreed.

M. PILOTTI (Italy) asked whether it was desirable to mention in paragraph (*a*) of the Sub-Committee's report the action which the Council might take. What means would the Council have at its disposal? It would be far more effective if all the Members of the Council were to set an example by adhering to the optional clause of the Statute of the Court.

M. MOTTA (Switzerland) reproached M. Rolin for having spoken in his capacity as an eminent jurist, instead of the statesman that he was. The First and Third Committees must not give the impression of being in conflict when the principle which should govern the work of the Assembly was precisely that of the unity of the delegations. The Belgian delegation had accepted in the Third Committee the principle of the Committee of Enquiry, which, in the opinion of the Third Committee, was a means of overcoming the obstacles in the way of the Preparatory Commission for the Disarmament Conference; a moral atmosphere of co-operation must be created. The First Committee did not wish to tell the Third Committee that it had no time to examine the question, that the Third Committee could do as it liked, and that the former Committee washed its hands of the matter. The fact that this question had been put and that the Third Committee had decided to appoint a Committee of Enquiry must be taken into consideration. It should be the duty of the First Committee to facilitate the work of this Committee of Enquiry and to render it as useful as possible. For that reason the attention of the First Committee had been drawn to the four points in the report, to the importance of which he would again refer. He was of opinion that the First Committee, by calling attention to these simple and prudent ideas, would not have wasted its time.

The CHAIRMAN asked M. Motta whether, in accordance with the observations of M. Politis, paragraph (*a*) should not read as follows:

" The acceptance of both the optional clause of Article 36 of the Statute of the Permanent Court of International Justice and the conclusion . . . should be fostered and encouraged. "

M. MOTTA (Switzerland) agreed.

Dr. LIMBURG (Netherlands) did not share M. Rolin's fears regarding the legal reputation of the First Committee in view of the fact that the First Committee, at the beginning of its report, took the precaution to state:

" The Committee does not consider itself in a position to study the Norwegian proposal in detail during the present session of the Assembly. "

He was opposed to a negative answer being returned to the Third Committee, as suggested by M. Rolin. This might occasion a delay in the work of the Preparatory Commission. Nor must the examination of a general arbitration convention be held up.

Dr. Limburg considered that it would be prudent to keep to the four points indicated. He merely wished that the words " and optional " in paragraph (*d*) should be omitted, as they were at variance, if not indeed in contradiction, with the rest of the text.

M. MOTTA (Switzerland) agreed.

Dr. LIMBURG (Netherlands) suggested that the following words should be added to the end of paragraph (*b*):

" . . . and to an enquiry as to what procedure might be followed after the failure of an attempt at conciliation. "

The CHAIRMAN announced that M. Rolin proposed to amend the end of his text as follows:

" The Committee requests the Secretariat to prepare, in the interval between the two sessions, a comparative and detailed survey of the partial conventions for compulsory arbitration concluded between certain Members of the League, so that this question could be examined under better conditions. "

M. ROLIN (Belgium) repudiated any intention of desiring a conflict between the First and Third Committees. The First Committee was merely asked to give its opinion on the details of a certain proposal, the Norwegian proposal, and not on the procedure to be followed with a view to an enquiry into arbitration.

He added that he was sorry if certain words in his draft resolution had created the impression that he desired to prohibit the Committee of Enquiry from undertaking an investigation, for

this was quite contrary to his intention. He was therefore glad to omit from his draft the words " in the interval between the two sessions ".

In any case, if the new Committee studied this question, it could not but welcome material collected by the Secretariat which would make its work easier.

M. FROMAGEOT (France) warmly supported the sound and prudent remarks made by M. Motta, the Rapporteur. The time at the disposal of the Sub-Committee had been too short to allow it to undertake a thorough enquiry, but it had not been wasted. The four ideas indicated were extremely interesting.

In order to remove M. Pilotti's scruples, the French delegate thought that paragraph (*a*) should be drafted as follows:

> " It would be advisable to investigate the means of encouraging the acceptance both of the optional clause . . . "

He concluded by saying that the Sub-Committee had certainly rendered a real service to the Disarmament Commission and the Security Committee.

M. POLITIS (Greece) thought that it would be most distressing if the First Committee, after its animated discussions, were to reply to the Third Committee that it had not had time to examine the Norwegian proposal and that it must be postponed. It was impossible that the Preparatory Committee contemplated should be postponed until the end of the enquiries which M. Rolin had suggested the Secretariat should undertake.

The speaker begged M. Rolin, who was restrained by scruples which did honour to his legal conscience, not to hold up so eminently practical a work. He could be quite certain that the Committee of Enquiry could not only make use of the investigations already carried out by the Secretariat, but could also itself request the Secretariat to continue these investigations in order to facilitate its own examination.

Sir Cecil HURST (British Empire) desired to speak in order to avert a threat to the unanimity essential for the Committee. It was the Committee's duty to examine the details of the Norwegian proposal from the legal point of view. If there had not been sufficient time to do this, the Committee's reply could be confined to stating that fact.

Contrary to what M. Motta had said, he thought that the First Committee should not give any directions to the Committee which would be appointed by the Preparatory Commission. The directions could be given either by the Council or by the Preparatory Commission itself.

Turning to paragraph (*a*), he said that, in its present form, it was liable to place in a position of some embarrassment States which had indicated their inability at present to accept compulsory arbitration. It was an excellent thing to desire to encourage the development of arbitration, but it should be forced upon nobody. If unanimity were desired, these ideas must be kept in mind.

The CHAIRMAN said he understood that Sir Cecil Hurst would prefer to reply that the Committee did not consider that it was at present in a position to study the details of the Norwegian proposal. If, nevertheless, the Committee desired to go further and to give its opinion upon certain ideas, he understood that Sir Cecil Hurst would prefer that the text of paragraph (*a*) should be modified.

Sir Cecil HURST (British Empire) replied that the Chairman had interpreted his opinion correctly. If it were desired to say and do more than merely reply to the question, then, in order to obtain unanimity, paragraph (*a*) should be modified.

Dr. LANGE (Norway) stated that he would have preferred the question of arbitration to be examined independently. He had consented, however, to this investigation being entrusted to a Committee appointed by the Preparatory Commission for the Disarmament Conference in order to avoid overlapping. He endorsed M. Rolin's suggestion that the Secretariat could be usefully invited to prepare a survey of the arbitration treaties already concluded. He would like to see this enquiry extended to all treaties in force, even those concluded before the war, in order to obtain a complete chart of the legal position. In order to meet Sir Cecil Hurst's wishes, he suggested that paragraph (*a*) of the report of the Sub-Committee should be amended as follows:

> " It would be desirable that an investigation should be made into the means of encouraging the acceptance of the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice and the conclusion of special treaties for judicial settlement, arbitration and conciliation, to the widest extent compatible with the present situation. "

Further, paragraph (*d*) could be modified as follows:

> " It would be desirable to investigate the means of giving the general Convention that necessary flexibility, etc. . . . "

M. ROLIN (Belgium) stated that he was not averse to the Committee expressing the opinions it preferred and agreed to withdraw the draft proposal which he had made.

He nevertheless would like paragraph (*d*) of the report of the Sub-Committee amended.

M. MOTTA (Switzerland) thought that an agreement could easily be reached.

He believed he was right in thinking that M. Rolin feared that the First Committee would lose hold of the question of arbitration, whereas, as a matter of fact, unless the Committee of Enquiry

discovered a solution without any difficulty, this question was bound to be examined by the First Committee again.

In reply to Sir Cecil Hurst, he stated that he had never had any intention of giving instructions to the proposed Committee, but had merely mentioned those points to which the attention of the Committee should, in his view, be drawn. The representative of the British Empire would retain full freedom of action.

He then proposed various amendments to the text before the Committee. Paragraph 5 might be drafted as follows:

> " It endorses the opinion of the Third Committee favouring the study of a general Convention for compulsory arbitration, through the instrumentality of the Committee provided for in the resolution concerning arbitration, security and disarmament voted by the Third Committee on September 21st, 1927. "

M. Motta did not care much for the next paragraph: " This enquiry should include . . . ". Dr. Lange, however, had insisted in the Sub-Committee that this sentence should be inserted, and there did not appear to be any objection to retaining it. It meant that the Committee might, if it thought fit, extend its investigations to all aspects of arbitration.

He suggested that the words " for this purpose " in the following sentence should be omitted, for they were in harmony neither with the preceding nor with the following parts of the text. For greater clearness he suggested that the word " enquiry " should be added. The sentence would then read:

> " The Committee begs to indicate the following points for enquiry. "

In order to satisfy Sir Cecil Hurst, he suggested that paragraph (*a*) should be drafted as follows:

> " Means should be sought for encouraging and promoting the acceptance of the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice and the conclusion of special treaties for judicial settlement, arbitration and conciliation. "

With regard to paragraph (*b*) he would prefer to leave it as it was, despite Dr. Limburg's proposal for an investigation into the procedure to be adopted if conciliation should fail. M. Motta thought that this addition was useless since, in his opinion, the procedure for conciliation included what had gone before and what followed.

There was no need to amend paragraph (*c*) except to add the words " and the Assembly's " after the phrase " the Council's ".

He suggested that paragraph (*d*) should be drafted as follows:

> " In studying a general Convention for compulsory arbitration, enquiry should be made as to how the Convention could be given sufficient flexibility to permit the contracting States to adjust the obligations assumed to accord with their special circumstances. "

Finally, he desired to point out that, as a matter of fact, it was not the First Committee which would submit a report to the Assembly. The First Committee's resolutions would be referred to the Third Committee, which would report to the Assembly.

He therefore requested the Committee to accept the report of the Sub-Committee No. 3 with the amendments he had suggested.

He stated that the Belgian delegation would accept the draft report if the last sentence, instead of mentioning " special relations of the States ", as proposed by M. Politis, retained its original phrase " special circumstances ".

The report of the Sub-Committee was adopted with the amendments indicated (see Annex 4*b*).

The CHAIRMAN said that the report which had just been adopted would be transmitted immediately to the Third Committee.

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. 2 (Annex 6).

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.

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' report (Annex 7).

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. As 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 if 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 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.

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 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 might 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 rejected.

The CHAIRMAN regretted that the Committee had been unable to compromise 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 said:

> " 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 read 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 ".

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 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. 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.

19. **Close of the Session.**

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.

ANNEXES.

A. 59. 1927. V.

ANNEX 1.

PREPARATION OF A CODE OF INTERNATIONAL LAW.

DRAFT RESOLUTION PRESENTED BY THE DELEGATION OF PARAGUAY AT THE MEETING OF THE ASSEMBLY HELD ON SEPTEMBER 10TH, 1927.

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.

A. 12. 1927. V.

ANNEX 2.

ACCESSION TO INTERNATIONAL AGREEMENTS, GIVEN SUBJECT TO RATIFICATION.

NOTE BY THE SECRETARY-GENERAL.

In accordance with the desire expressed by the Assembly in its resolution of September 24th, 1926, the Council, at its session of December last, instructed the Secretary-General to submit twice a year to the Council a list in chronological order of the international agreements which have been concluded under the auspices of the League, showing the States which had become parties to those agreements by ratification or accession, the States which had signed but not yet ratified them and the States which had neither signed nor acceded, although they took part in the Conferences at which the agreements were drawn up or had been invited to become parties thereto.

The first such list was placed before the Council at its session of last March. The Rapporteur, M. Zaleski, representative of Poland, presented on that occasion a report calling attention to the fact that certain accessions given to Conventions included in the list, after the expiry of the period during which those conventions were open for signature, were not definitive accessions, but were subject to subsequent ratification[1]. The report pointed out that this practice had only grown up in recent years and suggested that the attention of the Assembly might be drawn to the matter. The Council, adopting M. Zaleski's conclusions, decided to place the question upon the agenda of the next session of the Assembly, and instructed the Secretary-General to circulate M. Zaleski's report to the Members of the League.

The Secretary-General has accordingly the honour to circulate M. Zaleski's report herewith to the Members of the League, and to request them to note that the matter with which it deals has been placed upon the agenda of the Assembly.

The text of the communication from the Swiss Federal Government to the Secretariat, dated February 18th, 1927, which is referred to in M. Zaleski's report, is annexed to the present memorandum in order to complete the documentation. This communication was received at the time when the subject dealt with by M. Zaleski was under consideration, but was not communicated to the Council as it did not propose any action to be taken by the League.

TEXT OF THE REPORT.

As the Council will doubtless have observed when reading the Secretary-General's report concerning the ratification of Conventions concluded under the auspices of the League of Nations,

---

[1] The list in question was printed in the *Official Journal*, April 1927, pages 453 to 474. It does not specify the actual cases in which an accession subject to ratification has been given, but, in order to take account of the existence of such accessions, which have the same legal effect as a signature not yet perfected by ratification, it showed the position of the various States with reference to each Convention by grouping them under one or other of the following three heads:

Ratifications or Definite Accessions;
Signatures or Accessions not yet perfected by Ratification;
Other States to whose accession the Convention is open.

The number of accessions subject to ratification which have been communicated to the Secretariat for all the Conventions concluded under the League's auspices is twenty-one.

certain States have, after the closing of the official period for signature, made their accession to certain Conventions dependent on subsequent ratification.

In a recent communication to the Secretariat, the Swiss Federal Government states that it experiences some difficulty in estimating the legal weight of these accessions which are dependent on subsequent ratification.

According to earlier procedure, accession was always full and complete as soon as it was notified. Most States still follow this rule. It is only recently that the practice of accession subject to ratification has been followed.

The Council may perhaps consider it desirable to draw the attention of the Assembly to this matter.

I therefore venture to propose that this report be distributed to the Members of the League and that the question be placed on the agenda of the next session of the Assembly.

The conclusions of the report were adopted.

Appendix.

COMMUNICATION DATED FEBRUARY 18TH, 1927, FROM THE SWISS FEDERAL GOVERNMENT TO THE SECRETARY-GENERAL.

[*Translation.*]

We have had the honour to receive the letter No. C.L. 6/1927/XI, dated the 31st of last month, by which the Legal Section of the Secretariat was so good as to inform us of the signature on January 19th, 1927, by the representative of Bolivia on the Advisory Committee on Traffic in Opium, of a Protocol of Accession, subject to ratification, by the Government of Bolivia to the Convention on Narcotics and to the Protocol on Raw Opium which were signed at Geneva on February 19th, 1925.

We have been glad to receive this communication. It would, however, be of interest to us to be exactly informed as to the practical consequences of the step taken by the Bolivian Government. We do not in fact know any precedent for a State's acceding, subject to ratification, to a general Convention, and we do not perfectly understand the legal effect which should be attributed to an accession given in this manner.

As we are on the point of submitting the Convention relating to Narcotics for approval by the Federal Chambers, we would be glad to learn whether Bolivia can be considered as having already become a party to this instrument.

Federal Political Department:

(*Signed*) MOTTA.

A. 18. 1927. V.

ANNEX 3.

WORK OF THE COMMITTEE OF EXPERTS FOR THE PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW.

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.

Note by the Secretary-General.

On June 13th, 1927, the Council considered the reports drawn up 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 of the Committee 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 Exploitation 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, 1927 [1].

"*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;

[1] Document C.254.1927.V.

" ' (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, 1927 [1].

" 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 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

---

1 Document C.253.1927.V. This memorandum, which merely informed the Council what were the documents to be considered by it, is not reproduced.

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 the 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 by whom the conference is to be convened. 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 meeting[1], 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. 41-48.)

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 questionnaries 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 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.

[1] The words "together with the Minutes of that meeting" were added by the Council.

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. "

A.I/3/1927.

ANNEX 4.

DRAFT OPTIONAL CONVENTION FOR THE COMPULSORY ARBITRATION OF DISPUTES, SUBMITTED BY THE THIRD COMMITTEE OF THE ASSEMBLY.

At the request of the Chairman of the First Committee, the Secretary of the Committee has the honour to communicate to the members the text of a resolution adopted by the Third Committee at its sixth meeting held on September 17th, 1927. The resolution has been transmitted by the Chairman of the Third Committee to the Chairman of the First Committee by a letter dated September 17th, 1927, and the text is as follows:

[*Translation.*]

" The Third Committee declares itself to be, in principle, favourable to a study being made of an optional convention for the compulsory arbitration of disputes, such as is the subject of the proposal submitted by the Norwegian delegation, and it requests the First Committee to examine the details of this proposal from the legal point of view."

The text of Dr. Nansen's proposal, referred to in the above-quoted resolution, is annexed to the present document.

TEXT OF THE DRAFT OPTIONAL CONVENTION FOR THE COMPULSORY ARBITRATION OF DISPUTES.

1. The signatory States undertake to submit all questions of every kind arising between them, which it has not been possible to settle within a reasonable time by the normal methods of diplomacy, either to judicial decision or to decision through the procedure defined in the following articles.

2. *Legal Disputes.* — In all legal disputes, including those with regard to which the parties are in conflict as to their respective rights, and in particular those mentioned in paragraph 2 of Article 36 of the Statute of the Permanent Court of International Justice, the signatory States recognise as compulsory, *ipso facto*, and without special agreement, the jurisdiction of the Court. In cases of doubt as to whether any dispute is one in which the parties are in conflict as to their respective rights, or falls within those mentioned in paragraph 2 of Article 36 of the Statute of the Permanent Court, the Permanent Court itself shall decide the question.

3. In all disputes not covered by the preceding article in which a settlement cannot be reached through the intervention of the Council of the League of Nations in accordance with the procedure of Article 15 of the Covenant, the signatory States agree to comply with the following procedure:

(*a*) The question in dispute shall be referred to arbitration and the parties shall appoint a Committee of Arbitrators to be constituted by agreement between the parties.

(*b*) If the parties cannot agree in whole or in part on the number, names and powers of the Arbitrators and upon the procedure, the Council shall, by a majority, settle the points remaining in suspense and constitute the Committee of Arbitrators.

(*c*) The parties undertake to accept and carry out in good faith within a reasonable time the award of the Committee of Arbitrators, which shall be made within six months unless otherwise agreed.

4. This Treaty in no way affects the rights and obligations of signatory parties under arbitration treaties already existing or to be concluded in the future.

A.I/4/1927.

ANNEX 4a.

DRAFT OPTIONAL CONVENTION FOR THE COMPULSORY ARBITRATION OF DISPUTES: REPORT OF SUB-COMMITTEE No. 3.

Rapporteur: M. MOTTA (Switzerland).

The Sub-Committee, which was composed as follows:

Dr. BASTOS (Uruguay),
Mr. COSTELLO (Irish Free State),
Dr. GAUS (Germany),
Dr. LANGE (Norway),
M. MATOS (Guatemala),
Mr. MOORE (Australia),
M. MOTTA (Switzerland),
M. SCIALOJA (Italy),

met on September 22nd to consider the question referred by the Third Committee to the First Committee (Optional Convention for Arbitration, proposed by the Norwegian delegation).

The Sub-Committee examined this question with all due care and asked M. Motta to act as Rapporteur to the First Committee.

The Sub-Committee has the honour to propose to the First Committee that the following opinion be given to the Third Committee:

The Committee does not consider itself in a position to study the Norwegian proposal in detail during the present session of the Assembly.

It endorses the opinion of the Third Committee favouring the consideration of a general compulsory arbitration convention, and is of opinion that it would be preferable to entrust this enquiry to the Committee provided for in the resolution relative to arbitration, security and disarmament voted by the Third Committee on September 21st, 1927.

This enquiry should include in its scope the possibility of the development of arbitration in all its aspects.

For this purpose, the Committee begs to indicate the following points:

(*a*) The acceptance of the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice or the conclusion of special treaties for judicial settlement, arbitration and conciliation should be encouraged.

(*b*) Any investigation into the methods of the pacific settlement of disputes between States should include special attention to the procedure of conciliation, the value of which cannot be exaggerated.

(*c*) Very special attention should also be given to the question of the relations between the Council's mediatory action and the procedures of arbitration and conciliation.

(*d*) As regards any possible subsequent general and optional convention for compulsory arbitration, it should in any case be given that flexibility which would enable the contracting States to regulate their engagements in accordance with their special conditions.

ANNEX 4b.

DRAFT OPTIONAL CONVENTION FOR THE COMPULSORY ARBITRATION OF DISPUTES: OPINION OF THE FIRST COMMITTEE PRESENTED TO THE THIRD COMMITTEE ON SEPTEMBER 23RD, 1927.

The Committee does not consider itself in a position to study the Norwegian proposal in detail during the present Assembly.

It endorses the opinion of the Third Committee favouring the study of a general convention for compulsory arbitration through the instrumentality of the Committee provided for in the resolution concerning arbitration, security and disarmament voted by the Third Committee on September 21st, 1927.

The enquiry should include in its scope the possibilities of the development of arbitration in all its aspects.

The Committee begs to indicate the following points for enquiry:

(*a*) Means should be sought for encouraging and promoting the acceptance of the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice and the conclusion of special treaties for judicial settlement, arbitration and conciliation.

(*b*) In any investigation into the methods of pacific settlement of disputes between States, special attention should be paid to the procedure of conciliation, which is of the utmost importance.

(*c*) Very special attention should also be given to the question of the relations between the Council's and the Assembly's mediatory action and the procedures of arbitration and conciliation.

(*d*) In studying a general convention for compulsory arbitration, enquiry should be made as to how the convention could be given sufficient flexibility to permit the contracting States to adjust the obligations assumed to their particular circumstances.

A. I/2/1927.

ANNEX 5.

ACCESSION TO INTERNATIONAL AGREEMENTS, GIVEN SUBJECT TO RATIFICATION: REPORT OF SUB-COMMITTEE No. 1.

Rapporteur: M. MOTTA (Switzerland).

The Sub-Committee appointed by the First Committee to study the question of accessions to international agreements given subject to ratification met at the Secretariat of the League of Nations at 10 a.m. on September 16th. It elected me as Chairman and at the same time asked me to submit its report.

The Sub-Committee considered the consequences involved by an accession to an international agreement given subject to ratification, a question submitted to the Assembly as a result of the Council's adoption last March of a report by the Polish delegate.

The Sub-Committee made a distinction in particular between accession pure and simple, as understood in the established practice, and exercising its full effects as soon as notified, and accession given subject to ratification, which is a more recent practice.

While considering that the former practice should in any case be maintained, the Sub-Committee observed, nevertheless, that the new practice offered advantages in certain cases. There are, in fact, Governments which, having been unable to sign an agreement within the time-limit fixed, would nevertheless be glad to accede thereto subject to ratification.

The list submitted to the Sub-Committee by the Secretariat shows that this procedure is nearly always followed by the same Members of the League and that several of them have followed up their accession by ratification.

In view of those facts, the Sub-Committee came to the conclusion that the procedure of accession given subject to ratification should be accepted, but that the practice should not be either encouraged or discouraged. So as to enable the States parties to an international agreement to know with what Governments they are pledged, it is necessary to establish a system precluding all doubt as to the scope of the undertaking entered into by an acceding State.

The Sub-Committee would therefore advise the First Committee to take the line that the obligation should be presumed to be final when a State does not, when notifying accession, expressly mention that it is subject to ratification.

The Sub-Committee also studied the effect which the new practice might have on the League's publications, and it came to the conclusion that it would be advisable to introduce in the accessions column of the list published by the Secretariat a sub-division clearly showing which accessions are final and which are still subject to ratification.

In view of the foregoing, the Sub-Committee recommends the First Committee to propose to the Assembly a resolution on the following lines:

> " The procedure of accession to international agreements given subject to ratification is an admissible one which the League should neither discourage nor encourage.
>
> " Nevertheless, if a State gives its accession, it should know that, if it does not expressly mention that this accession is subject to ratification, it shall be presumed to have undertaken a final obligation. If it desires to prevent this consequence it must expressly declare at the time of accession that the accession is given subject to ratification. "

A. I/6/1927.

ANNEX 6.

PROPOSAL BY THE DELEGATION OF PARAGUAY FOR THE PREPARATION OF A GENERAL AND COMPREHENSIVE PLAN OF CODIFICATION OF INTERNATIONAL LAW: REPORT OF SUB-COMMITTEE No. 2.

Rapporteur: Dr. CABALLERO (Paraguay).

The First Committee appointed a 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.

This proposal was referred to Sub-Committee No 2 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 view 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 Sub-Committee, however, considered that, as this investigation was not particularly urgent, 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 next year.

The Sub-Committee has accordingly the honour to propose that the following draft resolution be submitted to the Assembly for its approval:

" 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 considers 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. "

A. I/5/1927.

ANNEX 7.

PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW: REPORT OF SUB-COMMITTEE No 2.

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 States taking part in the first Codification Conference should be allowed to propose the insertion in the agenda of questions other than those mentioned above. What will be said below regarding the necessity of careful and methodical preparation for the work of the conference will demonstrate the impossibility of allowing this. At the conference itself no right of initiative should be exercised by States. Even during the preparatory discussions, proposals for the insertion of fresh questions in the agenda of the conference must not be allowed. That would interfere with the whole scheme. The exercise by States of any such initiative is quite out of the question unless it took the form of a recommendation to the Council of the League, or to the Conference and related to the study of new questions, at a later conference [1].

---

[1] In the text of the report of the First Committee to the Assembly, the drafting of this paragraph was slightly modified in order to take into account, as far as it was possible, the observations made by Dr. Lange.

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. The President of the Council should be entrusted with their appointment upon the proposal of the Secretary-General.

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 perpetual. 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 concluded for a period of ten years, renewable by tacit agreement, unless in the course of a subsequent period of ten years a certain number of signatory States should demand revision. 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 reigstration 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 he contemplated for 1928 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:

" 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 Persons 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 Permanent International Council for the Exploration of the Sea at Copenhagen and any other organisation specially interested in this matter, the problem of the international protection of marine fauna, and to report to the Council, indicating what possibility there may be of summoning a technical conference on this subject 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 President of the Council with the task of appointing, at the earliest possible date, a preparatory committee, on the advice of the Secretary-General, 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. "

CONTENTS TABLE

of the Minutes and Annexes of the First Committee arranged according to subject.